

Fixing Long-Term Care Act, 2021

S.O. 2021, CHAPTER 39 SCHEDULE 1

Consolidation Period: From April 11, 2022 to the [e-Laws currency date](#).

Last amendment: 2021, c. 39, Sched. 1, s. 203.

Legislative History: 2021, c. 39, Sched. 1, s. 203.

CONTENTS

Preamble

PART I

FUNDAMENTAL PRINCIPLE AND INTERPRETATION

- [1.](#) Home: the fundamental principle
- [2.](#) Interpretation

PART II

RESIDENTS: RIGHTS, CARE AND SERVICES

RESIDENTS' BILL OF RIGHTS

- [3.](#) Residents' Bill of Rights

MISSION STATEMENT

- [4.](#) Mission statement

SAFE AND SECURE HOME

- [5.](#) Home to be safe, secure environment

PLAN OF CARE

- [6.](#) Plan of care
- [7.](#) Consent

CARE AND SERVICES

- [8.](#) Direct hours of care target — personal support workers, nurses
- [9.](#) Direct hours of care target — allied health care professionals
- [10.](#) Measuring progress
- [11.](#) Nursing and personal support services
- [12.](#) Palliative care
- [13.](#) Restorative care
- [14.](#) Recreational and social activities
- [15.](#) Dietary services and hydration
- [16.](#) Medical services
- [17.](#) Information and referral assistance
- [18.](#) Religious and spiritual practices
- [19.](#) Accommodation services
- [20.](#) Volunteer program
- [21.](#) Staffing and care standards
- [22.](#) Standards for programs and services
- [23.](#) Infection prevention and control program

PREVENTION OF ABUSE AND NEGLECT

- [24.](#) Duty to protect
- [25.](#) Policy to promote zero tolerance

REPORTING AND COMPLAINTS

- [26.](#) Complaints procedure — licensee
- [27.](#) Licensee must investigate, respond and act
- [28.](#) Reporting certain matters to Director
- [29.](#) Inspections or inquiries where information received by Director
- [30.](#) Whistle-blowing protection
- [31.](#) Complaint to Ontario Labour Relations Board
- [32.](#) Obstruction — information to inspectors, Director

MINIMIZING OF RESTRAINING

- [33.](#) Policy to minimize restraining of residents, etc.
- [34.](#) Protection from certain restraining

| | | |
|----------------------|--|--|
| 34. | Protection from restraining and confining | |
| 34.1 | Confining of resident | |
| 35. | Restraining by physical devices | |
| 36. | PASDs that limit or inhibit movement | |
| 37. | Records on restraining of residents | |
| 38. | Prohibited devices that limit movement | |
| 39. | Common law duty | |
| | OFFICE OF THE LONG-TERM CARE HOMES RESIDENT AND FAMILY ADVISER | |
| 40. | Office of the Long-Term Care Homes Resident and Family Adviser | |
| | REGULATIONS | |
| 41. | Regulations | |
| | PART III | |
| | QUALITY | |
| 42. | Continuous quality improvement | |
| 43. | Resident and Family/Caregiver Experience Survey | |
| 44. | Long-Term Care Quality Centre | |
| 45. | Regulations | |
| | PART IV | |
| | ADMISSION OF RESIDENTS | |
| 46. | Application of Part | |
| 47. | Designation of placement co-ordinators | |
| 48. | Placement co-ordinator to comply with Act, etc. | |
| 49. | Requirements for admission to home | |
| 50. | Eligibility for long-term care home admission | |
| 51. | Authorization for admission to a home | |
| 52. | Elements of consent | |
| 53. | Substitute decision-maker may apply for person | |
| 54. | Transfer of application | |
| 55. | Controls on licensee | |
| 56. | Suspension of admissions where risk of harm | |
| 57. | Preference for veterans | |
| 58. | Immunity — placement co-ordinator's employees and agents | |
| 59. | Hearing — ineligibility | |
| 60. | Appeal to Divisional Court | |
| 61. | Regulations | |
| | PART V | |
| | COUNCILS | |
| | RESIDENTS' COUNCIL | |
| 62. | Residents' Council | |
| 63. | Powers of Residents' Council | |
| 64. | Residents' Council assistant | |
| | FAMILY COUNCIL | |
| 65. | Family Council | |
| 66. | Powers of Family Council | |
| 67. | Family Council assistant | |
| | GENERAL | |
| 68. | Licensee to co-operate with and assist Councils | |
| 69. | Licensee duty to meet with Council | |
| 70. | Attendance at meetings — licensees, staff, etc. | |
| 71. | No interference by licensee | |
| 72. | Immunity — Council members, assistants | |
| 73. | Duty of licensee to consult Councils | |
| 74. | Regulations | |
| | PART VI | |
| | OPERATION OF HOMES | |
| | DIRECTORS, OFFICERS AND OTHER STAFF | |
| 75. | Duties of directors and officers of a corporation | |
| 76. | Administrator | |
| 77. | Director of Nursing and Personal Care | |
| 78. | Medical Director | |
| 79. | Staff qualifications | |
| 80. | Continuity of care — limit on temporary, casual or agency staff | |
| 81. | Screening measures | |
| 82. | Training | |
| 83. | Orientation for volunteers | |
| | RESIDENTS — INFORMATION, AGREEMENTS, ETC. | |

- [84.](#) Information for residents, etc.
- [85.](#) Posting of information
- [86.](#) Regulated documents for resident
- [87.](#) Voidable agreements
- [88.](#) Agreement cannot prevent withdrawal of consent, etc.
- [89.](#) Coercion prohibited

[GENERAL MANAGEMENT](#)

- [90.](#) Emergency plans
- [91.](#) Reports

[REGULATIONS](#)

- [92.](#) Regulations

[PART VII](#)
FUNDING

- [93.](#) Funding
- [94.](#) Resident charges
- [95.](#) Accounts and records
- [96.](#) Non-arm's length transactions, limitation
- [97.](#) Regulations

[PART VIII](#)
LICENSING

- [98.](#) Licence required
- [99.](#) Public interest — need
- [100.](#) Public interest — who can be issued a licence
- [101.](#) Limitations on eligibility for licence
- [102.](#) Issue of licence
- [103.](#) Undertaking to issue licence
- [104.](#) Conditions of licence
- [105.](#) Term of licence
- [106.](#) End of term
- [107.](#) Beds allowed under licence
- [108.](#) Transfers, limitation
- [109.](#) Public consultation
- [110.](#) Exercise of security interests
- [111.](#) Notice
- [112.](#) Gaining controlling interest
- [113.](#) Management contracts
- [114.](#) Temporary licences
- [115.](#) Temporary emergency licences
- [116.](#) Amendments with consent
- [117.](#) Competitive process
- [118.](#) No appeal
- [119.](#) Review by Minister
- [120.](#) Regulations

[PART IX](#)
MUNICIPAL HOMES AND FIRST NATIONS HOMES

[INTERPRETATION](#)

- [121.](#) Interpretation

[SOUTHERN HOMES](#)

- [122.](#) Southern municipal homes
- [123.](#) Joint homes — south
- [124.](#) Agreement to help maintain home — south

[NORTHERN HOMES](#)

- [125.](#) Northern municipal homes
- [126.](#) Joint homes — north
- [127.](#) Agreement to help maintain home — north
- [128.](#) Territorial district home under board of management
- [129.](#) Operating costs — apportionment by board of management
- [130.](#) Capital costs — apportionment by board of management
- [131.](#) Regulations, apportionments by boards of management

[FIRST NATIONS HOMES](#)

- [132.](#) First Nations homes

[GENERAL](#)

- [133.](#) Approval required
- [134.](#) Application of Part VIII
- [135.](#) Committee of management, appointment
- [136.](#) Trust funds

| | |
|----------------------|--|
| 137. | Personal information, disclosure to inspectors, etc. |
| 138. | Director may make orders re renovations, etc. |
| 139. | Director may take control with consent |
| 140. | Taking control on certain grounds |
| 141. | Provisional exercise of power without hearing |
| 142. | Powers where control is taken |
| 143. | Regulations |

PART X
COMPLIANCE AND ENFORCEMENT
INSPECTIONS

| | |
|----------------------|---------------------------|
| 144. | Appointment of inspectors |
| 145. | Purpose of inspection |
| 146. | Annual inspection |
| 147. | Inspections unannounced |
| 148. | Meeting with councils |
| 149. | Powers of entry |
| 150. | Powers on inspection |
| 151. | Warrant |
| 152. | Inspection report |
| 153. | Obstruction, etc. |

ENFORCEMENT

| | |
|----------------------|---|
| 154. | Actions by inspector if non-compliance found |
| 155. | Compliance orders |
| 156. | Order that funding be returned or withheld |
| 157. | Order requiring management |
| 158. | Notice of administrative penalty |
| 159. | Suspension or revocation |
| 160. | Supervisor, rules relating to employees |
| 161. | Minister's suspension |
| 162. | Due diligence, mistake do not prevent orders or penalties |
| 163. | More than one order or notice |
| 164. | Enforcement under other Acts |
| 165. | Order or notice not a bar to conviction |
| 166. | Form and service of orders and notices |
| 167. | Filing with court |
| 168. | Offence |

REVIEWS AND APPEALS

| | |
|----------------------|--|
| 169. | Review of inspector's order or notice |
| 170. | Appeal from order, notice, decision |
| 171. | When and how appeal to be made |
| 172. | No automatic stay of order or decision |
| 173. | Parties |
| 174. | Hearing |
| 175. | Decision of Appeal Board |
| 176. | Appeal to court |
| 177. | Funding not to be considered |

MISCELLANEOUS AND ACCESS TO INFORMATION

| | |
|----------------------|-----------------------------|
| 178. | Recognition |
| 179. | Publication |
| 180. | Reports, etc., to be public |
| 181. | Copy constitutes evidence |
| 182. | Compellability, civil suit |
| 183. | Regulations |

PART XI
ADMINISTRATION, MISCELLANEOUS

| | |
|----------------------|---|
| 184. | Directives by Minister |
| 185. | Director — appointment |
| 186. | Altering or revoking orders |
| 187. | Personal information, collection |
| 188. | Restriction on terms |
| 189. | Affidavits |
| 190. | Service |
| 191. | Immunity |
| 192. | Penalties |
| 193. | Regulations |
| 194. | Public consultation before making initial regulations |

[195.](#) Amendments
[196.](#) General provisions re regulations

[PART XII](#)
TRANSITIONAL

[197.](#) Transitional — compliance
[198.](#) Transitional — interim manager
[199.](#) Transition, licences
[200.](#) Transition, municipal homes
[201.](#) Further transitional, Charitable Institutions Act
[202.](#) Further transitional, Homes for the Aged and Rest Homes Act

Preamble

The people of Ontario and their Government:

Recognize that long-term care services and care must respect resident diversity and diversity in communities;

Respect the requirements of the *French Language Services Act* in the planning, design, delivery and evaluation of long-term care services for Ontario's French-speaking communities;

Recognize the role of Indigenous peoples in the planning, design, delivery, and evaluation of culturally safe long-term care services and care in their communities;

Acknowledge that long-term care residents have diverse and complex physical and mental health needs that require individual, proactive, efficient, and effective supports;

Are committed to resident-directed, safe, quality care that responds to a resident's physical, psychological, emotional, social, spiritual and cultural goals and needs and is respectful of every resident's individual identity and history;

Are committed to providing and promoting high quality accommodation in a safe, comfortable, home-like environment where every long-term care resident has an ability to enjoy life, and pursue the relationships, activities and interests that are meaningful to them;

Acknowledge that a resident's health and quality of life depend on integration and collaboration between an ecosystem of people, including fellow residents, family members, caregivers, long-term care home staff, volunteers, service providers, community and government;

Recognize the importance of caregivers in supporting a resident's physical, mental, social and emotional well-being and quality of life;

Are committed to having a diverse, qualified, and empowered workforce that is respected and supported by effective leadership to meet the individual and diverse needs of residents;

Share a vision for a province where excellent long-term care services and care are available to all Ontarians who require it and where residents and their families have trust and confidence in their long-term care home;

Affirm their belief that long-term care homes must be governed and operated in a way that reflects the interest of the public, and promote effective and efficient delivery of high-quality care and services to all residents;

Are committed to improving public accountability and transparency, through robust and regular inspections and progressive enforcement actions;

Affirm our responsibility to take action where standards or requirements under this Act are not being met, or where the care, safety, security and rights of residents might be or are compromised;

Recognize the importance of fostering an environment that supports continuous quality improvement and innovation;

Recognize the value of transparency from government, long-term care home licensees, staff and service providers with residents and their families;

Acknowledge that relevant information and data about long-term care homes should be accessible to the public in a timely manner;

Recognize the principle that access to long-term care homes is based on prospective residents' assessed needs;

Are committed to the promotion of the delivery of long-term care home services by not-for-profit and mission-driven organizations; and

Are committed to all long-term care homes operating as mission-driven organizations that have resident-directed, safe, quality care as the primary goal.

**PART I
FUNDAMENTAL PRINCIPLE AND INTERPRETATION**

Home: the fundamental principle

1 The fundamental principle to be applied in the interpretation of this Act and anything required or permitted under this Act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met.

Interpretation

2 (1) In this Act,

“abuse”, in relation to a resident, means physical, sexual, emotional, verbal or financial abuse, as defined in the regulations in each case; (“mauvais traitements”)

“Administrator”, in relation to a long-term care home, means the Administrator for the home required under section 76; (“administrateur du foyer”)

“Agency” means the corporation continued by section 3 of the *Connecting Care Act, 2019*; (“Agence”)

“Appeal Board” means the Health Services Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission d’appel”)

“care” includes treatment and interventions; (“soins”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 2 (1) of the Act is amended by adding the following definition: (See: 2021, c. 39, Sched. 1, s. 203 (1))

“confine”, except with respect to the common law duty of a caregiver to confine a person as referred to in section 39, has the meaning provided for in the regulations; (“confiner”)

“Director” means the person appointed under section 185 as the Director and, where more than one person has been appointed, means the person who is the Director for the purposes of the provision in which the term appears; (“directeur”)

“Director of Nursing and Personal Care”, in relation to a long-term care home, means the Director of Nursing and Personal Care for the home required under section 77; (“directeur des soins infirmiers et des soins personnels”)

“fundamental principle” means the fundamental principle set out in section 1; (“principe fondamental”)

“incapable” means unable to understand the information that is relevant to making a decision concerning the subject matter or unable to appreciate the reasonably foreseeable consequences of a decision or a lack of decision; (“incapable”)

“intervention” means an action, procedure or activity designed to achieve an outcome to a condition or a diagnosis; (“intervention”)

“licensee” means the holder of a licence issued under this Act, and includes the municipality or municipalities or board of management that maintains a municipal home, joint home or First Nations home approved under Part IX; (“titulaire de permis”)

“local health integration network” means a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*; (“réseau local d’intégration des services de santé”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “local health integration network” in subsection 2 (1) of the Act is repealed. (See: 2021, c. 39, Sched. 1, s. 203 (2))

“long-term care home” means a place that is licensed as a long-term care home under this Act, and includes a municipal home, joint home or First Nations home approved under Part IX; (“foyer de soins de longue durée”)

“Minister” means the Minister of Long-Term Care, or, if the responsibility for the administration of this Act has been assigned to another Minister under the *Executive Council Act*, that Minister; (“ministre”)

“Ministry” means the Ministry over which the Minister presides; (“ministère”)

“physician” means a member of the College of Physicians and Surgeons of Ontario; (“médecin”)

“registered nurse” means a member of the College of Nurses of Ontario who holds a certificate of registration as a registered nurse under the *Nursing Act, 1991*; (“infirmière autorisée” or “infirmier autorisé”)

“registered nurse in the extended class” means a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*; (“infirmière autorisée ou infirmier autorisé de la catégorie supérieure”)

“registered practical nurse” means a member of the College of Nurses of Ontario who holds a certificate of registration as a registered practical nurse under the *Nursing Act, 1991*; (“infirmière auxiliaire autorisée” or “infirmier auxiliaire autorisé”)

“requirement under this Act” means a requirement contained in this Act, in the regulations, or in an order or agreement made under this Act, and includes a condition of a licence under Part VIII or an approval under Part IX, a condition to which funding is subject under section 93 and, subject to subsection 184 (7), an operational or policy directive issued by the Minister under section 184; (“exigence que prévoit la présente loi”)

“resident” means a person admitted to and living in a long-term care home; (“résident”)

“Residents’ Bill of Rights” means the list of rights of residents set out in section 3; (“déclaration des droits des résidents”)

“rights adviser” means a person designated by or in accordance with the regulations as a rights adviser; (“conseiller en matière de droits”)

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage; (“conjoint”)

“staff”, in relation to a long-term care home, means persons who work at the home,

- (a) as employees of the licensee,
- (b) pursuant to a contract or agreement with the licensee, or
- (c) pursuant to a contract or agreement between the licensee and an employment agency or other third party; (“personnel”)

“substitute decision-maker” means a person who is authorized under the *Health Care Consent Act, 1996* or the *Substitute Decisions Act, 1992* to give or refuse consent or make a decision, on behalf of another person; (“mandataire spécial”)

“volunteer” means a person who is part of the organized volunteer program of the long-term care home under section 20 and who does not receive a wage or salary for the services or work provided for that program. (“bénévole”)

Meaning of “explain”

(2) A rights adviser or other person whom this Act requires to explain a matter directly to a resident or an applicant for admission to a long-term care home satisfies that requirement by explaining the matter to the best of their ability and in a manner that addresses the special needs of the person receiving the explanation, whether that person understands it or not.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (1, 2) - not in force

PART II RESIDENTS: RIGHTS, CARE AND SERVICES

RESIDENTS’ BILL OF RIGHTS

Residents’ Bill of Rights

3 (1) Every licensee of a long-term care home shall ensure that the following rights of residents are fully respected and promoted:

RIGHT TO BE TREATED WITH RESPECT

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.
2. Every resident has the right to have their lifestyle and choices respected.
3. Every resident has the right to have their participation in decision-making respected.

RIGHT TO FREEDOM FROM ABUSE AND NEGLECT

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.

RIGHT TO AN OPTIMAL QUALITY OF LIFE

6. Every resident has the right to communicate in confidence, receive visitors of their choice and consult in private with any person without interference.
7. Every resident has the right to form friendships and relationships and to participate in the life of the long-term care home.

8. Every resident has the right to share a room with another resident according to their mutual wishes, if appropriate accommodation is available.
9. Every resident has the right to meet privately with their spouse or another person in a room that assures privacy.
10. Every resident has the right to pursue social, cultural, religious, spiritual and other interests, to develop their potential and to be given reasonable assistance by the licensee to pursue these interests and to develop their potential.
11. Every resident has the right to live in a safe and clean environment.
12. Every resident has the right to be given access to protected outdoor areas in order to enjoy outdoor activity unless the physical setting makes this impossible.
13. Every resident has the right to keep and display personal possessions, pictures and furnishings in their room subject to safety requirements and the rights of other residents.
14. Every resident has the right to manage their own financial affairs unless the resident lacks the legal capacity to do so.
15. Every resident has the right to exercise the rights of a citizen.

RIGHT TO QUALITY CARE AND SELF-DETERMINATION

16. Every resident has the right to proper accommodation, nutrition, care and services consistent with their needs.
17. Every resident has the right to be told both who is responsible for and who is providing the resident's direct care.
18. Every resident has the right to be afforded privacy in treatment and in caring for their personal needs.
19. Every resident has the right to,
 - i. participate fully in the development, implementation, review and revision of their plan of care,
 - ii. give or refuse consent to any treatment, care or services for which their consent is required by law and to be informed of the consequences of giving or refusing consent,
 - iii. participate fully in making any decision concerning any aspect of their care, including any decision concerning their admission, discharge or transfer to or from a long-term care home and to obtain an independent opinion with regard to any of those matters, and
 - iv. have their personal health information within the meaning of the *Personal Health Information Protection Act, 2004* kept confidential in accordance with that Act, and to have access to their records of personal health information, including their plan of care, in accordance with that Act.
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.
21. Every resident has the right to have any friend, family member, caregiver or other person of importance to the resident attend any meeting with the licensee or the staff of the home.
22. Every resident has the right to designate a person to receive information concerning any transfer or any hospitalization of the resident and to have that person receive that information immediately.
23. Every resident has the right to receive care and assistance towards independence based on a restorative care philosophy to maximize independence to the greatest extent possible.
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.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 24 of subsection 3 (1) of the Act is amended by striking out "restrained" and substituting "restrained or confined". (See: 2021, c. 39, Sched. 1, s. 203 (3))

25. Every resident has the right to be provided with care and services based on a palliative care philosophy.
26. Every resident who is dying or who is very ill has the right to have family and friends present 24 hours per day.

