



# Committee Report

<b>To:</b>	Chair and Members of the Long Term Care Committee of Management
<b>Committee Date:</b>	May 10, 2022
<b>Subject / Report No:</b>	LTCR-CM-09-22
<b>Title:</b>	Fixing Long Term Care Act, 2021 and Regulation 246/22 Update
<b>Prepared by:</b>	Jennifer Cornell, Director of Long Term Care
<b>Reviewed by:</b>	Kim Wingrove, Chief Administrative Officer
<b>Lower Tier(s) Affected:</b>	Recommendation adopted by Committee as presented; Endorsed by County Council May 26, 2022 per Resolution CC48-22;

## Recommendation

1. That report **LTCR-CM-10-22 regarding Fixing Long Term Care Act, 2021 and Regulation 246/22 Update** be received for information.

## Background

Since 2019, there have been a number of public reports that focused on the quality and safety of services provided in long term care homes; The Gillespie Public Inquiry, Auditor's Food and Nutrition report, and The Auditor General of Ontario COVID-19 Preparedness and Management. These reports have led to a complete overview of the current Act, and provided recommendations to improve the quality of life for residents. On December 9, 2021, Ontario's Bill 37, Providing More Care, Protecting our Seniors, and building More Best Act, 2021 received royal assent. Bill 37 will repeal the Long-Term Care Act, 2007 and replace it with the Fixing Long Term Care Act (FLTCA), 2021 as of April 11, 2022. The new Act lays the foundation for long term care residents to receive better quality of care by supporting the three pillars.

- Staffing and care
- Accountability and transparency, enforcement, and licensing
- Building modern, safe, comfortable homes for residents

# Highlights

## Direct Hours of Care Target

Prior to the Act, residents were receiving an average of two hours and 45 minutes of direct care from registered nurses, registered practical nurses and personal support workers. The FLTCA establishes incremental targets for the average minimum number of hours of direct care to be provided to the residents per day.

The Act phases in the requirements gradually over time; by March 31, 2025, the Act will require that an average of four hours of direct care be provided to residents by personal support workers and nurses, and by March 31, 2023, an average of 36 minutes of direct care must be provided to residents by allied health care professionals.

The government has also released [Ontario's Long-Term Care Staffing Plan](#), which focuses on increasing staff, increasing education and training, supporting staff development, improving working conditions, providing effective leadership, and evaluating and measuring success.

## Considerations for employers

In implementing operational changes to achieve the direct hours of care targets and other obligations in the Act, employers should be mindful of the following considerations:

- Sufficient staff will need to be engaged or available to provide the required levels of care. Given that staffing shortages are already a challenge for employers in the sector, arrangements for contingent staffing or efforts towards recruitment and retention should be considered.
- Employers might adjust existing employees' hours of work, availability expectations, and scope of responsibility, consideration should be given to compliance with applicable terms of employment, including individual employment contracts and collective agreements for unionized staff. Unilateral changes could carry risk of constructive dismissal claims or grievances alleging breach of applicable collective agreement provisions.
- Employers should review and update their policies and procedures to incorporate these targets and methods of monitoring and complying with them.
- The term "allied health care professionals" is not defined by the Act and is open to be defined in further regulations. Employers must be vigilant in keeping up with upcoming regulations and hire and/or allocate the specified hours to these health care professionals.

## Compliance and Enforcement

The FLTCA has strengthened the tools for compliance and enforcement to improve resident care and safety. These tools will be used as part of the Ministry's Inspection Program and include:

- Remedied Non-Compliance (NEW)
  - Inspectors may address very low risk instances of non-compliance during an inspection without having to take further compliance action.

- Written Notifications
  - Inspectors are no longer able to issue a voluntary plan of correction as a possible compliance action.
- Compliance Orders (NEW)
  - When there is a non-compliance finding the inspector may issue an order that requires the home to do anything or refrain from doing anything to achieve compliance with FLTCA.
  - The home must prepare, submit, and implement a written plan for achieving compliance.
  - There are also two new areas of the compliance order that may include direction by the inspector for the homes to:
    - Arrange for specific staff to receive training.
    - Allow the Ministry to perform any work or activity at the licensee's expense.
- Administrative Monetary Penalties (AMP) (NEW)
  - An inspector can issue an AMP if licensee has not complied with a requirement under the FLTCA and must be issued if the licensee:
    - Has not complied with a compliance order made under the FLTCA; or;
    - Has not complied with a requirement under the FLTCA and it results in a compliance order being issued and the licensee has received at least one other compliance order for the same requirement within a three-year period.
- Order Requiring Management (UPDATED)
  - The FLTCA may order a licensee to retain a temporary manager to assist in the management of the home if they determine that there are circumstances that are harmful to the health, safety, or welfare of residents or if there is an emergency situation.
  - A temporary manager may also be brought into the home to manage the entire operations of the home.
- Increased Fines for Offences (NEW)
  - Current fines have doubled; if convicted an individual could face a fine up to \$200,000 for first offence and up to \$400,000 for a subsequent offence. If convicted a corporation could face a fine up to \$500,000 for a first offence and up to \$1,000,000 for a subsequent offence.
- Investigations
  - Ministry is expanding its capacity to investigate and lay charges for offenses under the FLTCA.
- License Suspension and Supervisor (NEW)
  - The Minister of LTC or the Director may suspend a license and appoint a LTC Supervisor to take over operations of the home until suspension is lifted, the license expires or revoked.

