



SELECTED TOPICS IN LONG-TERM CARE

May 25, 2022

By Jane E. Meadus
Staff Lawyer & Institutional Advocate
Advocacy Centre for the Elderly

Disclaimer

- This presentation and any material provided for this presentation is not legal advice but is only legal information for educational purposes
- Legal issues are **FACT SPECIFIC** and require factual information in order to provide legal advice to resolve an issue/problem/determine your rights
- If you require legal advice, please consult your own lawyer or legal advisor

Overview of Long-Term Care Homes

RESIDENT CHARACTERISTICS



78,787 LTC residents across the province (September 2019)



39,513 people on the LTC wait list (October 2020)

RESIDENT DEMOGRAPHICS

83 years old is the average age

57% are 85 year or older

69% are female

85% speak primarily English or French

7% (4,980) are under the age of 65

24% are married at admission

ACTIVE CONDITIONS

64% of residents (65,000) have dementia or Alzheimer's disease (the most prevalent active condition amongst LTC home residents)

90% residents with 3 or more active conditions

43% aggressive behaviour

80% bladder incontinence

SECTOR CHARACTERISTICS

12 specialized units (225 beds) targeted to behaviours, dialysis and veterans' care



321 beds are allocated for respite

3 Centres for Learning, Research and Innovation



Employs over **52,000** staff who provide interdisciplinary care to over **100,000** residents annually.



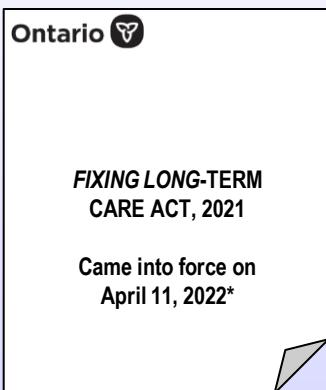
40% of homes have 96 or fewer beds

Fixing Long-Term Care Act, **2021 (FLTCA)**

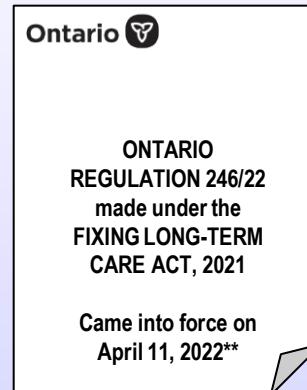
- Was part of a larger piece of legislation called the *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021*
- This legislation was introduced on October 28, 2021
- Debate was held from November 5 – November 18 (see Hansard for Transcripts)
- Was sent to the Standing Committee on the Legislative Assembly on November 18
- Standing Committee on the Legislative Assembly received written and oral submissions
- Oral submissions were held from November 23 – 25 (see Hansard for Transcripts)
- Minister of Long-Term Care presented first
- There were 12 other oral submissions
- Committee reviewed submissions and made any amendments
- Went back to House for 2 days of debate and received Royal Assent on December 9
- January 18, 2022 – draft regulations were released for 30 day consultation
- *FLTCA* was enacted April 11, 2022

How to Read and Find the FLTCA and Regulation

Fixing Long-Term Care Act, 2021



Regulation under the FLTCA



Replaces the *Long-Term Care Homes Act, 2017*

Replaces O. Reg. 79/10
made under the *Long-Term Care Homes Act, 2017*

Read the FLTCA and Regulation online: www.ontario.ca/laws

Confinement Sections – No Date for Enacting

- Sections related to confinement – passed but not enacted
 - Section 33 – Amendment will be needed to require a policy for restraining **and** confining
 - Section 34 – Protecting from restraining and confining
 - adding confining to the protections
 - Section 34.1 – Confining of resident
 - Requirements as to when can confine
 - Required as cannot legally confine without due process
 - Section 51
 - Process to be used when admitting to confinement
 - Section 82 – Training
 - Adding confinement to staff on confinement, minimizing of confinement
 - Section 84 – Information for residents, etc.
 - Adding notification of confinement policy to information for residents on admission
 - Section 85 – Posting of Information
 - Adding notification of confinement policy to posted information

Review by Minister – No Date for Enactment

- Section 115 - Request for Minister review – passed but no date for enacting confinement
- This section would allow any person to request the Minister review
 - Whether or not an license should be issued
 - Whether to approve a transfer of license or beds under a license
 - Whether an undertaking should be given to issue a license

Regulatory Amendments Not Yet in Place

- Section 77 – Menu Planning (effective July 11, 2022)
 - Among the changes
 - No longer requires alternate choices
 - Includes choice of other available entrees and side dishes at all three meals to meet residents' specific needs and food preferences
 - Removes references to Canada Food Act
 - Whether an undertaking should be given to issue a license
- Section 242 – Special Circumstances, Pandemic, Hospital Admission (effective October 11, 2022)