RIGHT TO BE INFORMED, PARTICIPATE, AND MAKE A COMPLAINT

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.
28. Every resident has the right to participate in the Residents' Council.
29. Every resident has the right to raise concerns or recommend changes in policies and services on behalf of themselves or others to the following persons and organizations without interference and without fear of coercion, discrimination or reprisal, whether directed at the resident or anyone else:

- i. the Residents' Council.
- ii. the Family Council.
- iii. the licensee, and, if the licensee is a corporation, the directors and officers of the corporation, and, in the case of a home approved under Part IX, a member of the committee of management for the home under section 135 or of the board of management for the home under section 128 or 132.
- iv. staff members.
- v. government officials.
- vi. any other person inside or outside the long-term care home.

Further guide to interpretation

(2) Without restricting the generality of the fundamental principle, the following are to be interpreted so as to advance the objective that a resident's rights set out in subsection (1) are respected:

- 1. This Act and the regulations.
- 2. Any agreement entered into between a licensee and the Crown or an agent of the Crown.
- 3. Any agreement entered into between a licensee and a resident or the resident's substitute decision-maker.

Enforcement by the resident

(3) A resident may enforce the Residents' Bill of Rights against the licensee as though the resident and the licensee had entered into a contract under which the licensee had agreed to fully respect and promote all of the rights set out in the Residents' Bill of Rights.

Regulations

(4) The Lieutenant Governor in Council may make regulations governing how rights set out in the Residents' Bill of Rights shall be respected and promoted by the licensee.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (3) - not in force

MISSION STATEMENT

Mission statement

4 (1) Every licensee shall ensure that,

- (a) there is a mission statement for each of the licensee's long-term care homes that sets out the principles, purpose and philosophy of care of the home;
- (b) the principles, purpose and philosophy of care set out in the mission statement are driven by the primary goal of providing quality care that is resident-directed and safe; and
- (c) the principles, purpose and philosophy of care set out in the mission statement are put into practice in the day-to-day operation of the long-term care home.

Basic consistency

(2) The licensee shall ensure that the mission statement is consistent with the fundamental principle and the Residents' Bill of Rights.

Collaboration

(3) The licensee shall ensure that the mission statement is developed, and revised as necessary, in collaboration with the Residents' Council and the Family Council, if any, and shall invite the staff of the long-term care home and volunteers to participate.

Updating

(4) At least once every five years after a mission statement is developed, the licensee shall consult with the Residents' Council and the Family Council, if any, as to whether revisions are required, and shall invite the staff of the long-term care home and volunteers to participate.

SAFE AND SECURE HOME

Home to be safe, secure environment

5 Every licensee of a long-term care home shall ensure that the home is a safe and secure environment for its residents.

PLAN OF CARE

Plan of care

- 6 (1) Every licensee of a long-term care home shall ensure that there is a written plan of care for each resident that sets out,
- (a) the planned care for the resident;
 - (b) the goals the care is intended to achieve;
 - (c) clear directions to staff and others who provide direct care to the resident; and
 - (d) any other requirements provided for in the regulations.

Based on assessment of resident

- (2) The licensee shall ensure that the care set out in the plan of care is based on an assessment of the resident and on the needs and preferences of that resident.

Plan to cover all aspects of care

- (3) The licensee shall ensure that the plan of care covers all aspects of care, including medical, nursing, personal support, mental health, nutritional, dietary, recreational, social, palliative, restorative, religious and spiritual care.

Integration of assessments, care

- (4) The licensee shall ensure that the staff and others involved in the different aspects of care of the resident collaborate with each other,
- (a) in the assessment of the resident so that their assessments are integrated and are consistent with and complement each other; and
 - (b) in the development and implementation of the plan of care so that the different aspects of care are integrated and are consistent with and complement each other.

Involvement of resident, etc.

- (5) The licensee shall ensure that the resident, the resident's substitute decision-maker, if any, and any other persons designated by the resident or substitute decision-maker are given an opportunity to participate fully in the development and implementation of the resident's plan of care.

Development of initial plan of care

- (6) When a resident is admitted to a long-term care home, the licensee shall, within the times provided for in the regulations, ensure that the resident is assessed and an initial plan of care developed based on that assessment and on the assessment, reassessments and information provided by the placement co-ordinator under section 51.

Duty of licensee to comply with plan

- (7) The licensee shall ensure that the care set out in the plan of care is provided to the resident as specified in the plan.

Staff and others to be kept aware

- (8) The licensee shall ensure that the staff and others who provide direct care to a resident are kept aware of the contents of the resident's plan of care and have convenient and immediate access to it.

Documentation

- (9) The licensee shall ensure that the following are documented:
1. The provision of the care set out in the plan of care.
 2. The outcomes of the care set out in the plan of care.
 3. The effectiveness of the plan of care.

When reassessment, revision is required

- (10) The licensee shall ensure that the resident is reassessed and the plan of care reviewed and revised at least every six months and at any other time when,
- (a) a goal in the plan is met;
 - (b) the resident's care needs change or care set out in the plan is no longer necessary; or
 - (c) care set out in the plan has not been effective.

Reassessment, revision

- (11) When a resident is reassessed and the plan of care reviewed and revised,

- (a) subsections (4) and (5) apply, with necessary modifications, with respect to the reassessment and revision; and
- (b) if the plan of care is being revised because care set out in the plan has not been effective, the licensee shall ensure that different approaches are considered in the revision of the plan of care.

Explanation of plan

(12) The licensee shall ensure that the resident, the resident’s substitute decision-maker, if any, and any other persons designated by the resident or substitute decision-maker are given an explanation of the plan of care.

Limitation on disclosure

(13) Subsection (12) does not require the disclosure of information if access to a record of the information could be refused under the *Personal Health Information Protection Act, 2004*.

Access to plan

(14) Nothing in this section limits a right of access to a plan of care under the *Personal Health Information Protection Act, 2004*.

Consent

7 Nothing in this Act authorizes a licensee to assess a resident’s requirements without the resident’s consent or to provide care or services to a resident without the resident’s consent.

CARE AND SERVICES

Direct hours of care target — personal support workers, nurses

8 (1) This section establishes a target for the average number of hours of direct care to residents to be provided by individuals who are hired by or otherwise work for licensees in a long-term care home as personal support workers, registered nurses, or registered practical nurses.

Target

(2) The target is for an average of four hours of direct care to be provided per resident per day.

Target date

(3) The target set in subsection (2) must be achieved no later than March 31, 2025, and once achieved, shall continue at that level, subject to subsection (5).

Periodic increase towards target

(4) The following periodic increases towards the target must also be achieved:

- 1. An average of three hours of direct care to be provided per resident per day no later than March 31, 2022.
- 2. An average of three hours and 15 minutes of direct care to be provided per resident per day no later than March 31, 2023.
- 3. An average of three hours and 42 minutes of direct care to be provided per resident per day no later than March 31, 2024.

Additional targets

(5) To further the purposes of this section, additional targets that are higher than those set out in subsections (2) and (4) may be established by regulation, and such a regulation, if made, may also set dates by which the higher targets must be achieved.

Required to comply

(6) Despite subsection (5), the regulation may not remove or amend the requirement to comply with the targets and achievement dates established under subsections (2), (3) and (4).

How average calculated

(7) The average is to be determined by taking the total number of hours of direct care actually worked by registered nurses, registered practical nurses and personal support workers in all long-term care homes, and dividing that number by the total number of resident days in all long-term care homes for the applicable calculation period provided for in the regulations.

Direct hours of care target — allied health care professionals

9 (1) This section establishes a target for the average number of hours of direct care to residents to be provided by allied health care professionals.

Target

(2) The target is for an average of 36 minutes of direct care to be provided per resident per day.

When to be achieved

(3) The target set in subsection (2) must be achieved no later than March 31, 2023, and, once achieved, shall continue at that level, subject to subsection (5).

Increase towards target

(4) An increase towards a target of an average of 33 minutes of direct care to be provided per resident per day must also be achieved no later than March 31, 2022.

Additional targets

(5) To further the purposes of this section, additional targets that are higher than those set out in subsections (2) and (4) may be established by regulation, and such a regulation, if made, may also set a date by which the excess target time must be achieved.

Required to comply

(6) Despite section (5), the regulation may not remove or amend the requirement to comply with the targets and achievement dates established under subsections (2), (3) and (4).

How average calculated

(7) The average is to be determined by taking the total number of hours of direct care actually worked by allied health care professionals in all long-term care homes, and dividing that number by the total number of resident days in all long-term care homes for the applicable calculation period provided for in the regulations.

Measuring progress

10 (1) The Minister shall assess, and publicly report, before the achievement date of the next target in subsection 8 (4), the progress that is being made or that has been made towards achieving the targets set out in sections 8 and 9 on an annual basis.

Assessment

(2) For the purposes of subsection (1), the Minister shall assess whether there are barriers or risks to achieving the targets and shall consider mitigations to the barriers and risks.

Dates

(3) For the purposes of subsection (1), the Minister shall annually assess the progress that is being made or has been made towards achieving the targets no later than six months after the end of every fiscal year of the Government of Ontario.

Failure to achieve a target

(4) If a target set out in this Part or under the regulations is not achieved, the Minister shall,

- (a) identify the reasons for the failure to achieve the targets, including any barriers and risks; and
- (b) develop and include a plan that specifies the measures that were implemented to achieve the target and the reasons for the failure to do so, and that contains proposed strategies to assist in achieving the target, or proposed steps to be taken to assist in achieving the target.

How subs. (4) requirements met

(5) The requirements under subsection (4) may be satisfied concurrently with the reporting requirements under subsections (1) and (3), or may be completed after the public reporting in subsection (1), but in any event, must be completed and made publicly available no later than six months after the end of the fiscal year of the Government of Ontario.

Consultation

(6) For the purposes of subsection (4), the Minister may consult with individuals or organizations that may have an interest in the target.

Nursing and personal support services

11 (1) Every licensee of a long-term care home shall ensure that there is,

- (a) an organized program of nursing services for the home to meet the assessed needs of the residents; and
- (b) an organized program of personal support services for the home to meet the assessed needs of the residents.

Personal support services

(2) In clause (1) (b),

“personal support services” means services to assist with the activities of daily living, including personal hygiene services, and includes supervision in carrying out those activities.

24-hour nursing care

(3) Every licensee of a long-term care home shall ensure that at least one registered nurse who is both 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, except as provided for in the regulations.

Same, Administrator and Director of Nursing and Personal Care

(4) During the hours that an Administrator or Director of Nursing and Personal Care works in that capacity, they shall not be considered to be a registered nurse on duty and present in the long-term care home for the purposes of subsection (3), except as provided for in the regulations.

Palliative care

12 (1) Every licensee of a long-term care home shall ensure that, subject to section 7, residents are provided with care or services that integrate a palliative care philosophy.

Matters in regulations

(2) Without restricting the generality of subsection (1), every licensee shall comply with the regulations respecting palliative care and the palliative care philosophy.

Restorative care

13 (1) Every licensee of a long-term care home shall ensure that there is an organized interdisciplinary program with a restorative care philosophy that,

- (a) promotes and maximizes independence; and
- (b) where relevant to the resident's assessed care needs, includes, but is not limited to, care or services that address psychosocial needs and physiotherapy and other therapy services, any of which may be either arranged or provided by the licensee.

Certain cases

(2) Without restricting the generality of subsection (1), the program shall include services for residents with cognitive impairments and residents who are unable to leave their rooms.

Recreational and social activities

14 (1) Every licensee of a long-term care home shall ensure that there is an organized program of recreational and social activities for the home to meet the interests of the residents.

Certain cases

(2) Without restricting the generality of subsection (1), the program shall include services for residents with cognitive impairments, and residents who are unable to leave their rooms.

Dietary services and hydration

15 (1) Every licensee of a long-term care home shall ensure that there is,

- (a) an organized program of nutritional care and dietary services for the home to meet the daily nutrition needs of the residents; and
- (b) an organized program of hydration for the home to meet the hydration needs of residents.

Same

(2) Without restricting the generality of subsection (1), every licensee shall ensure that residents are provided with food and fluids that are safe, adequate in quantity, nutritious and varied.

Medical services

16 Every licensee of a long-term care home shall ensure that there is an organized program of medical services for the home.

Information and referral assistance

17 (1) Every licensee of a long-term care home shall ensure that residents are provided with information and assistance in obtaining goods, services and equipment that are relevant to the residents' health care needs but are not provided by the licensee.

Clarification of extent of assistance

(2) The information and assistance required under subsection (1) does not include financial assistance.

Religious and spiritual practices

18 Every licensee of a long-term care home shall ensure that there is an organized program for the home to ensure that residents are given reasonable opportunity to practise their religious and spiritual beliefs, and to observe the requirements of those beliefs.

Accommodation services

19 (1) Every licensee of a long-term care home shall ensure that,

- (a) there is an organized program of housekeeping for the home;
- (b) there is an organized program of laundry services for the home to meet the linen and personal clothing needs of the residents; and
- (c) there is an organized program of maintenance services for the home.

Specific duties re cleanliness and repair

(2) Every licensee of a long-term care home shall ensure that,

- (a) the home, furnishings and equipment are kept clean and sanitary;
- (b) each resident's linen and personal clothing is collected, sorted, cleaned and delivered; and
- (c) the home, furnishings and equipment are maintained in a safe condition and in a good state of repair.

Volunteer program

20 (1) Every licensee of a long-term care home shall ensure that there is an organized volunteer program for the home that encourages and supports the participation of volunteers in the lives and activities of residents.

To be included in program

(2) The volunteer program must include measures to encourage and support the participation of volunteers as may be further provided for in the regulations.

Staffing and care standards

21 Every licensee of a long-term care home shall ensure that the home meets the staffing and care standards provided for in the regulations.

Standards for programs and services

22 (1) Every licensee shall ensure that the programs required under sections 11 to 20, the services provided under those programs and anything else required under those sections comply with any standards or requirements, including outcome measures, provided for in the regulations.

Matters included

(2) Without restricting the generality of subsection (1), every licensee shall comply with the regulations made under paragraph 14 of subsection 193 (2).

Infection prevention and control program

23 (1) Every licensee of a long-term care home shall ensure that there is an infection prevention and control program for the home.

Requirements of program

(2) The infection prevention and control program must include,

- (a) evidence-based policies and procedures;
- (b) an educational component in respect of infection prevention and control for staff, residents, volunteers and caregivers;
- (c) daily monitoring to detect the presence of infection in residents of the long-term care home;
- (d) measures to prevent the transmission of infections;
- (e) a hand hygiene program; and
- (f) any additional matters provided for in the regulations.

Standards and requirements

(3) The licensee shall ensure that the infection prevention and control program and what is provided for under that program, including the matters required under subsection (2), comply with any standards and requirements, including required outcomes and accountability measures, provided for in the regulations.

Infection prevention and control lead

(4) Except as provided for in the regulations, every licensee of a long-term care home shall ensure that the home has an infection prevention and control lead whose primary responsibility is the home's infection prevention and control program.

Qualifications

(5) Every licensee of a long-term care home shall ensure that the infection prevention and control lead possesses the qualifications provided for in the regulations.

PREVENTION OF ABUSE AND NEGLECT

Duty to protect

24 (1) Every licensee of a long-term care home shall protect residents from abuse by anyone and shall ensure that residents are not neglected by the licensee or staff.

If absent from the home

(2) The duties in subsection (1) do not apply where the resident is absent from the home, unless the resident continues to receive care or services from the licensee, staff or volunteers of the home.

Offence

(3) Every licensee who contravenes subsection (1) is guilty of an offence.

Policy to promote zero tolerance

25 (1) Without in any way restricting the generality of the duty provided for in section 24, every licensee shall ensure that there is in place a written policy to promote zero tolerance of abuse and neglect of residents, and shall ensure that the policy is complied with.

Contents

- (2) At a minimum, the policy to promote zero tolerance of abuse and neglect of residents,
- (a) shall provide that abuse and neglect are not to be tolerated;
 - (b) shall clearly set out what constitutes abuse and neglect;
 - (c) shall provide for a program, that complies with the regulations, for preventing abuse and neglect;
 - (d) shall contain an explanation of the duty under section 28 to make mandatory reports;
 - (e) shall contain procedures for investigating and responding to alleged, suspected or witnessed abuse and neglect of residents;
 - (f) shall set out the consequences for those who abuse or neglect residents;
 - (g) shall comply with any requirements respecting the matters provided for in clauses (a) through (f) that are provided for in the regulations; and
 - (h) shall deal with any additional matters as may be provided for in the regulations.

Communication of policy

(3) Every licensee shall ensure that the policy to promote zero tolerance of abuse and neglect of residents is communicated to all staff, residents and residents' substitute decision-makers.

REPORTING AND COMPLAINTS

Complaints procedure — licensee

- 26** (1) Every licensee of a long-term care home shall,
- (a) ensure that there are written procedures that comply with the regulations for initiating complaints to the licensee and for how the licensee deals with complaints;
 - (b) ensure that the written procedures include information about how to make a complaint to the patient ombudsman under the *Excellent Care for All Act, 2010* and to the Ministry; and
 - (c) immediately forward to the Director any written complaint that it receives concerning the care of a resident or the operation of a long-term care home in the manner set out in the regulations, where the complaint has been submitted in the format provided for in the regulations and complies with any other requirements that may be provided for in the regulations.

Other documentation

(2) A licensee who is required to forward a complaint under clause (1) (c) shall also provide the Director with any documentation provided for in the regulations, in a manner that complies with the regulations.

Licensee must investigate, respond and act

27 (1) Every licensee of a long-term care home shall ensure that,

- (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:
 - (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;
- (b) appropriate action is taken in response to every such incident; and
- (c) any requirements that are provided for in the regulations for investigating and responding as required under clauses (a) and (b) are complied with.

Reports of investigation

(2) A licensee shall report to the Director the results of every investigation undertaken under clause (1) (a), and every action taken under clause (1) (b).

Manner of reporting

(3) A licensee who reports under subsection (2) shall do so as is provided for in the regulations, and include all material that is provided for in the regulations.

Reporting certain matters to Director

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, the *Local Health System Integration Act, 2006* or the *Connecting Care Act, 2019*.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 of subsection 28 (1) of the Act is amended by striking out "the Local Health System Integration Act, 2006". (See: 2021, c. 39, Sched. 1, s. 203 (4))

False information

(2) Every person is guilty of an offence who includes in a report to the Director under subsection (1) information the person knows to be false.

Exceptions for residents

(3) A resident may make a report under subsection (1), but is not required to, and subsection (2) does not apply to residents who are incapable.

Duty on practitioners and others

(4) Even if the information on which a report may be based is confidential or privileged, subsection (1) also applies to a person mentioned in paragraph 1 or 2, and no action or other proceeding for making the report shall be commenced against a person who acts in accordance with subsection (1) unless that person acts maliciously or without reasonable grounds for the suspicion:

1. A physician or any other person who is a member of a College as defined in subsection 1 (1) of the *Regulated Health Professions Act, 1991*.
2. A member of the Ontario College of Social Workers and Social Service Workers.

Offence of failure to report

(5) The following persons are guilty of an offence if they fail to make a report required by subsection (1):

1. The licensee of the long-term care home or a person who manages a long-term care home pursuant to a contract described in section 113.
2. If the licensee or person who manages the home is a corporation, an officer or director of the corporation.
3. In the case of a home approved under Part IX, a member of the committee of management for the home under section 135 or of the board of management for the home under section 128 or 132.
4. A staff member.
5. Any person who provides professional services to a resident in the areas of health, social work or social services work.
6. Any person who provides professional services to a licensee in the areas of health, social work or social services work.

Offences re suppressing reports

- (6) Every person mentioned in paragraph 1, 2, 3 or 4 of subsection (5) is guilty of an offence if the person,
- (a) coerces or intimidates a person not to make a report required by this section;
 - (b) discourages a person from making a report required by this section; or
 - (c) authorizes, permits or concurs in a contravention of the duty to make a report required by this section.

Solicitor-client privilege

- (7) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (4) - not in force

Inspections or inquiries where information received by Director

29 (1) The Director shall have an inspector conduct an inspection or make inquiries for the purpose of ensuring compliance with the requirements under this Act if the Director receives information from any source indicating that any of the following may have occurred:

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. A violation of section 30.
5. Misuse or misappropriation of a resident's money.
6. Misuse or misappropriation of funding provided to a licensee under this Act, the *Local Health System Integration Act, 2006* or the *Connecting Care Act, 2019*.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 6 of subsection 29 (1) of the Act is amended by striking out "the *Local Health System Integration Act, 2006*". (See: 2021, c. 39, Sched. 1, s. 203 (5))

7. A failure to comply with a requirement under this Act that resulted in harm or risk of harm to a resident.
8. Any other matter provided for in the regulations.

