

Ontario Government Files Emergency Order and Amends Regulations Relating to Long-Term Care Homes in Response to COVID-19. Also Amends Retirement Homes Act Regulation

Date : March 25, 2020

Public health authorities have advised that the elderly and people with underlying chronic or immunocompromising medical conditions are particularly at risk from COVID-19. There have also been concerns raised about the health care system's ability to provide the level of care and service that may be needed if COVID-19 cases surge. The Ontario Government has made regulatory changes to address the needs of long-term care homes during the pandemic.

On March 20, the Government filed amendments to Regulation 79/10 under the *Long-Term Care Homes Act, 2007*. The purposes of the amendments are to:

- Protect the health and safety of long-term care home residents;
- Streamline the operations of long-term care homes; and
- Support long-term care homes in building staffing capacity during the pandemic.

On March 23, the Government also filed an Order under the *Emergency Management and Civil Protection Act* addressing work deployment and staffing measures in long-term care homes. Those amendments mirror the emergency Order filed on March 21 with respect to work deployment and staffing measures in hospitals.

The Government has also made regulatory amendments regarding retirement homes. On March 19, the Ontario Government filed amendments to Regulation 166/11 under the *Retirement Homes Act, 2010*. The amendments ensure that guidance and requirements from the Chief Medical Officer of Health relating to COVID-19 are followed by retirement homes, including those that apply to long-term care homes.

Long-Term Care Homes Act Regulation Amendments

Exception to the 24/7 Registered Nurse Requirement

The *Long-Term Care Homes Act (LTCHA) General Regulation* is amended to provide exceptions to the requirement to ensure that at least one Registered Nurse (RN) who is an employee of the licensee and a member of the regular nursing staff of the home is on duty and present in the home

at all times.

Where the pandemic prevents an RN who is a member of the regular nursing staff from getting to the home, and where the back-up plan is unable to ensure that the 24/7 RN requirement is met, the following will be sufficient:

- An RN who works at the home pursuant to a contract or agreement with the licensee of the home or who works at the home pursuant to a contract or agreement between the licensee and an employment agency or other third party may be used;
- A registered practical nurse who is an employee of the licensee or who works at the home pursuant to a contract or agreement with the licensee or a contract or agreement between the licensee and an employment agency or other third party may be used if the Director of Nursing and Personal Care or a registered nurse is available for consultation; or
- A member of a regulated health profession who is a staff member of the home and has a set of skills that, in the reasonable opinion of the licensee, would allow them to provide care to a resident, may be used if the Director of Nursing and Personal Care or registered nurse is available for consultation.

Staffing Requirement Exemptions for Director of Nursing and Personal Care

Additional amendments to the LTCHA General Regulation provide for the removal of the number of required hours that the Director of Nursing and Personal Care must work in their position so that they can focus on frontline activities, if needed.

Providing Temporary Flexibility in Timing of Police Record Checks

Temporary flexibility in the timing of police record checks in order to get more staff working in homes sooner is also addressed by the amendments, and the following will apply during a pandemic:

- Before a staff member is hired or a volunteer is accepted by a licensee, the licensee must require that the staff member or volunteer must provide the licensee with a signed declaration disclosing specified charges and convictions for offences since the date the person's last police record check was conducted, or if no such police record check has been conducted, of all occurrences;
- Ongoing requirements regarding signed declarations of offences and orders since the date of the last Police Record Check would be maintained; and
- Should the staff member or volunteer continue to be employed or accepted by the home

after these regulations are revoked, a police record check (vulnerable sector check) would be required for the person to facilitate their on-going employment or volunteer activity.

Prioritizing Timing of Training Requirements

Finally, the LTCHA General Regulation is amended to prioritize the timing of specific training requirements. The Government has indicated that training must be provided within one week of the staff member beginning to perform their responsibilities on the following topics:

- The Residents' Bill of Rights;
- The long-term care home's policy to promote zero tolerance of abuse and neglect of residents;
- The duty under section 24 of the *Long-Term Care Homes Act* to make mandatory reports;
- Fire prevention and safety;
- Emergency and evacuation procedures; and
- Infection prevention and control.

All other required training must be provided within three months of the staff member beginning to perform their responsibilities.

Long-Term Care Homes Emergency Order

The emergency Order regarding work deployment and staffing measures filed on March 24 applies to long-term care homes and municipal homes for the aged. Long-term care homes are authorized to take, with respect to work deployment and staffing, any reasonably necessary measure to respond to, prevent and alleviate the COVID-19 outbreak.

The Order authorizes long-term care homes to take the actions outlined below despite any other statute, regulation, order, policy, arrangement, or agreement, including a collective agreement:

1. Identify staffing priorities and develop, modify and implement redeployment plans, including the actions outlined below. Long-term care homes may implement redeployment plans without complying with provisions of a collective agreement, including lay-off, seniority/service or bumping provisions

- Redeploying staff within different locations in (or between) facilities of the long-term care home
- 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 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

2. Conduct any skills and experience inventories of staff to identify possible alternative roles in any area

3. Require and collect information from staff or contractors about their availability to provide services for the long-term care home

4. Require the provision of 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 service

5. Suspend, for the duration of the Order, any grievance process with respect to any matter referred to in the Order

The Order applies throughout the Province of Ontario. It lasts for 14 days, unless revoked sooner or extended under the *Emergency Management and Civil Protection Act*.

Retirement Homes

Section 27 of the *Retirement Homes Act (RHA) General Regulation* deals with the infection prevention and control program required by the *RHA*. The amendments to that section add requirements for licensees to ensure that:

- Any guidance, advice or recommendations given to retirement homes by the Chief Medical Officer of Health are followed in the retirement home; and
- All reasonable steps are taken in the retirement home to follow:
 - Any directive respecting COVID-19 issued to long-term care homes by the Chief Medical Officer of Health; and
 - Any guidance, advice or recommendations respecting COVID-19 that are given to long-term care homes by the Chief Medical Officer of Health and made available on

the Government of Canada's website respecting COVID-19.

In Our View

Long-term care homes and retirement homes house individuals who may be particularly at risk for COVID-19. It is therefore crucial for employers in these sectors to be able to take steps to protect their residents and provide an adequate level of care. These regulatory changes will provide employers with increased flexibility to do so as effectively as possible during the pandemic.

For further information, please contact [Porter Heffernan](#) at [613-940-2764](#), [André Champagne](#) at [613-940-2735](#), [Sébastien Huard](#) at [613-940-2744](#), [Kecia Podetz](#) at [613-940-2752](#), [Raquel Chisholm](#) at [613-940-2755](#) or [Vicky Satta](#) at [613-940-2753](#).