Complementary Legislation

- *Health Care Consent Act*
- *Substitute Decisions Act*
- *Personal Health Information and Protection Act*
- *Fire Code*
- *Occupational Health and Safety Act*
- *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*
- Many others

RESIDENTS' BILL OF RIGHTS WHAT HAS CHANGED

Preamble and Fundamental Principal

- Fundamental Principal remains the same
- Essentially that it is the home of the resident
- The Preamble sets out the purpose and goals of the legislation
- *FLTCA* has increased what is in the Preamble

Residents' Bill of Rights

- Residents Rights can be enforced as a contract in Court
- Guides interpretation of:
 - The Act and regulations
 - Agreements between the licensee and Crown/agent
 - Agreements between the licensee and resident/SDM
- Just because a “right” does not appear in the Residents’ Bill of Rights – does not mean that the resident does not have that “right”
- Residents do not “lose” rights that all others have just because they move into a long-term care home

Changes to the Residents' Bill of Rights

- Twenty-nine (29) rights
 - Was 27 under the *LTCHA*
- Two brand new rights
 - #20 – Caregiver Support
 - #25 – Palliative Care Philosophy
- Amendment to wording
- Grouped rights together under headings
- Amended to have gender neutral language
 - Removed “his or her” and replaced with “their”

New: Rights Headings and Groupings

- Right to be Treated with Respect
- Right to Freedom from Abuse and Neglect
- Right to an Optimal Quality of Life
- Right to Quality Care and Self-Determination
- Right to be Informed, Participate, and Make a Complaint

Right #1

1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's **inherent dignity, worth and individuality, regardless of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.**

- Amended to reflect wording of under the *Ontario Human Rights Code*
- Long-term care homes were already, and continue to be, subject to the *Ontario Human Rights Code*

Rights #4 and #5

4. Every resident has the right **to freedom** from abuse.
5. Every resident has the right **to freedom** from neglect by the licensee and staff.

- These rights previously stated residents were “protected from” neglect and abuse
- Are tied to the abuse sections in the Act and Regulation

Right #6

6. Every resident has the right to communicate in confidence, receive visitors of their choice and consult in private with any person without interference.

- New regulations related to homes having “visitor policies” ostensibly to ensure that visitors are allowed in, may conflict with this section if they “interfere” with visitors, by limiting where and when can visit, barring them, serving with Trespass Notices, etc.

Right #8

8. Every resident has the right to share a room with another resident according to their mutual wishes, if appropriate accommodation is available.

- Newly built homes often do not have any shared rooms, which makes this right impossible to meet, and is problematic for spouses/partners who want to continue to be together

Right #16

16. Every resident has the right to **proper accommodation, nutrition, care and services consistent with their needs.**

➤ Previous wording was right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.

Right #20

20. Every resident has a right to ongoing and safe support from their caregivers to support their physical, mental, social and emotional wellbeing and their quality of life and to assistance in contacting a caregiver or other person to support their needs.

- New – direct result of barring of caregivers during the pandemic

Right #24

24. Every resident has the right not to be restrained, except in the limited circumstances provided for under this Act and subject to the requirements provided for under this Act.

- At a future date, this will be amended to read “restrained or confined” in conjunction with the enacting of *FLTCA* s. 34. & 34.1
- Confinement sections was also written into the *LTCHA* but never enacted – thus making ongoing confinement (detention) in LTCHs illegal

Right #25

25. Every resident has the right to be provided with care and services based on a palliative care philosophy.

- New – in conjunction with section 12 of the *FLTCA*
- Palliative – does not mean “end-of-life” (see Palliative Care Information Sheet)
- however – it is not clear what this means – many advocates do not agree with this inclusion
- Palliative Care Philosophy will be the subject of a separate webinar on June 14 conducted by Dr. Fred Mather

Right #27

27. Every resident has the right to be informed in writing of any law, rule or policy affecting services provided to the resident and of the procedures for initiating complaints.

- Residents/SDMs must be provided with the following policies:
 - Duty of home to promote zero tolerance of abuse and neglect of residents
 - Written procedure for making complaints to the Director
- Residents/SDM must be notified of the policy to minimize restraint and how to get a copy of that policy
- Despite the right to access any policy that affects them – it is common for residents to be refused access to other policies



VISITORS

Visitor Policy

O. Reg. 246/22, s. 267

- Must have a visitor policy which includes
 - Process for access during outbreaks and non-outbreaks
 - Process for designating and documenting caregivers
 - Complies with all applicable laws, directives, orders, guidance or recommendations in accordance with the *Health Protection and Promotion Act*
 - Requires visitor logs
 - Policy must be provided to the Residents' Council and Family Council, if any