Immediate visit to home

(2) The inspector acting under subsection (1) shall immediately visit the long-term care home concerned if the information indicates that any of the following may have occurred:

1. Anything described in paragraph 1, 2 or 3 of subsection (1) that resulted in serious harm or a significant risk of serious harm to a resident.
2. Any other matter provided for in the regulations.

Other matters

(3) If the Director receives information, not provided for in subsection (1), that raises concerns about the operation of a long-term care home, the Director shall have an inspector conduct an inspection or make inquiries into the matter for the purpose of ensuring compliance with the requirements under this Act, if the Director has reasonable grounds to believe that there may be a risk of harm to a resident.

Powers of inspector

(4) For greater clarity, an inspector acting under this section may exercise any power of an inspector under section 150, and has the power of an inspector to obtain a warrant under section 151.

Other inquiries

(5) If the Director receives information from any source about the operation of a long-term care home, and is not required to have an inspector conduct an inspection or make inquiries into the matter, the Director may disclose the information to another person, including the licensee, or to the Residents' Council or Family Council.

Licensee to be notified

(6) If the Director discloses the information to the Residents' Council or Family Council under subsection (5), the Director is required to provide the information to the licensee.

Information

(7) Without in any way restricting the generality of the term, for the purposes of this section, "information" includes anything in,

- (a) a report under subsection 27 (2); or
- (b) a report under section 28.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (5) - not in force

Whistle-blowing protection

30 (1) No person shall retaliate against another person, whether by action or omission, or threaten to do so because,

- (a) anything has been disclosed to an inspector;
- (b) anything has been disclosed to the Director including, without limiting the generality of the foregoing,
 - (i) a report has been made under section 28, or the Director has otherwise been advised of anything mentioned in paragraphs 1 to 5 of subsection 28 (1),
 - (ii) the Director has been advised of a breach of a requirement under this Act, or
 - (iii) the Director has been advised of any other matter concerning the care of a resident or the operation of a long-term care home that the person advising believes ought to be reported to the Director;
- (c) anything has been disclosed to any other personnel of the Ministry, or to any other individual or entity that may be provided for in the regulations; or
- (d) evidence has been or may be given in a proceeding, including a proceeding in respect of the enforcement of this Act or the regulations, or in an inquest under the *Coroners Act*.

Manner of disclosure, etc.

(2) For the purposes of subsection (1), disclosure may be by any method, such as by making a complaint to the Ministry or by calling an action line where one has been established, subject to any exceptions provided for in the regulations.

Interpretation, retaliate

(3) Without in any way restricting the meaning of the word "retaliate", the following constitute retaliation for the purposes of subsection (1):

- 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

(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 because of anything mentioned in subsection (1), 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.

Interpretation, discriminatory treatment

(5) Without in any way restricting the meaning of the term "discriminatory treatment", for the purposes of subsection (4) discriminatory treatment includes any change or discontinuation of any service to or care of a resident or the threat of any such change or discontinuation.

May not discourage reporting

(6) None of the following persons shall do anything that discourages, is aimed at discouraging or that has the effect of discouraging a person from doing anything mentioned in clauses (1) (a) to (d):

1. The licensee of a long-term care home or a person who manages a long-term care home pursuant to a contract described in section 113.
2. If the licensee or the person who manages the home is a corporation, an officer or director of the corporation.
3. In the case of a home approved under Part IX a member of the committee of management for the home under section 135 or of the board of management for the home under section 128 or 132.
4. A staff member.

May not encourage failure to report

(7) No person mentioned in paragraphs 1 to 4 of subsection (6) shall do anything to encourage a person to fail to do anything mentioned in clauses (1) (a) to (d).

Protection from legal action

(8) No action or other proceeding shall be commenced against any person for doing anything mentioned in clauses (1) (a) to (d) unless the person acted maliciously or in bad faith.

Offence

(9) Every person is guilty of an offence who does anything prohibited by subsection (1), (4), (6) or (7).

Complaint to Ontario Labour Relations Board

31 (1) Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 30 (1), the staff member may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

Inquiry by Board

(2) The Board may inquire into any complaint filed under subsection (1) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with all necessary modifications as if that section, except subsection (5), is enacted in and forms part of this Act.

Same

(3) On an inquiry by the Board into a complaint filed under subsection (1), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with all necessary modifications.

Onus of proof

(4) On an inquiry by the Board into a complaint filed under subsection (1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 30 (1) lies upon the employer or the person acting on behalf of the employer.

Board may substitute penalty

(5) Where, on an inquiry by the Board into a complaint filed under subsection (1), the Board determines that a staff member has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Interpretation

(6) In this section,

“Board” means the Ontario Labour Relations Board; (“Commission”)

“employer”, in relation to a staff member, means,

- (a) where the staff member is an employee of a licensee or a person who works at a long-term care home pursuant to a contract or agreement with a licensee, the licensee, or
- (b) where the staff member works at a long-term care home pursuant to a contract or agreement between the licensee and an employment agency or other third party, the employment agency or third party. (“employeur”)

Obstruction — information to inspectors, Director

32 Every person is guilty of an offence who attempts, by any means, to prevent another person from providing information to an inspector or the Director where the provision of the information is required or permitted by this Act or the regulations.

MINIMIZING OF RESTRAINING

Note: On a day to be named by proclamation of the Lieutenant Governor, the heading before section 33 of the Act is amended by striking out “Restraining” and substituting “Restraining and Confining”. (See: 2021, c. 39, Sched. 1, s. 203 (6))

Policy to minimize restraining of residents, etc.

33 (1) Every licensee of a long-term care home,

- (a) shall ensure that there is a written policy to minimize the restraining of residents and to ensure that any restraining that is necessary is done in accordance with this Act and the regulations; and
- (b) shall ensure that the policy is complied with.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 33 (1) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (7))

Policy to minimize restraining and confining of residents, etc.

(1) Every licensee of a long-term care home,

- (a) shall ensure that there is a written policy to minimize the restraining and confining of residents and to ensure that any restraining or confining that is necessary is done in accordance with this Act and the regulations; and
- (b) shall ensure that the policy is complied with. 2021, c. 39, Sched. 1, s. 203 (7).

Policy to comply with regulations

(2) The policy must comply with such requirements as may be provided for in the regulations.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (7) - not in force

Protection from certain restraining

34 (1) Every licensee of a long-term care home shall ensure that no resident of the home is:

1. Restrained, in any way, for the convenience of the licensee or staff.
2. Restrained, in any way, as a disciplinary measure.
3. Restrained by the use of a physical device, other than in accordance with section 35 or under the common law duty referred to in section 39.
4. Restrained by the administration of a drug to control the resident, other than under the common law duty referred to in section 39.
5. Restrained, by the use of barriers, locks or other devices or controls, from leaving a room or any part of a home, including the grounds of the home, or entering parts of the home generally accessible to other residents, other than under the common law duty referred to in section 39.

Devices that resident can release

(2) The use of a physical device from which a resident is both physically and cognitively able to release themselves is not a restraining of the resident.

Use of PASD to assist resident

(3) The use of a personal assistance services device (“PASD”), within the meaning of subsection 36 (2), to assist a resident with a routine activity of living is not a restraining of the resident.

Administration of drugs, etc., as treatment

(4) The administration of a drug to a resident as a treatment set out in the resident’s plan of care is not a restraining of the resident.

Perimeter barriers, etc., of home, grounds

(5) The use of barriers, locks or other devices or controls at entrances and exits to the home or the grounds of the home is not a restraining of a resident unless the resident is prevented from leaving.

Safety measures at stairways

(6) The use of barriers, locks or other devices or controls at stairways as a safety measure is not a restraining of a resident.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 34 of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (8))

Protection from restraining and confining

34 (1) Every licensee of a long-term care home shall ensure that no resident of the home is:

1. Restrained or confined, in any way, for the convenience of the licensee or staff.
2. Restrained or confined, in any way, as a disciplinary measure.
3. Restrained by the use of a physical device, other than in accordance with section 35 or under the common law duty referred to in section 39.
4. Restrained by the administration of a drug to control the resident, other than under the common law duty referred to in section 39.
5. Confined, other than in accordance with section 34.1 or under the common law duty referred to in section 39. 2021, c. 39, Sched. 1, s. 203 (8).

Devices that resident can release

(2) The use of a physical device from which a resident is both physically and cognitively able to release themselves is not a restraining of the resident. 2021, c. 39, Sched. 1, s. 203 (8).

Use of PASD to assist resident

(3) The use of a personal assistance services device (“PASD”), within the meaning of subsection 36 (2), to assist a resident with a routine activity of living is not a restraining of the resident. 2021, c. 39, Sched. 1, s. 203 (8).

Administration of drugs, etc., as treatment

(4) The administration of a drug to a resident as a treatment set out in the resident’s plan of care is not a restraining of the resident. 2021, c. 39, Sched. 1, s. 203 (8).

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (8) - not in force

Confining of resident

34.1 (1) A resident may be confined as described in paragraph 5 of subsection 34 (1) if the confining of the resident is included in the resident’s plan of care. 2021, c. 39, Sched. 1, s. 203 (8).

Provision in plan of care

(2) The confining of a resident may be included in a resident’s plan of care only if all of the following are satisfied:

1. There is a significant risk that the resident or another person would suffer serious bodily harm if the resident were not confined.
2. Alternatives to confining the resident have been considered, and tried where appropriate, but would not be, or have not been, effective to address the risk referred to in paragraph 1.
3. The method and degree of confining are reasonable, in light of the resident’s physical and mental condition and personal history, and the method and degree are the least restrictive of the reasonable methods and degrees that would be effective to address the risk referred to in paragraph 1.
4. A physician, registered nurse or other person provided for in the regulations has recommended the confining.
5. The confining of the resident has been consented to by the resident or, if the resident is incapable, by a substitute decision-maker of the resident with authority to give that consent.
6. The plan of care provides for everything required under subsection (3). 2021, c. 39, Sched. 1, s. 203 (8).

Requirements if resident is confined

(3) If a resident is being confined under subsection (1), the licensee shall ensure that,

- (a) the resident’s condition is reassessed and the effectiveness of the confining evaluated, in accordance with the requirements provided for in the regulations;
- (b) the resident is confined only for as long as is necessary to address the risk referred to in paragraph 1 of subsection (2);
- (c) the confining is discontinued if, as a result of the reassessment of the resident’s condition, one of the following is identified that would address the risk referred to in paragraph 1 of subsection (2):
 - (i) an alternative to confining, or
 - (ii) a less restrictive method of confining or a less restrictive degree of confining that would be reasonable in light of the resident’s physical and mental condition and personal history; and
- (d) any other requirements provided for in the regulations are satisfied. 2021, c. 39, Sched. 1, s. 203 (8).

Notice and advice if substitute consent to confining

(4) The following apply if the substitute decision-maker of a resident has given consent on the resident's behalf to the confining of the resident:

1. The licensee of the home shall,
 - i. ensure that the resident is promptly given a written notice that complies with subsection (6),
 - ii. ensure that the resident is promptly provided with a verbal explanation of the written notice, the verbal explanation complies with the requirements, if any, provided for in the regulations and the resident is asked whether they wish to meet with a rights adviser, and
 - iii. ensure that, if the resident wishes to meet with a rights adviser or expresses disagreement with the confining, a rights adviser is promptly notified and the notification is provided in accordance with the requirements, if any, provided for in the regulations.
2. The rights adviser notified under subparagraph 1 iii shall promptly meet with the resident and explain,
 - i. the right of the resident or any person acting on their behalf to apply to the Consent and Capacity Board, under section 54.18 of the *Health Care Consent Act, 1996*, for a determination as to whether the substitute decision-maker complied with section 54.7 of that Act, and
 - ii. any other matters that may be provided for in the regulations.
3. At the resident's request, the rights adviser shall assist him or her in making an application to the Consent and Capacity Board and in obtaining legal services.
4. The rights adviser shall comply with the regulations, if any, providing for how the rights adviser satisfies the requirements of paragraphs 2 and 3.
5. Paragraphs 2 and 3 do not apply if the resident refuses to meet with the rights adviser.
6. The licensee shall ensure that the resident is not confined until after,
 - i. the requirements of paragraph 1 have been satisfied,
 - ii. the requirements of paragraph 2, if applicable, have been satisfied or the licensee is advised by the rights adviser that the resident refuses to meet with the rights adviser, and
 - iii. the requirements, if any, provided for in the regulations have been satisfied.
7. For greater certainty, paragraph 6 does not affect any further restrictions on the licensee under Part III.1 of the *Health Care Consent Act, 1996*. 2021, c. 39, Sched. 1, s. 203 (8).

Rights adviser to notify licensee

(5) The rights adviser shall promptly notify the licensee, and shall do so in accordance with the requirements, if any, provided for in the regulations,

- (a) that the meeting with the resident has occurred, or that the resident refused to meet with the rights adviser, as the case may be; and
- (b) if the rights adviser is aware that the resident or any person acting on the resident's behalf intends to make an application to the Consent and Capacity Board referred to in section 54.10 of the *Health Care Consent Act, 1996* or that another person intends to apply to the Consent and Capacity Board to be appointed as the representative to give or refuse consent to the confining on the resident's behalf. 2021, c. 39, Sched. 1, s. 203 (8).

Contents of notice to resident

(6) The written notice given to the resident under subparagraph 1 i of subsection (4) shall be in accordance with the requirements, if any, provided for in the regulations and shall inform the resident,

- (a) of the reasons for the confining;
- (b) that the resident has the right to meet with a rights adviser, together with the contact information for the rights adviser;
- (c) that the resident, or any person acting on their behalf, is entitled to apply to the Consent and Capacity Board, under section 54.18 of the *Health Care Consent Act, 1996*, for a determination as to whether the substitute decision-maker complied with section 54.7 of that Act;
- (d) that the resident has the right to retain and instruct counsel without delay; and
- (e) of any other matters provided for in the regulations. 2021, c. 39, Sched. 1, s. 203 (8).

Placement co-ordinator recommendation

(7) If the placement co-ordinator has, under subsection 51 (2.1), recommended that a resident be confined in the home, the licensee,

- (a) shall consider the recommendation; and
- (b) in considering the recommendation shall comply with the requirements provided for in the regulations, if any. 2021, c. 39, Sched. 1, s. 203 (8).

Elements of consent for confining

(8) Section 52 applies, with necessary modifications, with respect to consent to the confining of a resident in a home. When obtaining consent to confining, the licensee shall ensure that the resident or substitute decision-maker is informed that consent may be withdrawn at any time. 2021, c. 39, Sched. 1, s. 203 (8).

Requirements under this section

(9) The licensee of the home shall ensure that the requirements under this section are satisfied,

- (a) when a resident is initially confined under subsection (1); and
- (b) at any other times and under any other circumstances provided for in the regulations. 2021, c. 39, Sched. 1, s. 203 (8).

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (8) - not in force

Restraining by physical devices

35 (1) A resident may be restrained by a physical device as described in paragraph 3 of subsection 34 (1) if the restraining of the resident is included in the resident's plan of care.

Provision in plan of care

(2) The restraining of a resident by a physical device may be included in a resident's plan of care only if all of the following are satisfied:

1. There is a significant risk that the resident or another person would suffer serious bodily harm if the resident were not restrained.
2. Alternatives to restraining the resident have been considered, and tried where appropriate, but would not be, or have not been, effective to address the risk referred to in paragraph 1.
3. The method of restraining is reasonable, in light of the resident's physical and mental condition and personal history, and is the least restrictive of such reasonable methods that would be effective to address the risk referred to in paragraph 1.
4. A physician, registered nurse in the extended class or other person provided for in the regulations has ordered or approved the restraining.
5. The restraining of the resident has been consented to by the resident or, if the resident is incapable, a substitute decision-maker of the resident with authority to give that consent.
6. The plan of care provides for everything required under subsection (3).

Requirement if resident is restrained

(3) If a resident is being restrained by a physical device under subsection (1), the licensee shall ensure that,

- (a) the device is used in accordance with any requirements provided for in the regulations;
- (b) the resident is monitored while restrained, in accordance with the requirements provided for in the regulations;
- (c) the resident is released and repositioned, from time to time, while restrained, in accordance with the requirements provided for in the regulations;
- (d) the resident's condition is reassessed and the effectiveness of the restraining evaluated, in accordance with the requirements provided for in the regulations;
- (e) the resident is restrained only for as long as is necessary to address the risk referred to in paragraph 1 of subsection (2);
- (f) the method of restraining used is discontinued if, as a result of the reassessment of the resident's condition, one of the following is identified that would address the risk referred to in paragraph 1 of subsection (2):
 - (i) an alternative to restraining, or
 - (ii) a less restrictive method of restraining that would be reasonable, in light of the resident's physical and mental condition and personal history; and

(g) any other requirements provided for in the regulations are satisfied.

PASDs that limit or inhibit movement

36 (1) This section applies to the use of a PASD if the PASD has the effect of limiting or inhibiting a resident's freedom of movement and the resident is not able, either physically or cognitively, to release themselves from the PASD.

Definition of PASD

(2) In this section,

"PASD" means personal assistance services device, being a device used to assist a person with a routine activity of living.

When PASD may be used

(3) Every licensee of a long-term care home shall ensure that a PASD described in subsection (1) is used to assist a resident with a routine activity of living only if the use of the PASD is included in the resident's plan of care.

Inclusion in plan of care

(4) The use of a PASD under subsection (3) to assist a resident with a routine activity of living may be included in a resident's plan of care only if all of the following are satisfied:

1. Alternatives to the use of a PASD have been considered, and tried where appropriate, but would not be, or have not been, effective to assist the resident with the routine activity of living.
2. The use of the PASD is reasonable, in light of the resident's physical and mental condition and personal history, and is the least restrictive of such reasonable PASDs that would be effective to assist the resident with the routine activity of living.
3. The use of the PASD has been approved by,
 - i. a physician,
 - ii. a registered nurse,
 - iii. a registered practical nurse,
 - iv. a member of the College of Occupational Therapists of Ontario,
 - v. a member of the College of Physiotherapists of Ontario, or
 - vi. any other person provided for in the regulations.
4. The use of the PASD has been consented to by the resident or, if the resident is incapable, a substitute decision-maker of the resident with authority to give that consent.
5. The plan of care provides for everything required under subsection (5).

Use of PASD

(5) If a PASD is used under subsection (3), the licensee shall ensure that the PASD is used in accordance with any requirements provided for in the regulations.

PASD used to restrain

(6) For greater certainty, if a PASD is being used to restrain a resident rather than to assist the resident with a routine activity of living, section 35 applies with respect to that use instead of this section.

Records on restraining of residents

37 Every licensee of a long-term care home shall keep records in the home, as provided for in the regulations, in relation to the following:

1. The restraining of a resident.
2. The use of a PASD, within the meaning of section 36.

Prohibited devices that limit movement

38 Every licensee of a long-term care home shall ensure that no device provided for in the regulations is used on a resident,

- (a) to restrain the resident; or
- (b) to assist a resident with a routine activity of living, if the device would have the effect of limiting or inhibiting the resident's freedom of movement.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 38 of the Act is amended by adding the following subsection: (See: 2021, c. 39, Sched. 1, s. 203 (9))

Same, confinement

(2) Every licensee of a long-term care home shall ensure that no device provided for in the regulations is used to confine a resident. 2021, c. 39, Sched. 1, s. 203 (9).

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (9) - not in force

Common law duty

39 (1) Nothing in this Act affects the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others.

Restraining by physical device under common law duty

(2) If a resident is being restrained by a physical device pursuant to the common law duty referred to in subsection (1), the licensee shall ensure that the device is used in accordance with any requirements provided for in the regulations and that any other requirements provided for in the regulations are satisfied.

Restraining by administration of drug, etc., under common law duty

(3) A resident may not be restrained by the administration of a drug pursuant to the common law duty referred to in subsection (1) unless the administration of the drug is ordered by a physician or other person provided for in the regulations.

Same

(4) If a resident is being restrained by the administration of a drug pursuant to the common law duty referred to in subsection (1), the licensee shall ensure that the drug is used in accordance with any requirements provided for in the regulations and that any other requirements provided for in the regulations are satisfied.

Note: Subsection 39 (5) of this Act is not yet in force. It comes into force on a day to be named by proclamation of the Lieutenant Governor.