## Complaints

All LTC homes must post their complaints procedure including the Ministry's telephone number in an area of the home that is easy to find, this information must also be provided at the time of admission. The FLTCA has updated the requirements for licensees to include:

- A licensee must forward all complaints that allege harm or risk of harm to one or more residents including but not limited to physical harm, immediately to the Director.
- A licensee must provide contact information for the MLTC Family Support and Action Line and for the Patient Ombudsman to the complainant in response to a complaint.
- Any complaint received about resident care or how the home runs, requires an investigation.
- If complaint alleges harm or risk of harm to one or more residents, the licensee must investigate the complaint immediately and forward to the Director.
- The response must be completed in the assigned timeframe and include telephone number of LTC Family Support and Action Line and the contact for the Patient Ombudsman.
- A documented record must be kept for all complaints received regarding resident care or the home's operation.
  - What the complaint was about
  - The date the complaint was received
  - The action taken to resolve the complaint
  - How it was finally resolved
  - The dates on which any response was provided
  - Any further responses from the complainant
- Trends must be analyzed every quarter and written records of each review must be kept.
- Licensees are encouraged to post all avenues available when submitting a complaint; Telephone, written correspondence or contacting the Patient Ombudsman.

## Continuous Quality Improvement Initiative

The FLTCA now has a greater emphasis on resident quality of care, quality of life and continuous quality improvement. Every licensee is required to:

- Establish an interdisciplinary quality improvement committee within six months of the date the section of regulation comes into effect.
  - The Committee is intended to create a safe and collaborative environment to support an ongoing culture shift. Members include the Executive Director, Director of Nursing, Medical Director, Designated Lead, Registered Dietitian, and a representative from Pharmacy, Nursing, Personal Support Worker, Resident Council and Family Council.
- Ensure the home's continuous quality of improvement initiative is coordinated by a designated lead.
- Prepare an interim report on the continuous quality improvement initiative for the home for the 2022-23 fiscal year and post the report on the County's website. Report must be completed and posted on web annually.
- Record must be maintained of all persons who participated in evaluation of improvements.
- Improve the resident experience by implementing the new requirement for air conditioning in resident bedrooms.
- Increasing menu planning flexibility and allowing more choice to better meet the needs of residents.

## Whistle-blowing Protections

The FLTCA continues the strong protections for whistle-blowers, it now expands to apply to any disclosure by anyone to any personnel of the Ministry and to LTC Residents' and Family Councils and prohibits any form of retaliation or threats of retaliation against someone. The home must post whistle blowing protections and provide this information to residents, staff, and volunteers.

The FLTCA gives protection to residents and family members from worrying about the affect of care due to raising concerns. A disclosure can be about anything, and anyone can come forward.

## Infection Prevention and Control Standard

[Infection Prevention and Control Standards](#) for LTC Homes has been developed based on current evidence-based requirements for IPAC in long-term care and reflects robust practices that are appropriate to the long-term care setting.

LTC Homes must implement any standard or protocol issued by the Director in regard to infection prevention and control and must comply with current evident and best practice. (IPAC Canada, Public Health Ontario and advice from expert IPAC practitioners). Additional requirements include:

- Additional training for IPAC leads
- IPAC Lead Certification within 3 years of new regulation
- Quality Management Program for IPAC must be implemented
- Additional personnel and resource assignments for IPAC program.
- IPAC program is implemented based on the standards and protocols issued by the Director. Sections of the standards include IPAC Program and Resources, Surveillance, Outbreak Preparedness and Management, IPAC Polices and Procedures, PPE, Training and Education, Regular Evaluation and Quality Improvement, Routine and Additional Precautions, Hand Hygiene Program and Immunization and Screening and must be implemented once FLTCA comes into effect.
- Each licensee shall implement any IPAC standard, or protocol issued by the Director.

## Palliative Care

The changes to Palliative Care reflect a shift in practice towards a broader and more holistic approach to palliative Care that aligns with the Ontario Provincial Framework for Palliative Care. The FLTCA has added a new right to the Resident's Bill of Rights to include every resident to be provided with care and services based on a palliative care philosophy.

All licensees must ensure that the resident's plan of care includes all aspects of care, including the integration of care/services that are based on the interdisciplinary assessment that has considered the resident's physical, emotional, psychological, social, cultural, and spiritual needs. An explanation of the palliative care options must be provided to the resident or POA/SDM and include at a minimum, quality of life improvements, symptom management, psychosocial support, and end of life care, if appropriate.