Essential Visitors

- A caregiver
- A support worker who visits a home to provide support to the critical operations of the home or to provide essential services to residents
- A person visiting a very ill resident for compassionate reasons including, but not limited to, hospice services or end-of-life care
- A government inspector with a statutory right to enter a long-term care home to carry out their duties

Ministry of Long-Term Care: FAQs re Visitors

- Regulation, not guidance documents, now apply
- Regulation sets “minimum standards” to ensure that **essential visitors and caregivers** continue to have access during an outbreak
- Ensure that licensees do not **prohibit or unreasonably restrict** visits
- Limitations by Chief Medical Officer or Health or medical office of health, regulations, continue to be allowed

Communication of Visitors' Policy

- Must provide copy of policy to Residents' and Family Councils
 - Does not require them to consult with them in preparation of the policy
- Must post in the home and communicate to residents
- Include in resident information package on admission to the home
- Post on the home's website

Restriction of Visitors per MLTC Guidance

- LTCHs have discretion to end or prohibit visits (including caregivers) in response to “repeated and flagrant non-compliance” with the home’s visitor policy and where a visitor’s behaviour may impact the ability to ensure a safe and secure home
- Before doing so – encouraged to consider
 - Whether visitor has had sufficient time and information to comply with the visitor’s policy
 - Nature, severity and frequency of non-compliance
 - Potential impact of non-compliance on health and safety of residents, staff and other visitors
 - Potential impact of discontinuing visits on the resident’s clinical and emotional well-being

Further Guidance

- Homes to document where they have ended or prohibited visitation due to non-compliance
- **Encouraged** to consult Resident and Family Councils on procedures for addressing non-adherence of policy by visitors

Visitors - Issues

- First time we have legislated requirement for home to have visitor policy
- We are already seeing policies where homes are placing limitations on visitors in contravention of Resident Right #6 which indicates that the **home cannot** interfere with visitors
- Ministry is allowing homes to create policy but instructing homes to “seek their own legal counsel” when creating these policies – thus distancing themselves from any policy which may not be legal
- While other authorities, such as Public Health, may have authority to restrict visitors where legislation allows, ACE does not believe that homes can do it under their own policy – as it contravenes the Residents’ Rights

Trespass to Property Act

- Homes continue to issue “Trespass Notices” against visitors
- Often against caregivers who complain about the care within the home
- Is this retaliation and thus contravenes whistle-blowing protection?
- Cannot use *Trespass to Property Act* if the person is a legal visitor – as the resident has a right to have visitors conferred by law – and therefore the *Trespass to Property Act* does not apply
- Visitors who receive Trespass Notices should seek legal advice from the private bar

Voula's Law

- Private member motion brought by Joel Harden, MPP
- Passed in the Ontario Legislature on March 4, 2021
- “That, in the opinion of this House, the Ford government should provide clear direction to operators that the Trespass to Property Act does not permit them to issue trespass notices to exclude substitute decision-makers and guests of the occupants of retirement homes, long-term-care homes, and other congregate care accommodations when they raise concerns about their loved ones’ living conditions.”



PALLIATIVE CARE PHILOSOPHY

Expansion of Palliative Care Requirements

- Expansion of palliative care requirements from *LTCHA*
- Align with the Ontario Provincial Framework for Palliative Care
 - Tabled in the Ontario Legislature in December 2020
 - Aligns definition of palliative care with those developed by the World Health Organization and the Canadian Hospice and Palliative Care Association
- *Compassionate Care Act, 2020*
 - Passed in December 2020
 - Required Minister of Health to develop a provincial framework to support improved access to palliative care
- *Fixing Long-Term Care Act, 2021, s. 12*
- O. Reg. 246/22, s. 61
- Compliance not required until October 11, 2022

Definition

- an approach to care that aims to relieve suffering and improve quality of living and dying for every person with a serious illness
- Strives to help the individual and their family/caregivers to:
 - Address physical, psychological, social, spiritual and practical issues, and their associated expectations, needs, hopes and fears
 - Prepare for and manage end-of-life choices and the dying process
 - Cope with loss and grief
 - Treat all active issues and prevent new issues from occurring
 - Promote opportunities for meaningful and valuable experiences and personal and spiritual growth

Broader, More Holistic Approach

- Does not focus solely on end-of-life care
- Broader, more holistic approach including early palliative care and end-of-life care
- Using a holistic and comprehensive assessment to determine the care and services a person needs
- Considers physical, social, linguistic, cultural, ethical and spiritual needs
- May or may not include end-of-life care
- Considers person's needs for quality of life improvements, symptom management and psychosocial support

- Licensees must ensure that residents are provided with care or services that integrate a palliative care philosophy.
- Licensees must also comply with the regulations respecting palliative care and the palliative care philosophy.
- Subject to *FLTCA s. 7*
 - Assessment and provision of care remain subject to the resident [or SDM] consent

O. Reg. 246/22, s. 61

- Licensee must ensure that a resident's palliative care needs are met
- Requires an interdisciplinary assessment of the resident's palliative care needs for their plan of care considers the resident's physical, emotional, psychological, social, cultural, and spiritual needs.
- Palliative care options available to the resident must be explained to the resident, their SDM [as applicable] or other person they designated
 - based on the assessment of the resident's palliative care needs, which may include, but are not limited to, early palliative care and end-of-life care.