Confinement

(5) If a resident is being confined pursuant to the common law duty referred to in subsection (1), the licensee shall ensure that the confining is in accordance with any requirements provided for in the regulations and that any other requirements provided for in the regulations are satisfied.

OFFICE OF THE LONG-TERM CARE HOMES RESIDENT AND FAMILY ADVISER

Office of the Long-Term Care Homes Resident and Family Adviser

40 The Minister may establish an Office of the Long-Term Care Homes Resident and Family Adviser to,

- (a) assist and provide information to residents and their families and others;
- (b) advise the Minister on matters and issues concerning the interests of residents; and
- (c) perform any other functions provided for in the regulations or assigned by the Minister.

REGULATIONS

Regulations

41 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

(2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) governing anything that a licensee is required to do, ensure or provide under this Part, including establishing standards or outcomes that must be met;
- (b) governing temperature requirements for long-term care homes;
- (c) requiring and governing the assessment and classification of residents for the purpose of determining care requirements and other needs of residents;
- (d) governing the mission statements provided for in section 4 and the requirements under that section;
- (e) governing plans of care, including governing their development and implementation and setting requirements in addition to what is required under section 6;
- (f) setting higher targets, interim targets and extended target dates for the purposes of sections 8 and 9 and generally respecting the application of those sections, including setting the applicable calculation periods;
- (g) governing the meaning of “number of hours of direct care actually worked” and “resident days” for the purposes of sections 8 and 9;

- (h) defining “allied health care professional” for the purposes of section 9;
- (i) defining “regular nursing staff” for the purposes of subsection 11 (3);
- (j) requiring certain classes of long-term care homes to have more registered nurses on duty than are required by subsection 11 (3) and providing for rules governing such a requirement;
- (k) respecting and governing palliative care and the development of a palliative care philosophy for the purposes of section 12;
- (l) governing the requirements of the infection prevention and control program under section 23, and prescribing conditions and requirements that must be complied with under that section;
- (m) requiring certain classes of long-term care homes to have more infection prevention and control leads appointed than are required by subsection 23 (4);
- (n) governing responsibilities that an infection prevention and control lead is required to perform;
- (o) providing for the qualification of an infection prevention and control lead for the purposes of subsection 23 (5);
- (p) governing the format and other requirements for complaints for the purposes of clause 26 (1) (c) and governing the accompanying documentation for the purposes of subsection 26 (2);
- (q) specifying, for the purposes of paragraph 4 of subsection 28 (1) and paragraph 5 of subsection 29 (1), what constitutes misuse or misappropriation of a resident’s money;
- (r) specifying, for the purposes of paragraph 5 of subsection 28 (1) and paragraph 6 of subsection 29 (1), what constitutes misuse or misappropriation of funding provided to a licensee;
- (s) providing for additional persons and entities for the purposes of clause 30 (1) (c), and governing exceptions for the purposes of subsection 30 (2);

Note: Clause 41 (2) (t) of this Act is not yet in force. It comes into force on a day to be named by proclamation of the Lieutenant Governor.

- (t) governing the confining of residents, including the setting of requirements in addition to those set out in this Part;
- (u) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

**PART III
QUALITY**

Continuous quality improvement

42 Every licensee of a long-term care home shall implement a continuous quality improvement initiative as provided for in the regulations.

Resident and Family/Caregiver Experience Survey

43 (1) Every licensee of a long-term care home shall ensure that, unless otherwise directed by the Minister, at least once in every year a survey is taken of the residents, their families and caregivers to measure their experience with the home and the care, services, programs and goods provided at the home.

Administration

(2) Where the regulations provide for how the survey is to be administered, the licensee shall ensure that the survey is administered in the manner and in the form provided for in the regulations, and that it contains the content provided for in the regulations.

Action

(3) A licensee shall make every reasonable effort to act on the results of the survey and to improve the long-term care home and the care, services, programs and goods accordingly.

Advice

(4) The licensee shall seek the advice of the Residents’ Council and the Family Council, if any, in carrying out the survey and in acting on its results.

Documentation

- (5) The licensee shall ensure that,
 - (a) the results of the survey are documented and made available to the Residents’ Council and the Family Council, if any, to seek their advice under subsection (4);
 - (b) the actions taken to improve the long-term care home, and the care, services, programs and goods based on the results of the survey are documented and made available to the Residents’ Council and the Family Council, if any;

- (c) the documentation required by clauses (a) and (b) is made available to residents and their families; and
- (d) the documentation required by clauses (a) and (b) is kept in the long-term care home and is made available during an inspection under Part X.

Long-Term Care Quality Centre

44 (1) The Minister may establish a Long-Term Care Quality Centre.

Functions, purposes

- (2) The functions and purposes of the Long-Term Care Quality Centre are,
- (a) to support mission-driven organizations;
 - (b) to advance and share research on innovative and evidence-informed person-centred models of care; and
 - (c) any other functions or purposes provided for in the regulations.

Regulations

45 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) governing the requirements for a continuous quality improvement initiative, including its development and its implementation;
 - (b) providing for and governing the survey of residents, families and caregivers, including its content, form and administration;
 - (c) providing for and governing the composition and additional functions and purposes of the Long-Term Care Quality Centre;
 - (d) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART IV ADMISSION OF RESIDENTS

Application of Part

46 (1) This Part applies to the admission of a person to a long-term care home as a resident and any transfer within a home to a specialized unit.

Transfer

(2) Where a person is to be transferred to a specialized unit within the long-term care home, this Part applies as though the transfer were an admission of the person to the home.

Definition

(3) In this section,

“specialized unit” means any unit designated by or in accordance with the regulations to provide or offer certain types of accommodation, care, services, programs and goods to residents.

Designation of placement co-ordinators

47 (1) The Minister shall designate one or more persons, classes of persons or other entities as placement co-ordinators for the long-term care homes in specified geographic areas.

Ineligible persons and entities

(2) The Minister shall not designate a person or entity if the person or entity is in a class of persons or entities described in the regulations as ineligible for designation as a placement co-ordinator.

Changes in designations

(3) The Minister may revoke a designation or make a new designation.

Placement co-ordinator to comply with Act, etc.

48 A placement co-ordinator shall act in accordance with this Act and the regulations.

Requirements for admission to home

49 The following are required in order for a person to be admitted as a resident of a long-term care home:

1. A placement co-ordinator must have determined that the person is eligible for long-term care home admission under section 50.
2. The placement co-ordinator for the geographic area where the home is located must have authorized the admission of the person to that specific home under section 51.

Eligibility for long-term care home admission

50 (1) A person may apply to a placement co-ordinator for a determination that the person is eligible for long-term care home admission.

Criteria for eligibility

(2) The criteria for determining eligibility for long-term care home admission shall be provided for in the regulations.

Application in accordance with regulations

(3) An application shall be made in accordance with the regulations.

Required assessments

(4) The placement co-ordinator shall determine whether or not the applicant is eligible for long-term care home admission only if the placement co-ordinator has the following:

1. An assessment of the applicant's physical and mental health, and the applicant's requirements for medical treatment and health care.
2. An assessment of the applicant's,
 - i. functional capacity,
 - ii. requirements for personal care,
 - iii. current behaviour, and
 - iv. behaviour during the year preceding the assessment.
3. Any other assessment or information provided for in the regulations.

Requirements re assessments

(5) The following apply with respect to the assessments under paragraphs 1 and 2 of subsection (4):

1. The assessment under paragraph 1 of subsection (4) must be in the form provided by the Director and the form provided by the Director must include information explaining,
 - i. the process of determining eligibility and admitting persons into long-term care homes, and
 - ii. what use will be made of the assessment.
2. The assessment under paragraph 1 of subsection (4) must be made by a physician or registered nurse.
3. The assessment under paragraph 2 of subsection (4) must be made by an employee or agent of the placement co-ordinator who is also,
 - i. a registered nurse,
 - ii. a social worker who is registered under the *Social Work and Social Service Work Act, 1998*, or
 - iii. any other person provided for in the regulations.
4. The assessments under paragraphs 1 and 2 of subsection (4) must be made by different individuals.

Assessments, etc., to be taken into account

(6) In determining whether or not the applicant is eligible for long-term care home admission, the placement co-ordinator shall take into account all the assessments and information required under subsection (4) and such other information as the placement co-ordinator has that is relevant to the determination of eligibility.

Determination of eligibility — information about process

(7) If the placement co-ordinator determines that the applicant is eligible for long-term care home admission, the placement co-ordinator shall, at the time of making the determination, provide information to the applicant about the process for admitting persons into long-term care homes and explain the process, the choices that the applicant has in the process and the implications of those choices.

Determination of ineligibility — assistance and notice

(8) If the placement co-ordinator determines that the applicant is not eligible for long-term care home admission,

- (a) the placement co-ordinator shall suggest alternative services and make appropriate referrals on behalf of the applicant; and
- (b) the placement co-ordinator shall ensure that the applicant is notified in writing of,
 - (i) the determination of ineligibility,
 - (ii) the reasons for the determination, and
 - (iii) the applicant's right to apply to the Appeal Board for a review of the determination.

Review of determination of ineligibility

(9) The applicant may apply to the Appeal Board for a review of the determination of ineligibility made by the placement co-ordinator, and the Appeal Board shall deal with the appeal in accordance with section 59.

Authorization for admission to a home

51 (1) A person who has been determined to be eligible for long-term care home admission may apply to a placement co-ordinator for an authorization of admission, by the appropriate placement co-ordinator, to such long-term care home or homes as the person selects.

Appropriate placement co-ordinator

(2) In this section,

“appropriate placement co-ordinator” means, in relation to a long-term care home, the placement co-ordinator designated pursuant to subsection 47 (1) for the geographic area where the home is located.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 51 of the Act is amended by adding the following subsections: (See: 2021, c. 39, Sched. 1, s. 203 (10))

Confinement to be considered

(2.1) The placement co-ordinator who determined that the applicant is eligible for long-term care home admission shall consider whether the applicant may need to be confined in the home and shall make a recommendation to the licensee after considering,

- (a) whether there would be a significant risk that the applicant or anyone else would suffer serious bodily harm if the applicant were not confined;
- (b) whether confining the applicant would be reasonable in light of the applicant's physical and mental condition and personal history; and
- (c) whether a physician, registered nurse in the extended class or other person provided for in the regulations has recommended the confining. 2021, c. 39, Sched. 1, s. 203 (10).

Advising of confinement recommendation

(2.2) If the placement co-ordinator intends to recommend to the licensee that the applicant be confined in the home, the placement co-ordinator shall advise the applicant, and if the applicant is incapable, a substitute decision-maker of the applicant, of the recommendation and of anything else that may be provided for in the regulations, prior to authorization of the admission and at such other times as may be provided for in the regulations. 2021, c. 39, Sched. 1, s. 203 (10).

Compliance with regulations

(2.3) The placement co-ordinator shall, when acting under subsections (2.1) and (2.2), comply with the requirements, if any, provided for in the regulations. 2021, c. 39, Sched. 1, s. 203 (10).

Assistance with choosing homes

(3) The placement co-ordinator who determined that the applicant is eligible for long-term care home admission shall, if the applicant wishes, assist the applicant in selecting the long-term care home or homes with respect to which the applicant will apply for authorization of admission.

Person's preferences

(4) In assisting the applicant under subsection (3), the placement co-ordinator shall consider the applicant's preferences relating to admission, based on ethnic, religious, spiritual, linguistic, familial and cultural factors.

Application in accordance with regulations

(5) An application for authorization of admission shall be made in accordance with the regulations and the applicant shall provide written consent to the disclosure of all information necessary to deal with the application.

Co-ordination with appropriate placement co-ordinators

(6) If a home selected by an applicant is not in the geographic area of the placement co-ordinator to whom the application was made, that placement co-ordinator shall co-ordinate with the appropriate placement co-ordinator for that home.

Licensee consideration and approval

(7) The appropriate placement co-ordinator shall give the licensee of each selected home copies of the assessments and information that were required to have been taken into account, under subsection 50 (6), and the licensee shall review the assessments and information and shall approve the applicant's admission to the home unless,

- (a) the home lacks the physical facilities necessary to meet the applicant's care requirements;
- (b) the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements; or
- (c) circumstances exist which are provided for in the regulations as being a ground for withholding approval.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 51 (7) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (11))

Licensee consideration and approval

(7) The appropriate placement co-ordinator shall give the licensee of each selected home copies of the assessments and information that were required to have been taken into account under subsection 50 (6) as well as any recommendation made under subsection (2.1), and the licensee shall review the assessments, information and recommendation and shall approve the applicant's admission to the home unless,

- (a) the home lacks the physical facilities necessary to meet the applicant's care requirements;
- (b) the staff of the home lack the nursing expertise necessary to meet the applicant's care requirements; or
- (c) circumstances exist which are provided for in the regulations as being a ground for withholding approval. 2021, c. 39, Sched. 1, s. 203 (11).

Notice if licensee gives approval

(8) If the licensee approves the applicant's admission, the licensee shall give the appropriate placement co-ordinator a written notice which shall include an acknowledgement that the licensee has reviewed the assessments and information the licensee is required to review under subsection (7).

Written notice if licensee withholds approval

(9) If the licensee withholds approval for admission, the licensee shall give to persons described in subsection (10) a written notice setting out,

- (a) the ground or grounds on which the licensee is withholding approval;
- (b) a detailed explanation of the supporting facts, as they relate both to the home and to the applicant's condition and requirements for care;
- (c) an explanation of how the supporting facts justify the decision to withhold approval; and
- (d) contact information for the Director.

Persons to whom notice given

(10) The persons referred to in subsection (9) are the following:

1. The applicant.
2. The appropriate placement co-ordinator.

Conditions of authorization of admission

(11) The appropriate placement co-ordinator may authorize the admission of the applicant to a home only if,

- (a) for each of the assessments required under subsection 50 (4), either the assessment or a reassessment was made within the three months preceding the authorization of admission, or within the preceding three months there was a significant change in the person's condition or circumstances in which case a reassessment was made at that time;
- (b) the applicant is still eligible for long-term care home admission following the review of any reassessment described in clause (a) and any redetermination required under subsection (12);
- (c) the licensee of the home approves the person's admission to the home; and
- (d) the person provides consent to being admitted to the home.

Review of reassessments, etc.

(12) The placement co-ordinator who determined the applicant was eligible for long-term care home admission under section 50, or the placement co-ordinator to whom the responsibility has been transferred under section 54 shall,

- (a) review any reassessment required under clause (11) (a); and

- (b) if after that review the placement co-ordinator is of the opinion that the applicant may no longer be eligible for long-term care home admission, make a new determination, under section 50, of the applicant's eligibility.

Application, if new determination required

(13) For greater certainty, subsections 50 (4), (5), (6), (8) and (9) apply with respect to the new determination required under clause (12) (b).

Reassessment to licensee who has approved admission

(14) If a reassessment required under clause (11) (a) has been done since the licensee approved the applicant's admission to the home, the appropriate placement co-ordinator shall give the licensee a copy of the reassessment and the licensee shall review the reassessment in accordance with the following:

1. The licensee may withdraw the approval only in the circumstances set out in clauses (7) (a) to (c), and such a withdrawal may only be made in accordance with the requirements provided for in the regulations.
2. If the licensee decides not to withdraw the approval, the licensee shall give the appropriate placement co-ordinator a written notice that includes an acknowledgement that the licensee has reviewed the reassessment.
3. If the licensee decides to withdraw the approval, subsections (9) and (10) apply with necessary modifications.

Alternative services, referrals

(15) The placement co-ordinator to whom the application was made under subsection (1) shall suggest alternative services and make appropriate referrals on behalf of an applicant under any of the following circumstances:

1. If the admission of the applicant to a home is delayed.
2. If a licensee withholds approval for admission of the applicant or withdraws approval for admission of the applicant.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (10, 11) - not in force

Elements of consent

52 (1) The following are the elements required for consent to admission to a long-term care home:

1. The consent must relate to the admission.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

Informed consent

(2) A consent to admission is informed if, before giving it,

- (a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the admission; and
- (b) the person received responses to their requests for additional information about those matters.

Same

(3) The matters referred to in subsection (2) are:

1. What the admission entails.
2. The expected advantages and disadvantages of the admission.
3. Alternatives to the admission.
4. The likely consequences of not being admitted.

Substitute decision-maker may apply for person

53 A substitute decision-maker may apply on behalf of a person under section 50 or 51.

Transfer of application

54 Responsibility for an application under section 50 or 51 may be transferred, with the consent of the applicant, from one placement co-ordinator to another and, upon such a transfer being made, the new placement co-ordinator shall be deemed, for the purposes of this Part, to be the placement co-ordinator to whom the application was made.

Controls on licensee

55 A licensee of a long-term care home shall not admit a person unless the person's admission to the home is authorized by the placement co-ordinator for the geographic area where the home is located, and shall admit a person whose admission is so authorized.

Suspension of admissions where risk of harm

56 (1) If the Director believes there is a risk of harm to the health or well-being of residents of a long-term care home or persons who might be admitted as residents, the Director may direct the placement co-ordinator for the geographic area where the home is located to cease authorizing admissions to the home for such period of time and subject to such conditions as the Director specifies.

Compliance with direction

(2) A placement co-ordinator who receives a direction under subsection (1) shall comply with it.

Preference for veterans

57 The Minister shall ensure that preference is given to veterans for access to beds that,

- (a) are located in long-term care homes for which funding is provided under an agreement between the Government of Ontario and the Government of Canada relating to veterans; and
- (b) are designated by the Minister as veterans' priority access beds.

Immunity — placement co-ordinator's employees and agents

58 (1) No action or other proceeding shall be commenced against an employee or agent of a placement co-ordinator for any act done in good faith in the performance or intended performance of the person's duty or for any alleged neglect or default in the performance in good faith of the person's duty.

Placement co-ordinator's liability

(2) Subsection (1) does not relieve a placement co-ordinator of liability for the acts or omissions of its employees or agents.

Hearing — ineligibility

59 (1) When the Appeal Board receives an application for a review of a determination of ineligibility, it shall promptly appoint a time and place for a hearing.

Same

(2) The hearing shall begin within 21 days after the day the Appeal Board receives the application for the hearing, unless the parties agree to a postponement.

Notice to parties

(3) The Appeal Board shall notify each of the parties of the time and place of the hearing at least seven days before the hearing begins.

Parties

(4) The parties to the proceeding before the Appeal Board are the applicant who was determined to be ineligible for admission, the placement co-ordinator who made the determination and such other parties as the Appeal Board specifies.

Notice to Minister

(5) When a placement co-ordinator is notified by the Appeal Board of a hearing, the placement co-ordinator shall promptly give the Minister written notice of the hearing together with written reasons for the determination of ineligibility made by the placement co-ordinator.

Minister entitled to be heard

(6) The Minister is entitled to be heard by counsel or otherwise in a proceeding before the Appeal Board under this section.

Evidence of person with a disability

(7) If a party to a proceeding before the Appeal Board under this Act wishes to give evidence in the proceeding or wishes to call another person as a witness to give evidence in the proceeding but the party or other person is unable to attend the hearing by reason of age, infirmity or physical disability, the Appeal Board members holding the hearing may, at the request of the party, attend upon the party or the other person, as the case may be, and take their evidence.

Medical report proves inability

(8) A medical report signed by a physician stating that the physician believes that the person is unable to attend the hearing by reason of age, infirmity or physical disability is proof, in the absence of evidence to the contrary, of the inability of the person to attend the hearing.

Opportunity for all parties

(9) No Appeal Board member shall take evidence from a party or other person under subsection (7) unless reasonable notice of the time and place for taking the evidence is given to all parties to the proceeding and each party attending is given an opportunity to examine or cross-examine the party or other person, as the case may be.

Recording of evidence

(10) The oral evidence taken before the Appeal Board at a hearing and the oral evidence taken from a party or other person under subsection (7) shall be recorded and, if required, copies of a transcript of the evidence shall be furnished on the same terms as in the Superior Court of Justice.

Health Insurance Act

(11) Subsections 23 (1), (2), (4) and (6) of the *Health Insurance Act* apply to the proceedings and decisions of the Appeal Board under this Part.

Powers of Appeal Board

(12) After a hearing by the Appeal Board, the Appeal Board may,

- (a) affirm the determination of ineligibility made by the placement co-ordinator;
- (b) rescind the determination of ineligibility made by the placement co-ordinator and refer the matter back to the placement co-ordinator for redetermination in accordance with such directions as the Appeal Board considers proper; or
- (c) rescind the determination of ineligibility made by the placement co-ordinator, substitute its opinion for the opinion of the placement co-ordinator and direct the placement co-ordinator to determine that the applicant is eligible for admission to a long-term care home.