Palliative Care Training has been updated in the FLTCA to include Medical Directors and physicians.

All homes must comply with the palliative care requirements within six months of the FLTCA enforcement date. All resident's plan of care that were in effect before April 11<sup>th</sup> continue to be considered in effect under the new FLTCA and reviewed/revised as per O. Reg. 246/22.

## Enhanced Screening Measures in LTC Homes

The FLTCA has enhanced the screening requirements for staff, volunteers, and members of the licensee's board of directors, its board of or committee of management or other governing structure.

Including:

- Restricting hiring staff, accepting volunteers, and maintaining relationships with members of the licensee's board of directors, its board of or committee of management or other governing structure if there has been an offence(s) against the vulnerable population or professional misconduct by a regulated professional.
- Members of the licensee's board of directors, its board of or committee of management or other governing structure are now part of the enhanced screening, and a police record check is to be conducted within six months before the person becomes a member of the licensee's governing structure.
  - Active members will have six months from the date that the regulation came into effect to comply with police record checks and signed declaration.
- Homes must ensure that police record checks have been received within three months for individuals that were hired during the pandemic.

## Emergency Planning

The FLTCA has strengthened the requirements for emergency and evacuation plans for LTC homes. Three months after the FLTCA effective date, homes must consult with entities that are involved or provide emergency services to the home, this also includes resident and family councils. The plan must clearly state activation and deactivation process, along with the communication plan to ensure frequent and ongoing communication. Homes are required to record emergency plans in writing, make plans available on its website and make physical copies available when requested.

Types of emergencies has been expanded to include outbreaks of communicable diseases, gas leaks, natural disasters, extreme weather events, boil water advisories and floods.

Outbreak of a communicable diseases, outbreaks of a disease of public health significance, epidemics and pandemics requirements have been updated to include:

- Identifying as area of the home to be used for isolating residents as required
- Cohorting process for staff and residents
- Staffing contingency plans during an emergency
- Managing staff exposure to an infectious disease policy
- Management of symptomatic residents and staff process
- A process that outlines who the Outbreak Management Team is and their roles and responsibilities

Emergency plans must include resourcing PPE supplies, identification of emergency service providers roles and responsibilities and a plan for food, fluid and drug provision in the event of an emergency.

Emergency plans must also include a recovery process that debriefs residents, POA/SDM, staff, volunteers and students that establishes how to resume to normal operations and how to support individuals that are experienced distress during the emergency. Homes must evaluate the plan within 30 days of emergency being declared over.

Homes' evacuation plans must now include the identification of a safe environment location, transportation plan and a plan to transport critical medication, supplies and equipment. At least once every three years, homes must conduct a planned evacuation test and record this information along with any changes of improvement.

Every LTC home must ensure all staff, students and volunteers are trained on the emergency plan during orientation and annually thereafter.

Annual attestation attesting to compliance must be prepared by all LTC Homes and submitted to the Director.

Website content must be updated to include:

- Physical address of home
- The approximate number of licensed beds
- Direct content information: Licensee, senior officer of the home (in case of municipal home – a person who is on the Committee of Management), Administrator/Executive Director, Director of Care and all infection prevention and control leads.
- The Ministry toll-free number for making complaints
- The current annual report
- The current version of emergency plans
- The current version of the visitor policy

## Other obligations

The FLTCA maintains the existing limit on temporary, casual, or agency staff.

- In order to provide a stable and consistent workforce and to improve continuity of care to residents, every licensee of a long-term care home shall ensure that the use of temporary, casual or agency staff is limited in accordance with the regulations.

Many of the new FLTCA requirements have come into force on April 11<sup>th</sup>, 2022, there are some requirements that have assigned timelines and are provided in the link below.

## Next Steps

Most of the requirements have come into force on April 11<sup>th</sup>, however there is a transition period that ranges from 3 to 6 months for identified items. Policies and Procedures are currently being updated to reflect new regulations. Our teams are preparing education for team members on new Act/Regulations. Medical Directors have been updated on new regulations and requirements for their role at the recent Medical Director's meeting. Health Quality Ontario – Quality Improvement Plan (QIP) for all three homes will be submitted on June 30, 2022. The

teams are getting back to the fundamentals as they work on the quality improvement activities, and operational planning. (i.e., Integration Medication Management, PCC Platform, Clinical Decision-Making Tools).

## Appendices and Attachments

- [The Gillese Public Inquiry](#)
- [Auditor's Food and Nutrition report](#)
- [The Auditor General of Ontario COVID-19 Preparedness and Management](#)
- [AsDM Memo to licensees - EN.pdf \(ltchomes.net\)](#)
- [O. Reg. 246/22: GENERAL \(ontario.ca\)](#)
- [Important Dates - Timelines and Dates](#)
- [Implementation QAs - EN.pdf \(ltchomes.net\)](#)