Palliative Care Requirements

O. Reg. 246/22, s. 61

- Licensee must ensure that a resident's palliative care needs are met
- Requires an interdisciplinary assessment of the resident's palliative care needs for their plan of care considers the resident's physical, emotional, psychological, social, cultural, and spiritual needs.
- Palliative care options available to the resident must be explained to the resident, their SDM [as applicable] or other person they designated
 - based on the assessment of the resident's palliative care needs, which may include, but are not limited to, early palliative care and end-of-life care.

Assessment of Palliative Care Needs

- Needs must be assessed
 - Quality of life improvements
 - Symptom management
 - Psychosocial support
 - End-of-life support
- **Before** taking any actions or providing palliative care to the resident, **must** obtain consent from the resident [or SDM]

Assessment of Palliative Care Needs

- Part of mandatory training (*FLTCA* s. 82)
- No longer any exemption for persons such as medical directors and physicians to mandatory training



CONSENT

Informed Consent

- *Health Care Consent Act (HCCA)* applies to all treatment, personal assistance services, in a long-term care home
- Except for in emergency situations – no treatment can be given unless the health practitioner gets informed consent first
- Informed consent must be obtained from the resident, if they are mentally capable of giving consent, or their substitute decision-maker if they are not
- Everyone who is incapable have a substitute decision-maker for treatment – set out in the *HCCA* hierarchy – with the Public Guardian and Trustee as decision-maker of last resort
- *HCCA* sets out what informed consent is, what information has to be provided by the health practitioner prior to consent
- If a resident is found to be incapable of making a treatment or personal assistance service decision, they have a right to challenge this at the Consent and Capacity Board

Access to Resident Health Records

- *Personal Health Information Protection Act (PHIPA)* regulates access to personal health information
- Residents and their substitute decision-maker (where applicable) have right of access to the resident's health records
- If information required to make a decision – it should be provided forthwith
- If want access, copies of records for other purposes – the request should be in writing and the home has 30 days to provide access
- The home may, but is not required to, charge a fee for copies, etc.

Consent under the *Health Care Consent Act*

- No treatment without consent
 - Health practitioner proposing treatment cannot treat or allow treatment to take place until the person, if capable gives consent, or if not, their SDM on their behalf
- Informed Consent
 - Consent must relate to the treatment
 - Consent must be informed
 - Consent must be given voluntarily
 - Consent must not be obtained through misrepresentation or fraud

Rules for SDMs

- SDMs can only make decisions around **proposed** treatments or withdrawal of treatments
- SDMs cannot advance care plan – meaning that they **cannot** sign “advance directives”, “level of care forms”, etc.
- SDMs must comply with the rules of decision-making set out in *HCCA* s. 21
 - Comply with a known capable wish applicable to the situation made after the person was age 18
 - If no known wish, in compliance with the person’s “best interest” as set out in the section

ABUSE AND NEGLECT

Legislative Components: Abuse Prevention in LTCHs

- Definitions of Abuse
- Residents' Bill of Rights
- Licensee obligation to protect residents ("Duty to Protect")
- Reporting to Director by anyone
- Licensee obligations r/t reporting, investigations, action
- Policies
- Staff Orientation and Mandatory Training
- Screening measures

FLTCA: Prevention of Abuse and Neglect

Definitions	
Abuse	Emotional, Financial, Physical, Sexual, Verbal
Neglect	The failure to provide a resident with the treatment, care, services or assistance required for health, safety or well-being, and includes inaction or a pattern of inaction that jeopardizes the health, safety or well-being of one or more residents.
Retaliation FLTCA, s. 30(3)	The following constitute retaliation: 1. Dismissing a staff member. 2. Disciplining or suspending a staff member. 3. Imposing a penalty upon any person. 4. Intimidating, coercing or harassing any person.
No retaliation against residents FLTCA, s. 30(4)	A resident shall not be discharged from a long-term care home, threatened with discharge, or in any way be subjected to discriminatory treatment even if the resident or another person acted maliciously or in bad faith, and no family member of a resident, substitute decision-maker of a resident, or person of importance to a resident shall be threatened with the possibility of any of those being done to the resident.