Decision and reasons

(13) The Appeal Board shall render its decision within one day after the end of the hearing and shall provide written reasons to the parties within seven days after rendering the decision.

Decision to Minister

(14) The placement co-ordinator shall furnish the Minister with a copy of the decision and reasons of the Appeal Board.

Appeal to Divisional Court

60 (1) A party to a review of the determination of ineligibility by the Appeal Board may appeal its decision to the Divisional Court on a question of law or fact or both, in accordance with the rules of court.

Record

(2) If a party appeals a decision of the Appeal Board to the Divisional Court under this section, the Appeal Board shall promptly file with the Divisional Court the record of the proceeding before the Appeal Board and the transcript of the evidence taken before the Appeal Board, which together constitute the record in the appeal.

Minister to be notified

(3) The placement co-ordinator who commences or is given notice of an appeal shall promptly give the Minister written notice of the appeal.

Minister to be heard

(4) The Minister is entitled to be heard by counsel or otherwise on the argument of an appeal under this section.

Powers of court on appeal

(5) On an appeal under this section, the Divisional Court,

- (a) may affirm or rescind the decision of the Appeal Board;
- (b) may refer the matter back to the Appeal Board for rehearing in whole or in part in accordance with such directions as the court considers proper;
- (c) may refer the matter back to the placement co-ordinator for redetermination in accordance with such directions as the court considers proper;
- (d) may substitute its opinion for that of the placement co-ordinator or the Appeal Board; and
- (e) may direct the placement co-ordinator to determine that the applicant is eligible for admission to a long-term care home.

Decision to Minister

(6) The placement co-ordinator shall furnish the Minister with a copy of the decision and reasons of the Divisional Court.

Regulations

61 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) governing determinations of eligibility for long-term care home admission;
 - (b) governing authorizations of admission to long-term care homes, including, without limiting the generality of the foregoing,
 - (i) providing for priorities for persons in circumstances specified in the regulations or for classes of persons specified in the regulations,
 - (ii) governing the notices to be given by licensees under subsections 51 (8) and (9);
 - (c) governing placement co-ordinators, including, without limiting the generality of the foregoing,
 - (i) providing for classes of persons or entities that are ineligible to be designated as placement co-ordinators,
 - (ii) providing for how placement co-ordinators shall co-ordinate with each other,
 - (iii) governing the transfer of responsibility for applications between placement co-ordinators under section 54;
 - (d) requiring placement co-ordinators to ensure that persons seeking admission to long-term care homes receive information about their rights and assistance in exercising their rights;
 - (e) providing for exemptions from provisions of this Part, subject to any conditions that may be set out in the regulations;
 - (f) modifying the application of this Part for emergencies or other special circumstances specified in the regulations;
 - (g) providing for applications under section 51 for admission to a long-term care home to be made before the home is licensed or approved;
 - (h) defining “veteran” for the purposes of section 57;
 - (i) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

Different requirements for programs, groups

(3) The regulations may provide for different requirements for programs or groups specified in the regulations.

PART V COUNCILS

RESIDENTS’ COUNCIL

Residents’ Council

62 (1) Every licensee of a long-term care home shall ensure that a Residents’ Council is established in the home.

Only residents

(2) Only residents of the long-term care home may be members of the Residents’ Council.

Powers of Residents’ Council

63 (1) A Residents’ Council of a long-term care home has the power to do any or all of the following:

1. Advise residents respecting their rights and obligations under this Act.
2. Advise residents respecting the rights and obligations of the licensee under this Act and under any agreement relating to the home.
3. Attempt to resolve disputes between the licensee and residents.
4. Sponsor and plan activities for residents.
5. Collaborate with community groups and volunteers concerning activities for residents.
6. Advise the licensee of any concerns or recommendations the Council has about the operation of the home.
7. Provide advice and recommendations to the licensee regarding what the residents would like to see done to improve care or the quality of life in the home.

8. Report to the Director any concerns and recommendations that in the Council's opinion ought to be brought to the Director's attention.
9. Review,
 - i. inspection reports and summaries received under section 152,
 - ii. a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 155 (1) (b) following a referral under paragraph 4 of subsection 154 (1),
 - iii. the detailed allocation, by the licensee, of funding under this Act, the *Local Health System Integration Act, 2006* and the *Connecting Care Act, 2019* and amounts paid by residents,

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 9 iii of subsection 63 (1) of the Act is amended by striking out "the *Local Health System Integration Act, 2006*". (See: 2021, c. 39, Sched. 1, s. 203 (12))

- iv. the financial statements relating to the home filed with the Director under the regulations or provided to a local health integration network or to the Agency, and

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 9 iv of subsection 63 (1) of the Act is amended by striking out "a local health integration network or to". (See: 2021, c. 39, Sched. 1, s. 203 (13))

- v. the operation of the home.

10. Exercise any other powers provided for in the regulations.

Duties

- (2) The Residents' Council shall comply with any duties provided for in the regulations.

Duty to respond

- (3) If the Residents' Council has advised the licensee of concerns or recommendations under either paragraph 6 or 8 of subsection (1), the licensee shall, within 10 days of receiving the advice, respond to the Residents' Council in writing.

Minister to consult

- (4) The Minister shall consult, in a manner the Minister considers appropriate, with organizations that represent the interests of Residents' Councils on an annual basis.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (12, 13) - not in force

Residents' Council assistant

- 64** (1) Every licensee of a long-term care home shall appoint a Residents' Council assistant who is acceptable to that Council to assist the Residents' Council.

Duties

- (2) In carrying out their duties, a Residents' Council assistant shall take instructions from the Residents' Council, ensure confidentiality where requested and report to the Residents' Council.

FAMILY COUNCIL

Family Council

- 65** (1) Every long-term care home may have a Family Council.

Request for Family Council

- (2) If there is no Family Council, a family member of a resident or a person of importance to a resident may request the establishment of a Family Council for a long-term care home.

Licensee to assist

- (3) The licensee shall assist in the establishment of a Family Council within 30 days of receiving a request from a person mentioned in subsection (2).

Notification of Director

- (4) When a Family Council is established, the licensee shall notify the Director or anyone else provided for in the regulations of the fact within 30 days of the establishment.

Right to be a member

- (5) Subject to subsection (6), a family member of a resident or a person of importance to a resident is entitled to be a member of the Family Council of a long-term care home.

Who may not be a member

(6) The following persons may not be members of the Family Council:

1. The licensee, and anyone involved in the management of the long-term care home on behalf of the licensee.
2. An officer or director of the licensee or of a corporation that manages the long-term care home on behalf of the licensee or, in the case of a home approved under Part IX, a member of the committee of management for the home under section 135 or of the board of management for the home under section 128 or 132 as the case may be.
3. A person with a controlling interest in the licensee.
4. The Administrator.
5. Any other staff member.
6. A person who is employed by the Ministry or has a contractual relationship with the Minister or with the Crown regarding matters for which the Minister is responsible and who is involved as part of their responsibilities with long-term care home matters.
7. Any other person provided for in the regulations.

Licensee obligations if no Family Council

(7) If there is no Family Council, the licensee shall,

- (a) on an ongoing basis advise residents' families and persons of importance to residents of the right to establish a Family Council; and
- (b) convene semi-annual meetings to advise such persons of the right to establish a Family Council.

Powers of Family Council

66 (1) A Family Council of a long-term care home has the power to do any or all of the following:

1. Provide assistance, information and advice to residents, family members of residents and persons of importance to residents, including when new residents are admitted to the home.
2. Advise residents, family members of residents and persons of importance to residents respecting their rights and obligations under this Act.
3. Advise residents, family members of residents and persons of importance to residents respecting the rights and obligations of the licensee under this Act and under any agreement relating to the home.
4. Attempt to resolve disputes between the licensee and residents.
5. Sponsor and plan activities for residents.
6. Collaborate with community groups and volunteers concerning activities for residents.
7. Review,
 - i. inspection reports and summaries received under section 152,
 - ii. a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 155 (1) (b) following a referral under paragraph 4 of subsection 154 (1),
 - iii. the detailed allocation, by the licensee, of funding under this Act, the *Local Health System Integration Act, 2006* and the *Connecting Care Act, 2019* and amounts paid by residents,

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 7 iii of subsection 66 (1) of the Act is amended by striking out "the *Local Health System Integration Act, 2006*". (See: 2021, c. 39, Sched. 1, s. 203 (14))

- iv. the financial statements relating to the home filed with the Director under the regulations, with the local health integration network for the geographic area where the home is located under the *Local Health System Integration Act, 2006* and with the Agency, and

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 7 iv of subsection 66 (1) of the Act is amended by striking out "with the local health integration network for the geographic area where the home is located under the *Local Health System Integration Act, 2006*". (See: 2021, c. 39, Sched. 1, s. 203 (15))

- v. the operation of the home.
8. Advise the licensee of any concerns or recommendations the Council has about the operation of the home.
9. Report to the Director any concerns and recommendations that in the Council's opinion ought to be brought to the Director's attention.
10. Exercise any other powers provided for in the regulations.

Duties

(2) The Family Council shall comply with any duties provided for in the regulations.

Duty to respond

(3) If the Family Council has advised the licensee of concerns or recommendations under either paragraph 8 or 9 of subsection (1), the licensee shall, within 10 days of receiving the advice, respond to the Family Council in writing.

Minister to consult

(4) The Minister shall consult, in a manner the Minister considers appropriate, with organizations that represent the interests of Family Councils on an annual basis.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (14, 15) - not in force

Family Council assistant

67 (1) If the Family Council so requests, the licensee shall appoint a Family Council assistant who is acceptable to that Council to assist the Family Council.

Duties

(2) In carrying out their duties, a Family Council assistant shall take instructions from the Family Council, ensure confidentiality where requested and report to the Family Council.

GENERAL

Licensee to co-operate with and assist Councils

68 A licensee shall co-operate with the Residents' Council, the Family Council, the Residents' Council assistant and the Family Council assistant and shall provide them with such financial and other information and such assistance as is provided for in the regulations.

Licensee duty to meet with Council

69 If invited by the Residents' Council or the Family Council, the licensee shall meet with that Council or, if the licensee is a corporation, ensure that representatives of the licensee meet with that Council.

Attendance at meetings — licensees, staff, etc.

70 A licensee of a long-term care home shall attend a meeting of the Residents' Council or the Family Council only if invited, and shall ensure that the staff, including the Administrator, and other persons involved in the management or operation of the home attend a meeting of either Council only if invited.

No interference by licensee

71 A licensee of a long-term care home,

- (a) shall not interfere with the meetings or operation of the Residents' Council or the Family Council;
- (b) shall not prevent a member of the Residents' Council or Family Council from entering the long-term care home to attend a meeting of the Council or to perform any functions as a member of the Council and shall not otherwise hinder, obstruct or interfere with such a member carrying out those functions;
- (c) shall not prevent a Residents' Council assistant or a Family Council assistant from entering the long-term care home to carry out their duties or otherwise hinder, obstruct or interfere with such an assistant carrying out those duties; and
- (d) shall ensure that no staff member, including the Administrator or other person involved in the management or operation of the home, does anything that the licensee is forbidden to do under clauses (a) to (c).

Immunity — Council members, assistants

72 No action or other proceeding shall be commenced against a member of a Residents' Council or Family Council or a Residents' Council assistant or Family Council assistant for anything done or omitted to be done in good faith in the capacity as a member or an assistant.

Duty of licensee to consult Councils

73 A licensee has a duty to consult regularly with the Residents' Council, and with the Family Council, if any, and in any case shall consult with them at least every three months.

Regulations

74 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) requiring a licensee to assist in the formation of Residents' Councils and Family Councils, and governing the assistance that the licensee is required to provide to those Councils;
 - (b) respecting and governing the duties of Residents' Councils and Family Councils;
 - (c) defining "detailed allocation" for the purpose of subparagraph 9 iii of subsection 63 (1) and subparagraph 7 iii of subsection 66 (1);
 - (d) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART VI OPERATION OF HOMES

DIRECTORS, OFFICERS AND OTHER STAFF

Duties of directors and officers of a corporation

75 (1) Where a licensee is a corporation, every director and every officer of the corporation shall ensure that the corporation complies with all requirements under this Act.

Municipal Homes and First Nations Homes

- (2) In the case of a long-term care home approved under Part IX,
- (a) if there is a committee of management for the home under section 135, the obligation under subsection (1) is an obligation on every member of that committee; and
 - (b) if there is a board of management for the home under section 128 or 132, the obligation under subsection (1) is an obligation on every member of that board.

Offence

(3) Every person who fails to comply with this section is guilty of an offence.

Corporate prosecution not necessary

(4) A person may be prosecuted and convicted under this section even if the corporation has not been prosecuted or convicted.

Administrator

76 (1) Every licensee of a long-term care home shall ensure that the home has an Administrator.

Role

- (2) The Administrator,
- (a) shall be in charge of the long-term care home and be responsible for its management; and
 - (b) shall perform any other duties provided for in the regulations.

Time must work in position

- (3) If the number of beds at a long-term care home is,
- (a) equal to or greater than the prescribed number of beds, the licensee of the home shall ensure that the Administrator works full-time in that position; or
 - (b) less than the prescribed number of beds, the licensee of the home shall ensure that the Administrator works in that position, on average, at least the number of hours per week that is prescribed for the number of beds at the home.

Director of Nursing and Personal Care

77 (1) Every licensee of a long-term care home shall ensure that the long-term care home has a Director of Nursing and Personal Care.

Must be R.N.

(2) The Director of Nursing and Personal Care shall be a registered nurse.

Role

(3) The Director of Nursing and Personal Care,

- (a) shall supervise and direct the nursing staff and personal care staff of the long-term care home and the nursing and personal care provided by them; and
- (b) shall perform any other duties provided for in the regulations.

Time must work in position

- (4) If the number of beds at a long-term care home is,
 - (a) equal to or greater than the prescribed number of beds, the licensee of the home shall ensure that the Director of Nursing and Personal Care works full-time in that position; or
 - (b) less than the prescribed number of beds, the licensee of the home shall ensure that Director of Nursing and Personal Care works in that position, on average, at least the number of hours per week that is prescribed for the number of beds at the home.

Medical Director

78 (1) Every licensee of a long-term care home shall ensure that the home has a Medical Director.

Must be physician

- (2) The Medical Director shall be a physician.

Role

- (3) The Medical Director,
 - (a) shall advise the licensee on matters relating to medical care in the long-term care home; and
 - (b) shall perform any other duties provided for in the regulations.

Must consult

- (4) In performing their duties under clause (3) (a), the Medical Director shall consult with the Director of Nursing and Personal Care and other health professionals working in the long-term care home.

Staff qualifications

79 Every licensee of a long-term care home shall ensure that all the staff of the home, including the persons mentioned in sections 76 to 78,

- (a) have the proper skills and qualifications to perform their duties; and
- (b) possess the qualifications provided for in the regulations.

Continuity of care — limit on temporary, casual or agency staff

80 (1) 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.

Agency staff

- (2) In subsection (1),

“agency staff” means staff who work at the long-term care home pursuant to a contract between the licensee and an employment agency or other third party.

Screening measures

81 (1) Every licensee of a long-term care home shall ensure that screening measures are conducted in accordance with the regulations before hiring staff and accepting volunteers.

Police record checks

- (2) The screening measures shall include police record checks, unless the person being screened is under 18 years of age.

When agency staff is hired

- (3) For the purposes of subsection (1), a staff member who is agency staff, as that term is defined in subsection 80 (2), is considered to be hired when they first work at the home.

Where convicted of certain offences, etc.

- (4) Every licensee of a long-term care home shall ensure that no staff member is hired and no volunteer accepted by the licensee if they have been,
 - (a) convicted of an offence prescribed in the regulations; or
 - (b) found guilty of an act of professional misconduct prescribed in the regulations.

Same

(5) No licensee shall permit any person who has been convicted of an offence described in clause (4) (a) or found guilty of an act described in clause (4) (b) to be a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

Time periods

(6) Where the regulations so provide, the restriction on hiring or membership set out in subsection (4) or (5) may only apply during a time period set out in the regulations.

Training

82 (1) Every licensee of a long-term care home shall ensure that all staff at the home have received training as required by this section.

Orientation

(2) Every licensee shall ensure that no person mentioned in subsection (1) performs their responsibilities before receiving training in the areas mentioned below:

1. The Residents' Bill of Rights.
2. The long-term care home's mission statement.
3. The long-term care home's policy to promote zero tolerance of abuse and neglect of residents.
4. The duty under section 28 to make mandatory reports.
5. The protections afforded by section 30.
6. The long-term care home's policy to minimize the restraining of residents.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 6 of subsection 82 (2) of the Act is amended by striking out "restraining" and substituting "restraining and confining". (See: 2021, c. 39, Sched. 1, s. 203 (16))

7. Fire prevention and safety.
8. Emergency and evacuation procedures.
9. Infection prevention and control.
10. All Acts, regulations, policies of the Ministry and similar documents, including policies of the licensee, that are relevant to the person's responsibilities.
11. Any other areas provided for in the regulations.

Exception

(3) Subsection (2) does not apply in the case of emergencies or exceptional and unforeseen circumstances, in which case the training set out in subsection (2) must be provided within one week of when the person begins performing their responsibilities.

Retraining

(4) Every licensee shall ensure that the persons who have received training under subsection (2) receive retraining in the areas mentioned in that subsection at times or at intervals provided for in the regulations.

On-going training — other areas

(5) Every licensee of a long-term care home shall ensure that every person mentioned in subsection (1) receives training that is provided for in the regulations in areas other than those provided for in subsection (2), at times or at intervals provided for in the regulations.

Further training needs

(6) Every licensee of a long-term care home shall ensure that the following are done:

1. The further training needed by the persons mentioned in subsection (1) is assessed regularly in accordance with the requirements provided for in the regulations.
2. The further training needs identified by the assessments are addressed in accordance with the requirements provided for in the regulations.

Additional training — direct care staff

(7) Every licensee shall ensure that all staff who provide direct care to residents receive, as a condition of continuing to have contact with residents, training in the areas set out in the following paragraphs, at times or at intervals provided for in the regulations:

1. Abuse recognition and prevention.
2. Mental health issues, including caring for persons with dementia.
3. Behaviour management.
4. How to minimize the restraining of residents and, where restraining is necessary, how to do so in accordance with this Act and the regulations.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 of subsection 82 (7) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (17))

4. How to minimize the restraining and confining of residents and, where restraining or confining is necessary, how to do so in accordance with this Act and the regulations.
5. Palliative care.
6. Any other areas provided for in the regulations.

Additional training — leadership

(8) Every licensee of a long-term care home shall ensure that every person in a leadership position in the home receives training in the areas provided for in the regulations, by the training providers provided in the regulations, at the times or at the intervals provided for in the regulations.

Further training needs

- (9) Every licensee of a long-term care home shall ensure that,
- (a) the further training needed by the persons mentioned in subsection (8) is assessed regularly in accordance with the requirements provided for in the regulations; and
 - (b) the further training needs identified by the assessments are addressed in accordance with the requirements provided for in the regulations.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (16, 17) - not in force

Orientation for volunteers

83 Every licensee of a long-term care home shall develop and implement an orientation program for volunteers that includes information on,

- (a) the Residents' Bill of Rights;
- (b) the long-term care home's mission statement;
- (c) the long-term care home's policy to promote zero tolerance of abuse and neglect of residents;
- (d) the duty under section 28 to make mandatory reports;
- (e) fire safety and universal infection control practices;
- (f) any other areas provided for in the regulations; and
- (g) the protections afforded by section 30.

RESIDENTS — INFORMATION, AGREEMENTS, ETC.

Information for residents, etc.

- 84** (1) Every licensee of a long-term care home shall ensure that,
- (a) a package of information that complies with this section is given to every resident and to the substitute decision-maker of the resident, if any, at the time that the resident is admitted;
 - (b) the package of information is made available to family members of residents and persons of importance to residents;
 - (c) the package of information is revised as necessary;
 - (d) any material revisions to the package of information are provided to any person who has received the original package and who is still a resident or substitute decision-maker of a resident; and
 - (e) the contents of the package and of the revisions are explained to the person receiving them.

