

Emergency Order Facilitates Staffing, Work Deployment and Streamlined Measures for the Developmental Service Sector in Response to COVID-19

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On March 17, 2020, the Ontario Government declared a province-wide state of emergency which was extended on March 31, 2020 for another 14 days. With the expanded powers afforded to it under the *Emergency Management and Civil Protection Act* (the “EMCPA”), the Ontario Government has passed several emergency orders amending several acts regulating staffing and work deployment in Ontario’s healthcare sector. Several of these emergency orders have been addressed in detail in earlier Focus Alerts which can be viewed on our [COVID-19 Information Hub](#).

In the most recent of these Orders, filed on April 3, 2020, the Ontario Government made amendments to the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* (SIPDDA) and Ontario Regulation 299/10 (the “Regulation”). This Order lasts until April 17, 2020 unless revoked sooner or extended under the EMCPA. A copy of the Order can be viewed [here](#).

SIPDDA and Ontario Regulation 299/10

SIPDDA’s primary purpose is to provide adults with developmental disabilities and their families with means of accessing safe and effective services and supports. To accomplish this purpose, SIPDDA regulates “service agencies”, organizations that are funded by the Ontario Ministry of Community and Social Services (Ministry) to provide services and supports to adults with developmental disabilities.

Under SIPDDA, Ontario Regulation 299/10 (Regulation) sets out quality assurance measures that a service agency must maintain relating to, for example preventing and reporting abuse, confidentiality and privacy and human resource practices.

Key Changes to SIPDDA and the Regulation

Emergency Order Facilitates Staffing and Work Deployment Measures by Employers

Ensuring adequate staffing is a primary concern facing service agencies in their efforts to maintain their level of services during the COVID-19 outbreak, with this concern only being exacerbated as

the outbreak continues.

Many of the emergency Order's amendments therefore minimize and remove legal hurdles to managing work deployment and staffing under SIPDDA, the Regulation and the Ministry's policy directives. Most substantially, the Order provides service agencies with a broad authority to do the following, despite any statute, regulation, order, policy, arrangement or agreement (including a collective agreement):

- Identify staffing priorities and develop, modify and implement redeployment plans, including the following:
 - Redeploying staff within different locations in (or between) premises where a service agency provides services and supports.
 - Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work.
 - Changing the scheduling of work or shift assignments.
 - Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise.
 - Employing extra full-time, part-time or temporary staff or contractors, including for the purposes of performing bargaining unit work.
 - Using volunteers to perform work, including to perform bargaining unit work.
 - Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.
- Conduct any skills and experience inventories of staff to identify possible alternative roles in any area;
- Require and collect information from staff or contractors about their availability to provide services for the service agency;
- Require and collect information from staff or contractors about their likely or actual exposure to COVID-19, or about any other health conditions that may affect their ability to provide services and supports.
- Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order.

A service agency may implement redeployment plans without complying with provisions of a collective agreement, including lay-off, seniority/service or bumping provisions.

Streamlined Requirements for Service Agencies

In addition to redeployment plans, the emergency Order relaxes some elements of the following

requirements under the Regulation and the Ministry's policy directives:

- Reporting
 - For example, the emergency Order permits service agencies to abstain from reporting information to the Ministry as required by the Regulation or the Ministry's policy directives, with the exception of the submission of serious occurrence reports as required by the policy directives.
- Documentation
 - Service agencies are not required to document information, unless it is necessary to ensure the safety, security and well-being of persons who receive services and supports from the service agency. The Order should be consulted for those documentation requirements that service agencies are still continued to comply with.
- Staffing, volunteers and members of the board of directors
 - For example, the Order permits service agencies to take the following measures:
 - Adjusting staffing levels to ensure an adequate level of support staff is maintained to meet individuals' support plans;
 - Deferring police record check requirements provided they adopt appropriate measures to ensure the safety of persons with developmental disabilities;
 - Abstaining from meeting training and orientation requirements set out in the Regulation provided they continue to ensure the safety and care of persons with developmental disabilities and the personal safety of staff and volunteers. Physical restraints may only be used by staff and volunteers who have been trained in accordance with the Regulation and the Ministry's policy directives; and
 - Deferring requirements to provide refresher courses.
- Care requirements
- Temporary residential settings

In Our View

In Ontario, thousands of adults with developmental disabilities depend on the continued operation of service agencies for their care, including those residing in intensive-support residences and supported group living residences. The COVID-19 outbreak endangers the effective operation of service agencies with the real risk of staffing shortages.

While the emergency Order may not completely address this concern, it is an important first step towards facilitating the ability of service agencies to adequately staff themselves, and therefore to

continue to provide a safe and secure environment for those they serve throughout the COVID-19 emergency.

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