FLTCA: Prevention of Abuse and Neglect

Requirements	
Residents' Bill of Rights <i>FLTCA, s. 3 (1)</i>	<p>Licensees shall ensure that the following rights of residents are fully respected and promoted (select provisions):</p> <ol style="list-style-type: none">1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's inherent dignity, worth and individuality, regardless of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.4. Every resident has the right to freedom from abuse.5. Every resident has the right to freedom from neglect by the licensee or staff.
Duty to Protect <i>FLTCA s. 24 (1)</i>	Outlines the duty of Licensees to protect residents from abuse by anyone and to ensure that residents are not neglected by the licensee or staff.

FLTCA: Prevention of Abuse and Neglect

Requirements	
Licensee must investigate, respond and act <i>FLTCA, s. 27(1)</i>	<p>Licensees shall ensure that:</p> <p>(a) every alleged, suspected or witnessed incident of the following that the licensee knows of, or that is reported to the licensee, is immediately investigated:</p> <ul style="list-style-type: none">(i) abuse of a resident by anyone,(ii) neglect of a resident by the licensee or staff, or(iii) anything else provided for in the regulations; <p>(b) appropriate action is taken in response to every such incident; and</p> <p>(c) any requirements that are provided for in the regulations for investigating and responding as required under clauses (a) and (b) are complied with.</p>
Reports of investigation <i>FLTCA, s. 27(2)</i>	Licensees must report the results of every investigation undertaken and every action taken, to the Director (under the <i>FLTCA</i>).

FLTCA: Prevention of Abuse and Neglect

Requirements

**Reporting Certain Matters to
Director**

FLTCA, s. 28 (1)

A person who has reasonable grounds to suspect that any of the following has occurred or may occur **shall immediately report** the suspicion and the information upon which it is based to the Director:

1. **Improper or incompetent treatment or care** of a resident that resulted in harm or a risk of harm to the resident.
2. **Abuse of a resident by anyone** or **neglect** of a resident **by the licensee or staff** that resulted in harm or a risk of harm to the resident.
3. **Unlawful conduct** that resulted in harm or a risk of harm to a resident.
4. Misuse or misappropriation **of a resident's money**.
5. Misuse or misappropriation **of funding** provided to a licensee under this Act or the *Local Health System Integration Act, 2006*, or the *Connecting Care Act, 2019*.

Residents do not have to report.

Licensee, management (including owners, board members, etc.), staff, and anyone providing a professional service to the resident or licensee in the areas of health, social work, or social services work, is guilty of an offence if they fail to report

FLTCA: Prevention of Abuse and Neglect

Requirements

**Policy to Promote Zero
Tolerance**

FLTCA, s. 25(1), (2) and (3)

Licensee shall ensure there is a written policy in place to promote zero tolerance of abuse and neglect of residents, and shall ensure that the policy is complied with.

Components of the Policy – Licensee shall :

- Provide that abuse and neglect are not to be tolerated
- Clearly set out what constitutes abuse and neglect
- Provide for a program, that complies with the regulations, for preventing abuse and neglect
- Contain an explanation of the duty under section 28 to make mandatory reports
- Contain procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of resident
- Set out the consequences for those who abuse or neglect residents.
- Shall comply with any regulations

Communication – policy must be communicated to staff, residents, and their SDMs.

FLTCA: Prevention of Abuse and Neglect

Requirements	
Screening, Orientation, Mandatory Training (for staff & volunteers)	<p>Screening measures: [<i>FLTCA</i>, s. 81 (1) and (2)]</p> <p>Licensees shall ensure that:</p> <ul style="list-style-type: none">• screening measures are conducted in accordance with the regulations before hiring staff and accepting volunteers.• The screening measures shall include police record checks, unless the person being screened is under 18 years of age.
	<p>Orientation and Mandatory Training of staff (select list): [<i>FLTCA</i>, s. 82]</p> <ul style="list-style-type: none">• The Residents' Bill of Rights.• The LTC home's mission statement.• LTC home's policy to promote zero tolerance of abuse and neglect of residents.• The duty under section 28 to make mandatory reports.• The protections afforded by section 30 (whistleblowing).• The LTC home's policy to minimize the restraining of residents.• Fire Prevention and Safety,• Emergency and evacuation procedures• Infection prevention and control• All Acts, regulations, policies of the Ministry and similar documents, including policies of the licensee that are relevant to the person's responsibilities• Any other requirements set out in the regulations

FLTCA: Prevention of Abuse and Neglect

Requirements	
Screening, Orientation, Mandatory Training (for staff & volunteers)	Orientation of volunteers (select list): [FLTCA, s. 82] <ul style="list-style-type: none">• The Residents' Bill of Rights.• The LTC home's mission statement.• LTC home's policy to promote zero tolerance of abuse and neglect of residents.• The duty under section 28 to make mandatory reports.• Fire safety and universal infection control practices• Protection afforded by section 30• Any other areas required by the regulations