Contents

- (2) The package of information shall include, at a minimum,

- (a) the Residents' Bill of Rights;
- (b) the long-term care home's mission statement;
- (c) the long-term care home's policy to promote zero tolerance of abuse and neglect of residents;
- (d) an explanation of the duty under section 28 to make mandatory reports;
- (e) the long-term care home's procedure for initiating complaints to the licensee;
- (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;
- (g) notification of the long-term care home's policy to minimize the restraining of residents and how a copy of the policy can be obtained;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 84 (2) (g) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (18))

- (g) notification of the long-term care home's policy to minimize the restraining and confining of residents and how a copy of the policy can be obtained;
- (h) the name and telephone number of the licensee and an email address maintained and monitored by the licensee that can receive communications from a resident or the substitute decision-maker of the resident;
- (i) a statement of the maximum amount that a resident can be charged under paragraph 1 or 2 of subsection 94 (1) for each type of accommodation offered in the long-term care home;
- (j) a statement of the reductions, available under the regulations, in the amount that qualified residents can be charged for each type of accommodation offered in the long-term care home;
- (k) information about what is paid for by funding under this Act or the *Connecting Care Act, 2019* or the payments that residents make for accommodation and for which residents do not have to pay additional charges;
- (l) a list of what is available in the long-term care home for an extra charge, and the amount of the extra charge;
- (m) a statement that residents are not required to purchase care, services, programs or goods from the licensee and may purchase such things from other providers, subject to any restrictions by the licensee, under the regulations, with respect to the supply of drugs;
- (n) a disclosure of any non-arm's length relationships that exist between the licensee and other providers who may offer care, services, programs or goods to residents;
- (o) information about the Residents' Council, including any information that may be provided by the Residents' Council for inclusion in the package;
- (p) information about the Family Council, if any, including any information that may be provided by the Family Council for inclusion in the package, or, if there is no Family Council, any information provided for in the regulations;
- (q) an explanation of the protections afforded by section 30; and
- (r) any other information provided for in the regulations.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (18) - not in force

Posting of information

85 (1) Every licensee of a long-term care home shall ensure that the required information is posted in the home, in a conspicuous and easily accessible location in a manner that complies with the requirements, if any, established by the regulations.

Communication

(2) Every licensee of a long-term care home shall ensure that the required information is communicated, in a manner that complies with any requirements that may be provided for in the regulations, to residents who cannot read the information.

Required information

- (3) The required information for the purposes of subsections (1) and (2) is,
 - (a) the Residents' Bill of Rights;
 - (b) the long-term care home's mission statement;
 - (c) the long-term care home's policy to promote zero tolerance of abuse and neglect of residents;

- (d) an explanation of the duty under section 28 to make mandatory reports;
- (e) the long-term care home's procedure for initiating complaints to the licensee;
- (f) the written procedure, provided by the Director, for making complaints to the Director, together with the contact information of the Director, or the contact information of a person designated by the Director to receive complaints;
- (g) notification of the long-term care home's policy to minimize the restraining of residents, and how a copy of the policy can be obtained;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 85 (3) (g) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (19))

- (g) notification of the long-term care home's policy to minimize the restraining and confining of residents, and how a copy of the policy can be obtained;
- (h) a copy of the service accountability agreement entered into in accordance with section 22 of the *Connecting Care Act, 2019*;
- (i) the name and telephone number of the licensee and an email address maintained and monitored by the licensee that can receive communications from a resident or the substitute decision-maker of the resident;
- (j) an explanation of the measures to be taken in case of fire;
- (k) an explanation of evacuation procedures;
- (l) copies of the inspection reports from the past two years for the long-term care home;
- (m) orders made by an inspector or the Director with respect to the long-term care home that are in effect or that have been made in the last two years;
- (n) a written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 155 (1) (b) following a referral under paragraph 4 of subsection 154 (1);
- (o) decisions of the Appeal Board or Divisional Court that were made under this Act with respect to the long-term care home within the past two years;
- (p) the most recent minutes of the Residents' Council meetings, with the consent of the Residents' Council;
- (q) the most recent minutes of the Family Council meetings, if any, with the consent of the Family Council;
- (r) an explanation of the protections afforded under section 30; and
- (s) any other information provided for in the regulations.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (19) - not in force

Regulated documents for resident

86 (1) Every licensee of a long-term care home shall ensure that no regulated document is presented for signature to a resident or prospective resident, a substitute decision-maker of a resident or prospective resident or a family member of a resident or prospective resident, unless,

- (a) the regulated document complies with all the requirements of the regulations; and
- (b) the compliance has been certified by a lawyer.

Interpretation

- (2) For the purposes of this section, a "regulated document" is a document,
 - (a) that is required by the regulations to meet certain requirements; and
 - (b) that is described as a regulated document in the regulations.

Voidable agreements

87 (1) An agreement between a licensee and a resident or prospective resident, a substitute decision-maker of a resident or prospective resident, or a family member of a resident or prospective resident is voidable by the resident, prospective resident, substitute decision-maker or family member for 10 days after it is made.

Obligations incurred before voiding

(2) The voiding of an agreement under subsection (1) does not relieve any person from liability for charges that were incurred before the voiding.

Preferred accommodation

(3) Subsection (1) does not apply to an agreement under paragraph 2 of subsection 94 (1) except as provided for in the regulations.

Agreement cannot prevent withdrawal of consent, etc.

88 An agreement with a licensee cannot prevent a consent or directive with respect to treatment or care from being withdrawn or revoked.

Coercion prohibited

89 (1) Every licensee of a long-term care home shall ensure that no person is told or led to believe that a prospective resident will be refused admission or that a resident will be discharged from the home because,

- (a) a document has not been signed;
- (b) an agreement has been voided; or
- (c) a consent or directive with respect to treatment or care has been given, not given, withdrawn or revoked.

Saving

(2) Subsection (1) does not apply with respect to a consent that is required by law for admission to a long-term care home .

GENERAL MANAGEMENT

Emergency plans

90 (1) Every licensee of a long-term care home shall ensure that there are emergency plans in place for the home that comply with the regulations, including,

- (a) measures for dealing with, responding to and preparing for emergencies, including, without being limited to, epidemics and pandemics; and
- (b) procedures for evacuating and relocating the residents, and evacuating staff and others in case of an emergency.

Testing of plans

(2) Every licensee of a long-term care home shall ensure that the emergency plans are tested, evaluated, updated and reviewed with the staff of the home as provided for in the regulations.

Attestation

(3) Every licensee of a long-term care home shall prepare an attestation attesting to compliance with this section and shall maintain a record of every attestation.

Requirements

(4) The licensee shall comply with every requirement respecting the attestation that may be set out in the regulations with respect to,

- (a) the information to be included in the attestation;
- (b) to whom the attestation shall be submitted; and
- (c) the form, manner and timing of the attestation.

Reports

91 (1) Every licensee of a long-term care home shall submit reports to the Director as provided for in the regulations.

Same

(2) The Director may at any time request a licensee to submit a report to the Director on any matter, in a form acceptable to the Director, and the licensee shall comply with such a request.

REGULATIONS

Regulations

92 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
 - (a) governing how drugs in long-term care homes are dealt with, including, without restricting the generality of the foregoing, governing their administration, handling and storage, requiring their destruction in specified circumstances,

allowing licensees to restrict from whom drugs may be supplied and placing restrictions on who may have drugs in their possession;

- (b) relating to the use of psychotropic drugs in long-term care homes, including requiring a licensee of a home to discuss the use of such drugs with the Medical Director of the home and requiring the Medical Director to prepare reports and advise the licensee on the use of such drugs in the home;
- (c) prescribing numbers of beds and numbers of hours per week for the purposes of subsection 76 (3);
- (d) prescribing numbers of beds and numbers of hours per week for the purposes of subsection 77 (4);
- (e) providing for the qualifications of staff for the purposes of clause 79 (b);
- (f) governing duties that the staff of a long-term care home are required to perform;
- (g) respecting duties that physicians and registered nurses in the extended class who attend on residents are required to perform;
- (h) governing steps to be taken by licensees to provide a stable and consistent workforce in accordance with section 80, including placing limits on the use of temporary, casual and agency staff by licensees, and limiting the amount of services that can be provided by persons who are not employees;
- (i) defining “temporary” and “casual” for the purposes of section 80;
- (j) providing that the use of other classes of staff are restricted as provided for in section 80, and defining those classes of staff;
- (k) governing screening measures for the purposes of section 81, including specifying the kinds of police record checks required under subsection 81 (2);
- (l) requiring licensees to obtain regular declarations from staff and volunteers, including, and without limiting the generality of the foregoing, requiring declarations about criminal convictions from persons for whom a police record check was required under subsection 81 (2);
- (m) prescribing offences and acts of professional misconduct for the purposes of subsection 81 (4), setting time periods for the purposes of subsection 81 (6), and generally governing the application of those subsections and clarifying the meaning of “governing structure” for the purposes of subsection 81 (5);
- (n) respecting and governing training for the purposes of section 82;
- (o) respecting information that is to be included in the package of information provided to residents under section 84, including the form and content of information that is to be provided and when and how the package must be updated, and defining “non-arm’s length relationship” for the purposes of clause 84 (2) (n);
- (p) governing the posting and communication of information under section 85;
- (q) governing regulated documents for the purposes of section 86, including describing what documents are regulated documents and establishing what requirements must be met by a regulated document, including providing for forms that must be used;
- (r) exempting agreements from the application of section 87;
- (s) governing the attestation provided for in section 90, including the information to be included in the attestation, to whom it shall be submitted, and its form, manner and timing;
- (t) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART VII FUNDING

Funding

93 (1) The Minister may provide funding for a long-term care home.

Conditions

(2) The Minister may attach conditions to funding provided under subsection (1), including how funding may be used.

Restrictions

(3) The provision of funding under subsection (1) is subject to any other conditions, rules and restrictions that may be provided for in the regulations, including requirements relating to eligibility to receive funding or how funding may be used.

Set-off

(4) Amounts owed to the Crown, including the Agency, may be set off against funding that would otherwise be provided under subsection (1).

Resident charges

94 (1) A licensee shall not charge a resident for anything, except in accordance with the following:

1. For basic accommodation, a resident shall not be charged more than the amount provided for in the regulations for the accommodation provided.
2. For preferred accommodation, a resident shall not be charged more than can be charged for basic accommodation in accordance with paragraph 1 unless the preferred accommodation was provided under an agreement, in which case the resident shall not be charged more than the amount provided for in the regulations for the accommodation provided.
3. For anything other than accommodation, a resident shall be charged only if it was provided under an agreement and shall not be charged more than the amount provided for in the regulations, or, if no amount is provided for, more than a reasonable amount.
4. Despite paragraph 3, a resident shall not be charged for anything that the regulations provide is not to be charged for.

Requirements for agreements

(2) The agreement referred to in paragraphs 2 and 3 of subsection (1) must be a written agreement with the resident or a person authorized to enter into such an agreement on the resident's behalf.

Responsibility for charges where no agreement

(3) Even if the licensee does not have an agreement with the resident, the resident is responsible for the payment of amounts charged by the licensee for basic accommodation in accordance with paragraph 1 or 2 of subsection (1).

Acceptance, charging or acceptance by another

(4) A licensee shall not accept payment from or on behalf of a resident for anything that the licensee is prohibited from charging for under subsection (1) and shall not cause or permit anyone to make such a charge or accept such a payment on the licensee's behalf.

Statements

(5) The licensee shall, at intervals provided for in the regulations, provide each resident or representative of the resident with an itemized statement of,

- (a) charges made to the resident; and
- (b) money held on behalf of the resident by the licensee or an employee or agent of the licensee.

Director to give statements

(6) The Director shall provide, annually and on the request of a resident, a statement setting out how much the resident may be charged for accommodation under subsection (1).

Accounts and records

95 Every licensee of a long-term care home shall keep accounts and records with respect to each long-term care home operated by the licensee,

- (a) that are separate from the accounts and records of any other long-term care home operated by the licensee, and from any other business of the licensee; and
- (b) that meet any other requirements that may be provided for in the regulations.

Non-arm's length transactions, limitation

96 (1) A licensee shall not enter into a non-arm's length transaction that is prohibited by the regulations.

Same

(2) A licensee shall not enter into a non-arm's length transaction without the prior consent of the Director if the regulations require such consent for that type of non-arm's length transaction.

Reporting

(3) Every licensee of a long-term care home shall submit reports to the Director, as provided for in the regulations, on every non-arm's length transaction entered into by the licensee.

Regulations

97 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) respecting and governing rules, conditions and restrictions to which the provision of funding under this Act is subject;
 - (b) governing charges for the purposes of section 94, including prescribing different charges for different kinds of basic and preferred accommodation;
 - (c) providing that a resident may apply to the Director for a reduction in the charges for accommodation that would otherwise be required to be paid by the resident on the condition that the Minister pays the licensee the difference between the reduced amount and the amount that would otherwise be charged, and providing for rules governing such an application and reduction;
 - (d) governing the payment of amounts charged by the licensee under section 94;
 - (e) governing non-arm's length transactions, including defining "non-arm's length transaction" for the purposes of section 96 or for the purposes of the regulations, or both, prohibiting certain types of non-arm's length transactions, and providing that certain types of non-arm's length transactions may only be entered into with the prior consent of the Director;
 - (f) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART VIII LICENSING

Licence required

98 (1) No person shall operate residential premises for persons requiring nursing care or in which nursing care is provided to two or more unrelated persons except under the authority of a licence under this Part or an approval under Part IX.

Exclusions

- (2) Subsection (1) does not apply to,
- (a) premises falling under the jurisdiction of,
 - (i) the *Child, Youth and Family Services Act, 2017*,
 - (ii) the *Private Hospitals Act*,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause 98 (2) (a) (ii) of the Act is repealed and the following substituted: (See: 2021, c. 39, Sched. 1, s. 203 (20))

- (ii) the *Oversight of Health Facilities and Devices Act, 2017*,
 - (iii) the *Public Hospitals Act*, or
 - (iv) the *Retirement Homes Act, 2010*; or
- (b) other premises provided for in the regulations.

Offence

(3) Every person who contravenes subsection (1) is guilty of an offence.

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (20) - not in force

Public interest — need

99 (1) Subject to subsection (2), the Minister shall determine whether or not there should be a long-term care home in an area, and how many long-term care home beds there should be in an area, by considering what is in the public interest, having taken into account,

- (a) the long-term care home bed capacity that exists,
 - (i) in the area, or
 - (ii) in the area and any other area;
- (b) the other facilities or services that are available,
 - (i) in the area, or
 - (ii) in the area and any other area;
- (c) the current and predictable continuing demand for long-term care home beds,

- (i) in the area, or
- (ii) in the area and any other area;
- (d) the funds available for long-term care homes in Ontario;
- (e) any other matters that may be provided for in the regulations; and
- (f) any other matters that the Minister considers to be relevant.

Exception, Minister’s policy

- (2) The Minister is not required to make a determination under subsection (1) where,
- (a) the Minister has made a policy respecting the matters described in subsection (1); and
 - (b) the Director has decided that an application for a licence is covered by the policy and that the Director is entitled to act under the policy.

Making policy available

(3) If the Minister makes a policy under subsection (2), the Minister shall ensure that the policy is made available to the public.

Non-application of *Legislation Act, 2006*

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a policy made under subsection (2).

Public interest — who can be issued a licence

100 (1) The Minister may restrict who may be issued a licence based on what the Minister considers to be in the public interest, having taken into account,

- (a) the effect that issuing the licence would have on the concentration of ownership, control or management of long-term care homes,
 - (i) in the area,
 - (ii) in the area and any other area, or
 - (iii) in Ontario;
- (b) the effect that issuing the licence would have on the balance between non-profit and for-profit long-term care homes,
 - (i) in the area,
 - (ii) in the area and any other area, or
 - (iii) in Ontario; and
- (c) any other matters that may be provided for in the regulations.

How determined

(2) The Minister may make a restriction in a particular case of an application for a licence or, where the Minister has made a policy respecting the matters described in subsection (1), the Director may decide whether an application is covered by the policy and whether or not the restriction applies.

Making policy available

(3) If the Minister makes a policy under subsection (2), the Minister shall ensure that the policy is made available to the public.

Non-application of *Legislation Act, 2006*

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a policy made by the Minister under subsection (2).

Limitations on eligibility for licence

101 (1) A person is only eligible to be issued a licence for a long-term care home if, in the Director’s opinion,

- (a) the home and its operation would comply with this Act and the regulations and any other applicable Act, regulation or municipal by-law;
- (b) where the home is subject to a development agreement, the home, or the beds that are subject to a development agreement, complies with, and will continue to comply with, the applicable design manual and any additional design requirements required under the development agreement;

- (c) the past conduct relating to the operation of a long-term care home or any other matter or business of the following affords reasonable grounds to believe that the home will be operated in accordance with the law and with honesty and integrity:
 - (i) the person,
 - (ii) if the person is a corporation, the officers and directors of the corporation and any other person with a controlling interest in the corporation, and
 - (iii) if the person with a controlling interest referred to in subclause (ii) is a corporation, the officers and directors of that corporation;
- (d) it has been demonstrated by the person that the person or, where the person is a corporation, its officers and directors and the persons with a controlling interest in it, is competent to operate a long-term care home in a responsible manner in accordance with this Act and the regulations and is in a position to furnish or provide the required services;
- (e) the past conduct relating to the operation of a long-term care home or any other matter or business of the following affords reasonable grounds to believe that the home will not be operated in a manner that is prejudicial to the health, safety or welfare of its residents:
 - (i) the person,
 - (ii) if the person is a corporation, the officers and directors of the corporation and any other person with a controlling interest in the corporation, and
 - (iii) if the person with a controlling interest referred to in subclause (ii) is a corporation, the officers and directors of the corporation; and
- (f) the person is not ineligible because of any other reason that may be provided for in the regulations.

Service of ineligibility decision

(2) If the Director decides that a person is not eligible to be issued a licence under subsection (1), the Director shall serve the person with a copy of the Director’s decision, including reasons.

Appeal of ineligibility decision

(3) A person who the Director decides is not eligible to be issued a licence may appeal the decision to the Appeal Board and, for that purpose, sections 171 to 176 apply as if references to the licensee were references to the person, and with such other modifications as are necessary.

Issue of licence

102 Following a determination by the Minister or a decision of the Director under section 99, the Director may issue a licence for a long-term care home at the location specified in the licence subject to any restrictions under section 104 and subject to section 105.

Undertaking to issue licence

103 (1) Following a determination by the Minister or a decision of the Director under section 99, the Director may, subject to any restrictions under section 104 and subject to section 105, give an undertaking to issue a licence to a person on condition that the person agrees to satisfy the specified conditions set out in the undertaking.

Form of undertaking

(2) An undertaking shall be in two parts, one to be described as “non-amendable components” and the other to be described as “amendable components”.

Non-amendable components

- (3) The non-amendable components shall consist of,
 - (a) a description of where the long-term care home will be;
 - (b) the following aspects of the licence to be issued:
 - (i) the number, class and type of beds,
 - (ii) the term of the licence, and
 - (iii) any conditions the licence is to be subject to;
 - (c) other components provided for in the regulations; and
 - (d) any other components that the Director considers appropriate.

Amendable components

(4) The amendable components shall consist of any matters not provided for in subsection (3).

What may be amended

(5) The amendable components may be amended on consent, but the non-amendable components may not be amended under any circumstances.

Issue of licence if conditions met

(6) If the Director determines that the person has complied with the specified conditions, the Director shall issue the licence.

Cancellation if conditions not met

(7) If the Director determines that the person has not complied with the specified conditions, the Director may cancel the undertaking by serving the person with notice of the cancellation.

Review by Minister

(8) Within 15 days of being served with a notice of cancellation, the person may request the Minister to review the cancellation, and the Minister may confirm the cancellation or revoke it and direct the Director to amend any specified conditions that are amendable components.

Conditions of licence

104 (1) A licence is subject to the conditions, if any, that are provided for in the regulations.

Additional conditions

(2) The Director may make a licence subject to conditions other than those provided for in the regulations,

(a) at the time a licence is issued, with or without the consent of the licensee; or

(b) at the time a licence is reissued under section 108, with or without the consent of the new licensee.

Conditions of licence

(3) It is a condition of every licence that the licensee shall comply with this Act, the *Connecting Care Act, 2019*, the regulations, and every directive issued, order made or agreement entered into under this Act and those Acts.

Licensee must comply

(4) Every licensee shall comply with the conditions to which the licence is subject.

Term of licence

105 (1) A licence shall be issued for a fixed term, specified in the licence, which shall not exceed 30 years.

Expiry at end of term

(2) A licence expires at the end of its fixed term.

Revocation for cause

(3) Nothing in this section prevents a licence from being revoked under section 159.

End of term

106 (1) The Director may make a policy respecting the obligations of a licensee with regard to the end of the term of a licence, and every licensee shall comply with the policy.