Emergency Orders During the Pandemic

Requirements

Streamlining Requirements for Homes during the COVID-19 Pandemic

Reopening Ontario (A Flexible Response to Covid 19) Act, O. Reg. 95/20:

Licensees may fill any staff position with the person who, in their reasonable opinion, has the adequate skills, training and knowledge to perform the duties required of that position. Licensees are also not required to meet the training and orientation requirements set out in the *LTCHA* and Ontario Regulation 79/10 [this **has not** been amended to reflect the new Act], provided that they ensure staff take measures to ensure resident care and safety.

Police Notification

- Every licensee of a long-term care home shall ensure that the appropriate police force is immediately notified of any alleged, suspected or witnessed incident of abuse or neglect of a resident that the licensee suspects may constitute a criminal offence.
- Must put mind to whether it meets the definition of abuse/neglect in the Act,
- AND May constitute a criminal offence
 - ex. Physical Abuse
 - Resident on resident – must have caused physical injury
 - Staff on resident– use of force that causes physical injury OR pain
 - ex. Sexual Abuse
 - All sexual acts between staff/resident **unless** relationship pre-dates admission
 - All non-consensual acts between resident and resident/non-staff
- If it does not meet these definitions, home **may** still report – it is just not **required** under these regulations



INSPECTIONS

Inspections under the *FLTCA*

- Types of Inspections
 - Proactive Inspections
 - Complaint Inspections
 - Critical Incident Inspections
 - Other
- At least one inspection to be done annually
- New proactive inspections replace the Resident Quality Inspections
- Ramping up Proactive Inspections over the next two years
 - Unclear whether Proactive Inspections will be performed annually in the future
 - If not – what would be the protocol for determining who is inspected and how often

Proactive Inspections – Key Areas of Focus

- Infection Prevention and Control
- Abuse and Neglect
- Safe Medication Management
- Nutrition and Hydration
- Policies/Directives
- Dining Observation
- Residents' Rights
- Plan of Care

Proactive Inspection Protocols*

- Personal Support Services
- Infection Prevention and Control
- Medication
- Dining Observation
- Residents' Council Interview
- Family Council Interview
- Skin and Wound Care
- Falls Prevention
- Pain
- Nutrition and Hydration
- Prevention and Abuse, Neglect and Retaliation
- Dignity, Choice and Privacy
- Quality Improvement

*Other protocols as needed

Inspection Protocols

Summary



RESIDENT RELATED

- Continence Care & Bowel Management
- Dignity, Choice & Privacy
- Falls Prevention
- Hospitalization and Change in Condition
- Minimizing of Restraining
- Nutrition & Hydration
- Pain
- Personal Support Services
- Prevention of Abuse, Neglect, & Retaliation
- Recreation & Social Activities
- Responsive Behaviours
- Skin & Wound



HOME RELATED

- Accommodation Services: Housekeeping
- Accommodation Services: Laundry
- Accommodation Services: Maintenance
- Admission & Discharge
- Critical Incident Response
- Dining Observation
- Family Council
- Food Quality
- Infection Prevention & Control
- Medication
- Quality Improvement
- Reporting & Complaints
- Resident Charges
- Residents' Council
- Safe & Secure Home
- Snack Observation
- Sufficient Staffing
- Training & Orientation
- Trust Accounts



ENFORCEMENT

Compliance and Enforcement Tools

- Ministry Enforcement Tools
 - Remedied Non-compliance **[NEW]**
 - Written Notifications
 - Compliance Orders **[Updated]**
 - Administrative Monetary Penalties **[NEW]**
 - Order Requiring Management **[Updated]**
 - Increased Fines for Offences **[NEW]**
 - Investigations
 - Licence Suspension and Supervisor **[NEW]**

Remedied Non-Compliance

- Allows inspector to address very low-risk instances of non-compliance during an inspection
 - Does not have to take any further action
 - Licensee must be able to show that the non-compliance was remedied
 - Inspector must be satisfied there was no harm or risk of harm to a resident
 - Non-compliance and remedy will be documented in the inspection report

Written Notification

- Inspector issues a written notification for the non-compliance
 - No longer have “voluntary plans of correction”

Compliance Orders

- On finding of non-compliance Inspector/Director may issue a compliance order on finding non-compliance, an inspector or the Director may issue a Compliance Order that requires a licensee to:
 - Do anything or refrain from doing anything to achieve compliance
 - Prepare, submit and implement a written plan for achieving compliance.
- Can order that funding be returned or can withhold funding
- Can suspend admissions
- Two new aspects of a Compliance Order that may direct licensees to take certain action, such as:
 - Arrange for specific staff to receive training.
 - Allow the ministry/agents/contractors to perform any work or activity at the LTC home at the licensee's expense.

Administrative Monetary Penalties

- On finding of a non-compliance Inspector/Director may issue an Administrative Monetary Penalty (AMP)
- Intended to encourage compliance and increase accountability where there are repeated no-compliance through non-punitive monetary penalties
- AMP **must** be issued by Inspector/Director if the licensee
 - Has not complied with an order; or
 - Has not complied with the requirements of the *FLTCA* which results in an order being issued and the licensee has had at least once other compliance order with the same requirement within a three year period
- Inspectors may refer the matter to the Director to review and issue an AMP if appropriate
 - Arrange for specific staff to receive training.
 - Allow the ministry/agents/contractors to perform any work or activity at the LTC home at the licensee's expense.

**AMP
 CHART**

Item	Column 1 Requirement under the Act	Column 2 Description of failure to comply	Column 3 Amount of administrative penalty, in dollars
1.	Act, s. 3 (1)	Residents' Bill of Rights	5,500
2.	Act, s. 11 (1)	Nursing and personal support services	5,500
3.	Act, s. 11 (3)	24-hour nursing care	5,500
4.	Act, s. 15	Dietary services and hydration	5,500
5.	Act, s. 23	Infection prevention and control program	5,500
6.	Act, s. 24	Duty to protect	5,500
7.	Act, s. 25	Policy to promote zero tolerance	5,500
8.	Act, s. 27	Licensee must investigate, respond and act	5,500
9.	Act, s. 28	Reporting certain matters to Director	5,500
10.	Act, s. 33	Policy to minimize restraining of residents, etc.	5,500
11.	Act, s. 34 (1)	Protection from certain restraining	5,500
12.	Act, s. 35	Restraining by physical devices	5,500
13.	Act, s. 76	Administrator	11,000
14.	Act, s. 77	Director of Nursing and Personal Care	11,000
15.	Act, s. 78	Medical Director	11,000
16.	This Regulation, s. 12	Doors in a home	5,500
17.	This Regulation, s. 18	Bed rails	5,500
18.	This Regulation, s. 19	Windows	5,500
19.	This Regulation, s. 35 (2)	Nursing and personal support services	5,500
20.	This Regulation, s. 35 (3)	Nursing and personal support services, staffing plan	5,500
21.	This Regulation, s. 53	Required programs	5,500
22.	This Regulation, s. 54	Falls prevention and management	5,500
23.	This Regulation, s. 55	Skin and wound care	5,500
24.	This Regulation, s. 56	Continence care and bowel management	5,500
25.	This Regulation, s. 57	Pain management	5,500
26.	This Regulation, s. 58	Responsive behaviours	5,500
27.	This Regulation, s. 74	Nutritional care and hydration programs	5,500
28.	This Regulation, s. 75	Weight changes	5,500
29.	This Regulation, s. 80	Registered dietitian	5,500
30.	This Regulation, s. 81	Nutrition manager	5,500
31.	This Regulation, s. 97	Hazardous substances	5,500
32.	This Regulation, s. 102	Infection prevention and control program	5,500
33.	This Regulation, s. 105	Police notification	5,500
34.	This Regulation, s. 115	Reports re critical incidents	5,500
35.	This Regulation, s. 119	Requirements relating to restraining by a physical device	5,500
36.	This Regulation, s. 121	Prohibited devices that limit movement	5,500
37.	This Regulation, s.138(1)	Safe storage of drugs	5,500
38.	This Regulation, s.140	Administration of drugs	5,500
39.	This Regulation, s.147	Medication incidents and adverse drug reactions	5,500
40.	This Regulation, s. 249 (1)	Administrator	11,000
41.	This Regulation, s. 249 (3)	Administrator, qualifications	11,000
42.	This Regulation, s. 249 (4)	Administrator, qualifications exception	11,000
43.	This Regulation, s. 249 (5)	Administrator, program enrolment	11,000
44.	This Regulation, s. 250 (1)	Director of Nursing and Personal Care	11,000
45.	This Regulation, s. 250 (3)	Director of Nursing and Personal Care, qualifications	11,000
46.	This Regulation, s. 250 (4)	Director of Nursing and Personal Care, qualifications exception	11,000
47.	This Regulation, s. 268	Emergency plans	5,500
48.	Any requirement under the Act not otherwise provided for in this Table.	Failure to comply with any other requirement under the Act	1,100

Appeals of AMPs

- Where AMP issued by an inspector, they can ask the Director to review it
 - Requirement to pay the AMP is on hold until matter resolved
 - Director may confirm or change, including reducing the amount of the AMP
- Where licensee disagrees with the Director's decision, either on review of an inspector's issuing or where the Director is issuing the AMP in first instance
 - Licensee can appeal to the Health Services Appeal Review Board
 - Allow the ministry/agents/contractors to perform any work or activity at the LTC home at the licensee's expense.