Making policy available

(2) If the Director makes a policy under subsection (1), the Director shall ensure that the policy is made available to the public.

Non-application of *Legislation Act, 2006*

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a policy made by the Director under subsection (1).

Surrender

(4) Prior to the end of the term of a licence, a licensee shall not surrender the licence except,

(a) with the consent of the Director; or

(b) as may be provided for in this Act or the regulations.

Beds allowed under licence

107 (1) A licensee shall not operate more beds in a long-term care home than are allowed under the licence for the home or under the terms of a temporary licence issued under section 114 or a temporary emergency licence issued under section 115.

Beds must be available

(2) Every licensee shall ensure that all the beds that are allowed under the licence are occupied or are available for occupation.

Reduction of licensed beds

(3) If beds are unoccupied and unavailable for occupancy for 14 consecutive days or more, and the licensee did not obtain written permission from the Director for them not to be available for occupancy, the Director may, by order served on the licensee,

- (a) amend the licence to reduce the number of beds allowed under the licence by the number of unoccupied and unavailable beds; or
- (b) impose any conditions on the licence that are provided for in the regulations.

Appeal

(4) A licensee whose licence has been amended or had conditions imposed on it under subsection (3) may appeal the Director's order to the Appeal Board and, for that purpose, sections 171 to 176 apply with any necessary modification.

Transfers, limitation

108 (1) A licence, or beds under a licence, may not be transferred except by the Director in accordance with this section.

If change of location

(2) A transfer that results in a change of the location specified in the licence, including a change of location of beds, may only be made following a determination or decision under section 99.

Application of Minister's restrictions, etc.

(3) All transfers are subject to any restrictions under section 104 and subject to section 105.

Request for Director's approval

(4) A request for approval of a proposed transfer may be submitted to the Director for the Director's consideration.

Transfer of licences

(5) Where the Director gives approval, a licence may be transferred by being surrendered to the Director for reissue to another person.

Change in location of home

(6) A licence reissued under subsection (5) may be for a different location and such a licence may be reissued to the same licensee.

Transfer of beds

(7) Where the Director gives approval, beds under a licence may be transferred by,

- (a) licences being surrendered to the Director for reissue with beds transferred from one licence to another; or
- (b) a licence being surrendered to the Director for reissue with beds transferred to a new licence issued by the Director.

Restriction, non-profit to for-profit

(8) A non-profit entity may not transfer a licence or beds to a for-profit entity except in the limited circumstances provided for in the regulations.

No transfer of interest

(9) No interest in a licence, including a beneficial interest, may be transferred except in accordance with this section.

Exception, security interests

(10) Subsection (9) does not apply to the giving of a security interest in a licence.

Public consultation

109 (1) Subject to subsection (3), the Director shall consult the public before,

- (a) issuing a licence for a new long-term care home under section 102;
- (b) undertaking to issue a licence under section 103;
- (c) transferring a licence, or beds under a licence, under section 108; or
- (d) amending a licence to increase the number of beds or to extend the term of the licence under section 116.

Public consultation, format

(2) The Director may determine how public consultations under subsection (1) shall be conducted.

Exception

(3) The Director is not required to consult the public under subsection (1) or under any other provision of this Act where the Director,

- (a) has determined that a public consultation is not warranted in the circumstances; or
- (b) has made a policy governing types of circumstances in which public consultation is not warranted, and the policy applies to the circumstances, unless the Director makes an exception to the policy.

Making policy available

(4) If the Director makes a policy under clause (3) (b), the Director shall ensure that the policy is made available to the public.

Non-application of *Legislation Act, 2006*

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a policy made by the Director under clause (3) (b).

Exercise of security interests

110 (1) No person may acquire control over, or interfere with, the operation of a long-term care home by exercising a security interest except through a contract under section 113 under which another person manages the home.

Application of Act if management contract used

(2) If a person exercising a security interest enters into a contract under section 113, then, subject to the regulations, if any, this Act applies, with necessary modifications, to that person as though that person were acting as the licensee.

No transfer of licence except under s. 108

(3) No exercise of a security interest in a licence results in a transfer of the licence but this subsection does not limit the transfer of the licence under section 108.

Section applies to receivers, etc.

(4) This section applies, with necessary modifications, to a receiver or trustee in bankruptcy as though the receiver or trustee was a person exercising a security interest.

Security interest

(5) In this section,

“security interest” means an interest in or charge upon a licence or property of the licensee to secure a debt or the performance of some other obligation.

Notice

111 (1) A licensee that is a corporation shall notify the Director in writing within 15 days of any change in the officers or directors of the corporation.

Same

(2) A licensee shall immediately notify the Director in writing if the licensee has reason to believe that a person has gained a controlling interest in the licensee.

Same, management contract

(3) Where a long-term care home is managed by a person under a contract under section 113, the licensee of the home shall immediately notify the Director in writing if the licensee has reason to believe that anything mentioned in subsection (1) or (2) has occurred with respect to the person.

Gaining controlling interest

112 (1) A person that by any method gains a controlling interest in a licensee shall obtain the approval of the Director, unless the regulations provide otherwise.

Director’s approval

(2) The approval by the Director is subject to any restrictions under section 100 and subject to section 101 as those sections would apply with respect to the licensee if the person had already gained a controlling interest in the licensee, unless the regulations provide otherwise.

Attachment of conditions

(3) The Director may attach conditions to an approval.

Regulations may provide for timing, process

(4) The regulations may provide for when the approval of the Director must be obtained and for the process for obtaining such approval.

Management contracts

113 (1) A licensee of a long-term care home shall not allow anyone else to manage the home except pursuant to a written contract approved by the Director.

Does not apply to Administrator

(2) Subsection (1) does not apply to the management of the home by the Administrator.

Compliance with regulations

(3) The contract described in subsection (1) must comply with any requirements established by the regulations.

Approval by Director

(4) The following apply with respect to the approval by the Director of a contract described in subsection (1):

1. Before approving the contract, the Director must be satisfied that the contract complies with any requirements established by the regulations.
2. The approval by the Director is subject to section 100 as if the person who would manage the long-term care home were to be the licensee.

Director may withdraw approval

(5) The Director may withdraw their approval of a contract at any time.

Amendment of contract

(6) A licensee shall not allow a contract described in subsection (1) to be amended materially without the approval of the Director.

Temporary licences

114 (1) The Director may issue a temporary licence,

- (a) authorizing premises to be used as a long-term care home on a temporary basis; or
- (b) authorizing temporary additional beds at a long-term care home.

Rules for temporary licence

(2) The following apply with respect to a temporary licence:

1. The licence may be revoked by the Director at any time on the giving of the notice provided for in the licence, as well as being revocable under section 159.
2. The licence may be issued for a term of no more than five years, and may not be renewed.
3. No interest in a temporary licence, including a beneficial interest, may be transferred.

Provisions that do not apply

(3) The following provisions do not apply with respect to a temporary licence:

1. Section 108.
2. Section 109.
3. Any other provisions provided for in the regulations.

Temporary emergency licences

115 (1) Subject to any restrictions or requirements that may be prescribed by regulation, in order to accommodate persons affected by a temporary emergency, the Director may issue a temporary emergency licence,

- (a) authorizing premises to be used as a long-term care home on a temporary basis; or
- (b) authorizing temporary additional beds at a long-term care home.

Conditions of temporary emergency licence

(2) Except as otherwise specified in writing by the Director, it is a condition of the temporary emergency licence that the only persons who may be admitted to a bed under the authority of the licence are persons affected by the temporary emergency.

Rules for temporary emergency licence

(3) The following apply with respect to a temporary emergency licence:

1. The licence may be revoked by the Director at any time on the giving of the notice provided for in the licence, as well as being revocable under section 159.
2. The licence may be issued for a term of no more than one year, and may not be renewed.
3. No interest in a temporary emergency licence, including a beneficial interest, may be transferred.

Provisions that do not apply

(4) The following provisions do not apply with respect to a temporary emergency licence:

1. Section 99.
2. Section 100.
3. Section 101.
4. Section 108.
5. Section 109.
6. Any other provisions provided for in the regulations.

Amendments with consent

116 (1) The Director may amend a licence with the consent of the licensee, subject to the restrictions in this section and the regulations.

Amendments that are not allowed

(2) A licence may not be amended under this section to,

- (a) change the licensee or the location of the home;
- (b) extend the term;
- (c) increase the preferred accommodation the licensee is allowed to provide; or
- (d) make any other change provided for in the regulations.

Extension in certain cases

(3) Despite clause (2) (b), a licence may be amended under this section to extend its term where there is,

- (a) a substantial renovation of the home; or
- (b) a significant addition of beds to the home.

Limitations — increase in number of beds

(4) The amendment of a licence under this section to increase the number of beds or extend the term under subsection (3) is subject to the following:

1. The amendment may only be made following a determination or decision under section 99.
2. The amendment is subject to any restrictions under section 104.

Amendments of licence conditions

(5) For the purposes of this section, amendments to conditions imposed on a licence under subsection 104 (2) shall be deemed to be amendments to the licence.

No application to transfers

(6) This section does not apply to changes to a licence when it is reissued under section 108.

Competitive process

117 A competitive process may be used, but is not required, before a licence is issued or amended under this Part or before an approval is granted or amended under Part IX.

No appeal

118 (1) Anything done by the Minister or the Director under this Part in respect of sections 99 and 100 is within the sole discretion of the Minister or Director and is not subject to an appeal.

Same, Director

(2) Decisions of the Director under this Part with respect to the term of a licence, number of beds, or any other condition of a licence are within the sole discretion of the Director and are not subject to an appeal.

Note: Section 119 of this Act is not yet in force. It comes into force on a day to be named by proclamation of the Lieutenant Governor.

Review by Minister

119 (1) A person, including a licensee, may request the Minister to review a decision of the Director under this Part with respect to a decision to,

- (a) issue or not to issue a licence;
- (b) approve or not approve the transfer of a licence or beds under a licence; or
- (c) give or not to give an undertaking to issue a licence.

Conditions and process

(2) A Minister's review under subsection (1) is subject to the conditions and process provided for in the regulations.

Minister's decision

(3) Following a review under subsection (1), the Minister may make any decision provided for in the regulations.

Regulations

120 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

(2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) defining "nursing care" for the purposes of subsection 98 (1);
- (b) governing and clarifying how clauses 100 (1) (a) and (b) are to be applied;
- (c) defining "design manual" for the purposes of section 101;
- (d) governing public consultation for the purposes of section 109 and governing requirements and restrictions with respect to any determination or policy of the Director under that section;
- (e) for the purposes of section 110, requiring a person exercising a security interest to satisfy requirements provided for in the regulations before the person can enter into a contract described in section 113, establishing and respecting limits on how long a long-term care home may be managed pursuant to such a contract once entered into, and governing the management of a home by a person acting under such a contract;
- (f) governing the amending of licences under section 116, including providing for procedures that must be followed and changes that may not be made;
- (g) modifying the application of this Part in respect of licences for a long-term care home in which there are beds that are subject to different terms under the licence;

Note: Clause 120 (2) (h) of this Act is not yet in force. It comes into force on a day to be named by proclamation of the Lieutenant Governor.

- (h) providing for the conditions and the process for a Minister's review under section 119;
- (i) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART IX MUNICIPAL HOMES AND FIRST NATIONS HOMES

INTERPRETATION

Interpretation

121 In this Part,

"joint home" means a home established pursuant to an agreement made under section 123 or 126; ("foyer commun")

"municipal home" means a home established under section 122, 125 or 128; ("foyer municipal")

"northern municipality" means a municipality in a territorial district as set out in regulations under the *Territorial Division Act, 2002*, but does not include The District Municipality of Muskoka; ("municipalité du Nord")

"southern municipality" means a municipality that is not a northern municipality. ("municipalité du Sud")

SOUTHERN HOMES

Southern municipal homes

122 (1) Every southern municipality that is an upper or single-tier municipality shall establish and maintain a municipal home and may establish and maintain municipal homes in addition to the home that is required.

Alternative ways to meet requirement

(2) The requirement in subsection (1) is met if the southern municipality participates in the establishment and maintenance of a joint home or helps maintain a municipal home or joint home under an agreement under section 124.

Exception, Township of Pelee

(3) This section does not apply to the Township of Pelee.

Joint homes — south

123 (1) Two or more southern municipalities that are required or permitted to establish and maintain a municipal home may, under an agreement with each other, establish and maintain a joint home.

Approval required

(2) No agreement may be entered into under subsection (1) without the approval in writing of the Minister.

Agreement to help maintain home — south

124 (1) A southern municipality that is required or permitted to establish and maintain a municipal home but that is not maintaining a home or joint home may enter into an agreement with a municipality or municipalities maintaining a home or joint home to help maintain that home or joint home.

Approval required

(2) No agreement may be entered into under subsection (1) without the approval in writing of the Minister.

NORTHERN HOMES

Northern municipal homes

125 A northern municipality that is an upper or single-tier municipality and that has a population of more than 15,000 may establish and maintain a municipal home.

Joint homes — north

126 (1) A northern municipality that is permitted to establish and maintain a municipal home and one or more other northern municipalities may, under an agreement with each other, establish and maintain a joint home.

Must be in same district

(2) The northern municipalities that enter into an agreement under subsection (1) must all be in the same territorial district.

Approval required

(3) No agreement may be entered into under subsection (1) without the approval in writing of the Minister.

Agreement to help maintain home — north

127 (1) A northern municipality that is not maintaining a municipal home or joint home may enter into an agreement with a municipality or municipalities maintaining a home or joint home, or with a board of management maintaining a home, to help maintain that home or joint home.

Approval required

(2) No agreement may be entered into under subsection (1) without the approval in writing of the Minister.

Territorial district home under board of management

128 (1) If a majority of the municipalities in a single territorial district pass by-laws authorizing the establishment and maintenance of a municipal home under a board of management, the following apply:

1. A certified copy of every by-law passed under this subsection shall be promptly transmitted to the Director.
2. If the Minister gives approval for the establishment of the home under section 133, a board of management shall be established as a corporation, by regulation, for the home.
3. The home shall be vested in the board of management and the board shall have charge of the home.
4. All the municipalities in the territorial district shall contribute to the establishment and maintenance of the municipal home.

Non-application of *Not-for-Profit Corporations Act, 2010*

(2) The *Not-for-Profit Corporations Act, 2010* does not apply to a board of management, except as provided for under the regulations.

Composition

(3) The regulations may provide for the composition of a board of management and the qualifications and term of office of its members.

Exception

(4) If a municipality in the territorial district has established and is maintaining a municipal home under section 125 or a joint home under section 126 or helps maintain a home or joint home under an agreement under section 127, it shall be deemed not to be in the territorial district for the purposes of this section and sections 129 and 130.

Operating costs — apportionment by board of management

129 (1) A board of management shall determine the amount that it estimates will be required to defray its expenditures for each year and apportion that amount, in accordance with the regulations under section 131, among the municipalities in the district and shall on or before February 25 notify the clerk of each municipality of the amount to be provided by that municipality.

Payment by municipality

(2) Each municipality shall pay the amount apportioned to it.

Operating reserve

(3) In preparing the estimates, the board may provide for a reserve for working funds, but the amount of the reserve in a year shall not exceed the higher of,

- (a) 15 per cent of the total estimates of the board for the year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

Power of district homes to borrow for operating costs

(4) Subject to subsections (5) and (6) and to any restrictions or requirements that may be prescribed by regulation, the board of management may borrow from time to time by way of a promissory note, or such other means as may be prescribed by regulation such sums as the board considers necessary to meet the operating costs of the board.

Maximum borrowings

(5) Subject to any restrictions or requirements that may be prescribed by regulation, the amount that may be borrowed at any one time for the purpose mentioned in subsection (4) together with the total of any other borrowing for operating costs that have not been repaid shall not exceed the higher of,

- (a) 25 per cent of the estimated current revenue of the board for the year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

Same

(6) Until the estimated current revenue of the board for the year has been determined, the limitation upon borrowing set out in subsection (5) shall be temporarily calculated based upon the higher of,

- (a) 25 per cent of the revenue of the board determined for the previous year; or
- (b) such other percentage or limit as may be prescribed by the regulations.

Security for borrowing

(7) In the circumstances prescribed by regulation and subject to any restrictions and requirements that may be prescribed by regulation, if the board is permitted to borrow under this section it may pledge security for the permitted borrowing from the real or personal property of the board.

Capital costs — apportionment by board of management

130 (1) If a municipal home is to be established under a board of management, or an existing municipal home under a board of management is to be renovated, altered or added to, the board of management shall determine the amount that it estimates will be required and apportion that amount, in accordance with the regulations under section 131, among the municipalities in the district and shall notify the clerk of each municipality of the amount to be provided by that municipality.

Payment by municipality

(2) Each municipality shall pay the amount apportioned to it.

Power of district homes to borrow for capital costs

(3) In the circumstances prescribed by regulation and subject to any restrictions or requirements that may be prescribed by regulation, a board that meets the prescribed requirements may borrow such sums as the board considers necessary to meet the capital costs it estimates under subsection (1).

Security for borrowing

(4) In the circumstances prescribed by regulation and subject to the restrictions and requirements that may be prescribed by regulation, if the board is permitted to borrow under this section it may pledge security for the permitted borrowing from the real or personal property of the board.

Regulations, apportionments by boards of management

131 (1) Despite any other Act, the Lieutenant Governor in Council may, with respect to a year, make regulations prescribing the basis on which apportionments are to be made by boards of management.

Application for review

(2) Where, in respect of any year, the council of a supporting municipality is of the opinion that an apportionment made pursuant to a regulation made under subsection (1) is incorrect because of an error, omission or failure set out in subsection (3), the supporting municipality may apply to the Director, within 30 days after notice of the apportionment was sent to the supporting municipality, for a review to determine the correct proportion of the apportionments that each supporting municipality shall bear in the year.

Same

(3) The errors, omissions and failures referred to in subsection (2) are,

- (a) an error or omission in the amount of the assessment of one or more supporting municipalities;
- (b) an error or omission in a calculation; or
- (c) a failure to apply one or more provisions of the regulation made under subsection (1).

Appeal to Tribunal

(4) A supporting municipality may appeal the decision resulting from the Director's review to the Ontario Land Tribunal within 30 days after notice of the decision was sent to the municipality.

Supporting municipality

(5) In this section,

“supporting municipality” means one of the municipalities among which costs are to be apportioned by a board of management under section 129 or 130.

FIRST NATIONS HOMES

First Nations homes

132 (1) A council of a band may establish and maintain a First Nations home under this section.

Joint First Nations homes

(2) The councils of two or more bands may, under an agreement with each other, establish and maintain a First Nations home under this section.

Approval required

(3) No agreement may be entered into under subsection (2) without the approval in writing of the Minister.

Board of management

(4) The following apply with respect to a First Nations home established under this section:

1. If the Minister gives approval for the establishment of the home under section 133, a board of management shall be established as a corporation, by regulation, for the home.
2. The home shall be vested in the board of management and the board shall have charge of the home.
3. The *Not-for-Profit Corporations Act, 2010* does not apply to a board of management, except as provided for under the regulations.
4. The regulations may provide for the composition of a board of management and the qualifications and term of office of its members.

Application of Part IX provisions

(5) The following sections apply with respect to a First Nations home established under this section as they apply with respect to municipal homes:

1. Section 133.
2. Section 134.
3. Section 135.
4. Sections 138 to 142.

Council not prevented from getting licence

(6) Nothing in this section prevents a council of a band from obtaining a licence under Part VIII.

Council of a band

(7) In this section,

“council of a band” means a council of the band within the meaning of the *Indian Act* (Canada).

GENERAL

Approval required

133 (1) No municipal home or joint home shall be established without the approval of the Minister.

Same, beds

(2) Where the Minister grants an approval, the Minister shall provide for the number of beds that are to be established under the approval, and the number of beds may not be increased without an amendment of the approval.

No expiry

(3) An approval does not expire.

No fee

(4) The Minister shall not charge a fee for granting or amending an approval under this Part.

Application of Part VIII

134 (1) Part VIII does not apply with respect to an approval, except as provided under this section.

Determination or policy required

(2) An approval shall be granted only following a determination or decision under section 99.

Provisions that apply

(3) The following provisions of Part VIII apply, with necessary modifications, and the modifications specified in this section, with respect to an approval as though the approval were a licence under Part VIII:

1. Section 103 (Undertaking to issue licence), other than subsection 103 (8).
2. Section 104 (Conditions of licence), other than clause 104 (2) (b).
3. Section 107 (Beds allowed under licence).
4. Section 109 (Public consultation), other than clauses 109 (1) (c) and (d).
5. Subsection 111 (3) (Notice, management contract).
6. Section 113 (Management contracts).
7. Section 116 (Amendments with consent).
8. Section 117 (Competitive process).
9. Section 118 (No appeal).
10. Section 120 (Regulations).