.

Order Requiring Management

- Expanded grounds under the FLTCA where the Director may order a licensee to retain a temporary manager to assist in managing the LTCH
- When can the Director require a temporary manager
 - If there are circumstances present that are harmful to the health, safety or welfare of residents
 - If there is an emergency situation such as an outbreak of disease or pandemic
 - May be brought in to manage either the entire operation of the LTCH or a specific issue in the home
 - Example of specific issues: infection prevention and control, financial management, or clinical operations

Provincial Offences - Fines

- Ministry is expanding its capacity to investigate and lay charges
 - Previously had to contract laying of charges to a police services
 - Minister will be giving Inspectors authority to lay a provincial offences charge
- Maximum fines for offences on conviction have been doubled
 - Up to \$200,000 for first offence for an individual
 - Up to \$400,000 for an individual for subsequent offence
 - Up to \$500,000 for first offence for a corporation
 - Up to \$1,000,000 for a corporation for a subsequent offence
- Only provincial fine in recent years was against the City of Cornwall for firing a nurse who reported an incident of abuse to the Director
 - \$15,000 plus \$3,750 victim surcharge
 - While City plead guilty, they publicly stated they only did so as it was cheaper than paying lawyers to continue fighting the charge

Licence Suspension and Supervisor; Revocation

- Minister of Long-Term Care or the Director may suspend a Licence and appoint a Long-Term Care Home Supervisor to take over the operations of the home
 - Allows Ministry full control of the home until the suspension is lifted, the licence expires or is revoked, or another solution is found
- Director can also revoke a license where certain criteria are met



COMPLAINTS

Process to Lodge Complaints to MLTC

Complaints process outlined on the public website:

<https://www.ontario.ca/page/long-term-care-home-complaint-process>

Long-term Care Family Support and ACTION Line
toll-free **1-866-434-0144**

Process:

- Details are recorded when a complaint is lodged.
- Issues are assessed, triaged (for risk) and assigned for inspection or inquiry,
- The assigned inspector then communicates directly with complainant both pre and post-inspection.

Reporting and Complaints

- Licensee required to:
 - Have written procedures for initiating complaints to the licensee and for how the licensee deals with complaints.
 - Forward all complaints that allege harm or risk of harm to one or more residents, including physical harm, immediately to the Director
 - Provide contact information for the Ministry's Long-Term Care Family Support and ACTION Line and for the Patient Ombudsman to the complainant in response to a complaint
 - Must post the information about the complaints procedures in the home
 - Must provide a copy of the complaints procedures to the applicant on admission

Dealing with Complaints

- Licensee must ensure that all written or verbal complaints made to the licensee or staff are dealt with, as follows:
 - The complaint must be investigated and resolved where possible, and a response provided within 10 business days of the receipt of the complaint, and where the complaint alleges harm or risk of harm including, but not limited to, physical harm, to one or more residents, the investigation shall be commenced immediately.
 - If the complaint cannot be investigated and resolved within 10 business days, an acknowledgement of receipt is provided within those 10 days, and
 - The date when they can reasonably expected to have a resolution
 - Follow-up response to be provided as soon as possible
 - If the licensee was required to forward the complaint to the Director, confirmation that they did so
 - Licensee must provide a response to the complainant advising what they have done to resolve the complaint or alternatively, if they believe there is no cause for the complaint, must explain why

Documentation of Complaints

- Licensee required to keep a documented record of all complaints it receives about the care of a resident or operation of the home. It must include
 - What the complaint was about
 - The date the complaint was received
 - The action taken to resolve the complaint, including when it was taken, and when any future actions will occur
 - How it was resolved, if applicable
 - The dates on which any response was provided to the complainant with a description of each response
 - Any further responses from the complainant

LICENSING

Minister's Licensing Review – *FLTCA* s. 119

- Are number of changes to Licensing scheme under the *FLTCA*
- New section allows anyone to request that the Minister to review the Director's decision to:
 - Issue or not issue a license
 - Approve or not approve the transfer of beds
 - Give or not give an undertaking to issue a license
- This section is passed but **not** enacted – meaning that it cannot be used at the present time
- No date has been given with respect to this



ADVOCACY CENTRE FOR THE ELDERLY

2 Carlton Street, Suite 701
Toronto, ON M5B 1J3

Phone: 416-598-2656
Toll Free: 1-855-598-2656
Fax: 416-598-7924

www.acelaw.ca