Modifications re Minister rather than Director

(4) For the purposes of this Part, every reference to the Director in a provision that applies by virtue of subsection (3) shall be deemed to be a reference to the Minister, except in the following places:

1. The first reference to the Director in subsection 107 (3).
2. Subsection 109 (2).

3. Section 113.

Modifications for grant of approval for required home

(5) The following modification applies with respect to a grant of an approval for a municipal home that is required under subsection 122 (1):

1. The determination or decision under section 99 that is mentioned in subsection (2) shall not deal with whether there should be a home in the municipality.

Temporary licence provision not affected

(6) Nothing in this section affects the application of sections 114 and 115 and, for greater certainty, a temporary licence under section 114 or a temporary emergency licence under section 115 can be issued to a municipality or board of management and can be revoked under section 159.

Committee of management, appointment

135 (1) The council of a municipality establishing and maintaining a municipal home or the councils of the municipalities establishing and maintaining a joint home shall appoint from among the members of the council or councils, as the case may be, a committee of management for the municipal home or joint home.

Board of control

(2) Where a municipal home is established and maintained by a municipality having a board of control, the members of the committee of management shall be appointed on the recommendation of the board of control, and section 68 of the *Municipal Act*, as that section read on December 31, 2002, applies in respect of the home except that a reference in subsections (3), (6) and (7) of that section to a two-thirds vote shall be deemed to be a reference to a majority vote.

Composition

(3) The regulations may provide for the composition of a committee of management and the qualifications and term of office of its members.

Trust funds

136 A municipality or municipalities that maintain a municipal home or joint home or a board of management that maintains a municipal home may receive, hold and administer the property of a resident in trust, subject to any restrictions provided for in the regulations.

Personal information, disclosure to inspectors, etc.

137 (1) A head and an institution are authorized to disclose personal information to an inspector or the Director for the purpose of complying with any requirement under this Act or facilitating an inspection or inquiries under this Act.

Definitions

(2) In this section,

“head”, “institution” and “personal information” have the same meaning as in the *Municipal Freedom of Information and Protection of Privacy Act*.

Director may make orders re renovations, etc.

138 (1) The Director may make an order to a municipality or municipalities or a board of management maintaining a municipal home or joint home respecting renovations, additions or alterations to the home and respecting information, plans and other material that are to be furnished to the Director, and requiring the order to be complied with within a certain time.

Appeal

(2) A decision of the Director under subsection (1) may be appealed to the Appeal Board, and sections 166 and 170 to 177 apply to such an appeal with necessary modifications.

Director may take control with consent

139 The Director may take control of, operate and manage a municipal home or joint home if the municipality maintaining and operating the home, each of the municipalities maintaining and operating the joint home or the board of management of the municipal home, as the case may be, consents to the Director so acting.

Taking control on certain grounds

140 (1) Subject to subsections (2) to (7), the Director may take control of, operate and manage a municipal home or joint home if the Director believes on reasonable grounds that the home is not being or is not likely to be operated with competence, honesty, integrity and concern for the health, safety and well-being of its residents.

Hearing

(2) Unless the municipality maintaining and operating the municipal home, each of the municipalities maintaining and operating the joint home or the board of management of the municipal home, as the case may be, has consented to the exercise of the Director's power under subsection (1), the Minister, before the power is exercised, shall cause a hearing to be held to determine whether it should be exercised.

Person conducting hearing

(3) The Minister shall appoint a person who is not an employee of the Ministry to conduct the hearing.

Procedure

(4) Sections 17, 18, 19 and 20 of the *Statutory Powers Procedure Act* do not apply to a hearing under this section.

Report to Minister

(5) The person conducting the hearing under this section shall give the Minister a report setting out,

- (a) recommendations as to the carrying out of the proposal;
- (b) the findings of fact, the information and the knowledge used in making the recommendations; and
- (c) the conclusions of law arrived at that are relevant to the recommendations.

Copy of report

(6) The person conducting the hearing under this section shall give a copy of the report to the municipality maintaining and operating the municipal home, each of the municipalities maintaining and operating the joint home or the board of management of the municipal home, as the case may be.

Minister's decision

(7) After considering a report provided under subsection (5), the Minister may direct the Director to exercise the power under subsection (1) and shall give the municipality maintaining and operating the municipal home, each of the municipalities maintaining and operating the joint home or the board of management of the municipal home, as the case may be, written notice of their decision respecting the exercise of the power together with written reasons for the decision.

Provisional exercise of power without hearing

141 (1) Despite section 140, on notice to the municipality maintaining and operating the municipal home, each of the municipalities maintaining and operating the joint home or the board of management of the municipal home, as the case may be, the Director may provisionally exercise the power under subsection 140 (1) without a hearing if, in the Director's opinion, it is necessary to do so to avert an immediate threat to a person's health, safety or well-being.

Content of notice

(2) The notice to the municipality, municipalities or board of management under subsection (1) shall set out,

- (a) the Director's opinion on which the provisional exercise of the power is based; and
- (b) the reasons for the Director's opinion.

Continuation of exercise of power

(3) As soon as possible after a power is exercised under subsection (1), the procedure set out in subsections 140 (2) to (7) shall be followed to determine whether the power should continue to be exercised.

Powers where control is taken

142 (1) The following apply when control is taken of a municipal home or joint home under section 139 or 140:

1. The Director has all of the powers of the municipality, municipalities or board of management, as the case may be, to occupy, manage, operate and administer the home, and they do not have those powers.
2. The following provisions apply, with necessary modifications, with respect to the operation and management of the home by the Director,
 - i. paragraphs 2 to 7 of subsection 159 (10), and
 - ii. section 160.

Occupation of premises

(2) Without limiting the generality of subsection (1), the Director,

- (a) despite sections 25 and 39 of the *Expropriations Act*, may immediately occupy, operate and manage the municipal home or joint home or arrange for it to be occupied, operated and managed by a person or entity designated by the Director; and

- (b) may apply without notice to the Superior Court of Justice for an order directing the sheriff to assist the Director or the person or entity designated by the Director in occupying the home or joint home.

Maximum period

(3) The Director shall not occupy, operate or manage a municipal home or joint home, or arrange for it to be occupied, operated or managed by a person or entity designated by the Director, for a period exceeding one year without the consent of the municipality that maintained and operated the home, the municipalities that maintained and operated the joint home or the board of management of the home, as the case may be.

Authorization of Minister

(4) Despite subsection (3), the Director may occupy, operate and manage a municipal home or joint home, or arrange for it to be occupied, operated and managed by a person or entity designated by the Director, for a period exceeding one year if the Minister so authorizes, and the Minister may authorize an extension of the period from time to time.

Regulations

143 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) clarifying the application of Part VIII to this Part;
 - (b) providing additional or alternate rules governing approvals under this Part;
 - (c) governing boards of management under sections 128 and 132, including, without limiting the generality of the foregoing,
 - (i) establishing a board of management as a corporation and governing the operation of boards of management as corporations, including prescribing provisions of the *Not-for-Profit Corporations Act, 2010* that apply to such boards and modifications to such provisions as they apply to such boards, and
 - (ii) for boards of management under section 128, providing for the division of each territorial district into areas, the appointment of members of boards of management, representing the areas to each board having regard to the proportionate distribution amongst the areas of population and assessment of rateable property and providing for the further appointment by the Lieutenant Governor in Council of members at large to the boards of management;
 - (d) prescribing the percentage or limit for the purpose of subsections 129 (3), (5) and (6);
 - (e) respecting the specification of times by which payments required under sections 129 and 130 must be made;
 - (f) prescribing any circumstances, restrictions or requirements related to borrowing under sections 129 and 130;
 - (g) providing for and governing any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with borrowing under sections 129 and 130;
 - (h) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

Same

(3) The Lieutenant Governor in Council may make regulations dividing any territorial district into two or more parts for the purposes of this Part and, where the Lieutenant Governor in Council has done so, each of the parts shall be deemed to constitute a territorial district for the purposes of this Part.

**PART X
COMPLIANCE AND ENFORCEMENT**

INSPECTIONS

Appointment of inspectors

144 (1) The Minister may appoint inspectors for the purposes of this Act.

Director is an inspector

(2) The Director is, by virtue of office, an inspector.

Certificate of appointment

(3) The Minister shall issue to every inspector a certificate of appointment which the inspector shall produce, upon request, when acting in the performance of their duties.

Purpose of inspection

145 An inspector may conduct inspections for the purpose of ensuring compliance with requirements under this Act.

Annual inspection

146 Every long-term care home shall be inspected at least once a year.

Inspections unannounced

147 No notice shall be given of,

- (a) any inspection required under section 146; or
- (b) any other inspection of a long-term care home, subject to any exceptions provided for in the regulations.

Meeting with councils

148 Where an inspection is required under section 146, the inspector may meet with the Residents' Council or the Family Council, if requested or permitted to do so by the Council.

Powers of entry

149 (1) An inspector may at any reasonable time enter a long-term care home, or place operated in connection with the home and providing services to it, in order to conduct an inspection.

Dwellings

(2) No inspector shall enter a place that is not in a long-term care home and that is being used as a dwelling, except with the consent of the occupier of the place or under the authority of a warrant.

Powers on inspection

150 (1) An inspector conducting an inspection,

- (a) may inspect,
 - (i) the premises of the long-term care home or the premises of a place operated in connection with the home and providing services to it, and
 - (ii) the operations on the premises;
- (b) may inspect or copy a record or other thing;
- (c) may demand the production of records or other things that the inspector believes are relevant to the inspection from any person;
- (d) may question a person;
- (e) may photograph, film or make any other kind of recording, but only in a manner that does not intercept any private communications and that is in keeping with reasonable expectations of privacy;
- (f) may conduct examinations or tests;
- (g) may use data storage, processing or retrieval devices or systems located at the premises in order to produce a record in readable form;
- (h) may, on providing a receipt, remove a record, a sample of a substance or any other thing or take a specimen; and
- (i) may call upon experts for assistance in carrying out the inspection.

Written demand

(2) A demand mentioned in clause (1) (c) must be in writing and must include,

- (a) a statement of the nature of the records and other things required; and
- (b) a statement of when the records and other things are to be produced.

Obligation to produce and assist

(3) If an inspector makes a demand under clause (1) (c), the person having custody of the record or other thing shall produce it for the inspector within the times provided for in the demand, and shall, at the inspector's request,

- (a) provide whatever assistance is reasonably necessary to produce the record in a readable form, including using a data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret the record for the inspector.

Assistance

(4) Every person shall give all reasonable assistance to an inspector in the exercise of the inspector's powers or the performance of the inspector's duties under this Act or the regulations.

Power to exclude persons

(5) An inspector who questions a person under clause (1) (d) may exclude any person from the questioning.

Return of things

(6) An inspector shall, within a reasonable time, return the records and other things removed under clause (1) (h).

Making things available

(7) At the request of the licensee, an inspector who has removed a record or other thing under clause (1) (h) shall make it available for review, copying, examination or testing by or on behalf of the licensee at a mutually convenient time and place.

Samples and specimens

(8) Subsections (6) and (7) do not apply to samples removed or specimens taken by the inspector.

Definition of record

(9) In this section,

"record" means any document or record of information, in any form, including a record of personal health information within the meaning of the *Personal Health Information Protection Act, 2004*.

Warrant

151 (1) A justice of the peace may issue a warrant authorizing an inspector named in the warrant to enter premises specified in the warrant and to exercise any of the powers mentioned in section 150, if the justice of the peace is satisfied on information under oath that,

- (a) the inspector has been prevented from entering a long-term care home, or place operated in connection with the home and providing services to it, or has been prevented from exercising a power under subsection 150 (1);
- (b) there are reasonable grounds to believe that the inspector will be prevented from entering a long-term care home, or place operated in connection with the home and providing services to it, or will be prevented from exercising a power under subsection 150 (1); or
- (c) there are reasonable grounds to believe that an offence against this Act or the regulations has been or is being committed.

Expiry of warrant

(2) A warrant issued under this section shall name a date on which it expires, which shall not be later than 30 days after the warrant is issued.

Extension of time

(3) A justice of the peace may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant.

Use of force

(4) An inspector named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a police officer for assistance in executing the warrant.

Time of execution

(5) A warrant issued under this section may be executed only between 8 a.m. and 8 p.m., unless the warrant specifies otherwise.

Other matters

(6) Subsections 150 (2) to (9) apply, with necessary modifications, with respect to the exercise, under a warrant issued under this section, of the powers mentioned in subsection (1).

Inspection report

152 (1) After completing an inspection, an inspector shall prepare an inspection report and give a copy of the report to the licensee and to the Residents' Council and the Family Council, if any.

Summaries to Councils

(2) Where the inspection is required under section 146, the inspector shall prepare a summary of the inspection report and provide it to the Residents' Council and the Family Council, if any.

All non-compliance to be documented

(3) If the inspector finds that the licensee has not complied with a requirement under this Act, the inspector shall document the non-compliance in the inspection report.

Obstruction, etc.

153 Every person is guilty of an offence who,

- (a) hinders, obstructs or interferes with or attempts to hinder, obstruct or interfere with an inspector conducting an inspection, or otherwise impedes an inspector in carrying out the inspector's duties;
- (b) destroys or alters a record or other thing that has been demanded under clause 150 (1) (c); or
- (c) fails to do anything required under subsection 150 (3) or (4).

ENFORCEMENT

Actions by inspector if non-compliance found

154 (1) If an inspector finds that a licensee has not complied with a requirement under this Act, the inspector shall do at least one of the following as the inspector considers appropriate:

1. Issue a written notification to the licensee.
2. Make an order under section 155.
3. Issue a notice of administrative penalty under section 158.
4. Issue a written notification to the licensee and refer the matter to the Director for further action by the Director.

Where non-compliance remedied in certain cases

(2) Despite subsection (1), where, during an inspection, an inspector finds that the licensee has not complied with a requirement under this Act but remedied the non-compliance prior to the conclusion of the inspection, and the inspector is satisfied that the non-compliance caused no harm and created no risk or minimal risk of harm to a resident, the inspector is not required to take an action under subsection (1), however the inspector shall document the findings in accordance with subsection 152 (3), as well as the remedy.

Vicariously liable

(3) Where an inspector finds that a staff member has not complied with subsection 28 (1) or 30 (1), the licensee shall be deemed to have not complied with the relevant subsection and the inspector shall do at least one of the actions set out in subsection (1) as the inspector considers appropriate.

Compliance orders

155 (1) An inspector or the Director may order a licensee to,

- (a) do anything, or refrain from doing anything, to achieve compliance with a requirement under this Act;
- (b) prepare, submit and implement a written plan for achieving compliance with a requirement under this Act;
- (c) arrange for staff specified in the order to receive training provided for in the regulations from providers set out in the regulations; or
- (d) allow employees of the Ministry, or agents or contractors acting under the authority of the Ministry, to perform any work or activity at the long-term care home that is necessary, in the opinion of the person making the order, to achieve compliance with a requirement under this Act and to pay the reasonable costs of the work or activity.

Grounds

(2) An order may be made under clause (1) (a), (b) or (c) if the licensee has not complied with a requirement under this Act.

Same

(3) An order may be made under clause (1) (d) if,

- (a) the licensee has not complied with a requirement under this Act; and
- (b) there are reasonable grounds to believe that the licensee will not or cannot perform the work or activity necessary to achieve compliance.

Licensee must co-operate

(4) If an order is made under this section respecting work or an activity to be performed at a long-term care home, the licensee shall co-operate with and give reasonable assistance to the persons performing the work or activity.

Recovery of costs

- (5) The Minister may,
- (a) recover the reasonable costs of any work or activity performed under this section by withholding an amount from the funding that would otherwise be provided to the licensee under this Act; or
 - (b) direct the Agency, if it provides funding to the licensee under the *Connecting Care Act, 2019* to withhold from such funding an amount equal to the reasonable costs of any work or activity performed under this section.

Compliance by Agency

- (6) The Agency shall comply with a direction of the Minister under clause (5) (b).

Order that funding be returned or withheld

156 (1) The Director may order,

- (a) that a specified amount of funding provided to or collected by the licensee under this Act be returned or paid by the licensee;
- (b) that a specified amount of funding be withheld from the funding that would otherwise be provided to the licensee under this Act;
- (c) that a specified amount of funding provided to the licensee by a local health integration network under the *Local Health System Integration Act, 2006* or by the Agency under the *Connecting Care Act, 2019* be returned by the licensee; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 156 (1) (c) of the Act is amended by striking out “by a local health integration network under the *Local Health System Integration Act, 2006* or”. (See: 2021, c. 39, Sched. 1, s. 203 (21))

- (d) that the Agency, if it provides funding to the licensee under the *Connecting Care Act, 2019*, withhold a specified amount from funding.

Grounds

- (2) An order may be made under this section if a licensee has not complied with a requirement under this Act.

Limit on amount

- (3) The amount of funding to be returned, paid or withheld shall not exceed, for each day on which the non-compliance continues, \$100 for each bed at the home.

Determination of amount

- (4) In determining the amount of funding to be returned, paid or withheld, the Director shall take into account the following principles:
1. The licensee should not gain from the non-compliance.
 2. If the non-compliance reduces the value of the care and services provided by the licensee, the amount of funding returned, paid or withheld should be at least equal to the reduction in value.
 3. The amount of funding returned, paid or withheld should be sufficient to encourage compliance with the requirement under this Act.
 4. Any other principles that may be provided for in the regulations.

Agreements

- (5) Subject to any limitations provided for in the regulations, the Director and a licensee against whom an order has been or may be made under this section may enter into an agreement that,
- (a) identifies the non-compliance in respect of which the order has been or may be made;
 - (b) requires the licensee to take steps specified in the agreement within the time specified in the agreement; and
 - (c) subject to any limitations provided for in the regulations, provides that the order be cancelled or not be made or the amount of funding to be returned, paid or withheld be reduced.

Compliance by Agency

- (6) The Agency shall comply with an order of the Director under clause (1) (d).

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (21) - not in force

Order requiring management

157 (1) The Director may order a licensee to retain, at the licensee's expense, one or more persons acceptable to the Director to act as managers of the long-term care home or to assist in managing the long-term care home.

Responsibility of manager

- (2) In making an order under subsection (1), the Director may require the licensee to retain a manager to,
- (a) manage or assist in managing the entire operations of the long-term care home; or
 - (b) manage or assist in managing a specific issue related to the operation of the long-term care home.

Grounds

- (3) An order may be made under this section if,
- (a) the licensee has not complied with a requirement under this Act;
 - (b) there are reasonable grounds to believe that the licensee cannot or will not properly manage the long-term care home, or cannot do so without assistance;
 - (c) there are circumstances present in the long-term care home that are prejudicial to the health, safety or welfare of residents; or
 - (d) there is an emergency in the long-term care home, or a situation comparable to an emergency, such as an outbreak of disease of public health significance, a communicable disease as defined in the *Health Protection and Promotion Act* or a pandemic.

Notice of administrative penalty

158 (1) An inspector or the Director may issue a notice in writing requiring a licensee to pay an administrative penalty in the amount set out in the notice if the inspector or Director is of the opinion that the licensee has not complied with a requirement under this Act.

Purpose of administrative penalty

- (2) A notice of administrative penalty may be issued under this section for the purpose of,
- (a) encouraging compliance with a requirement under this Act; or
 - (b) preventing a licensee from deriving, directly or indirectly, any economic benefit as a result of not complying with a requirement under this Act.

Amount of administrative penalty

- (3) Subject to subsections (4) and (5), the amount of an administrative penalty in respect of a failure to comply,
- (a) shall not exceed \$250,000;
 - (b) shall be determined by the inspector or Director in accordance with the regulations; and
 - (c) shall reflect the purpose referred to in subsection (2).

Same, reduction

(4) The inspector or Director shall reduce the amount of an administrative penalty determined under clause (3) (b) if the inspector or Director determines that the amount is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances.

Same, considerations

(5) In determining the amount of an administrative penalty under clause (3) (b), the inspector or Director may consider whether an order has been previously made under section 155 in respect of the licensee not complying with the same requirement under this Act, including an order made before this section came into force.

Two-year limitation

(6) A notice of administrative penalty shall not be issued under this section more than two years after the day the most recent failure to comply on which the notice is based first came to the knowledge of an inspector or Director.

Payment to Minister of Finance

(7) A licensee who is required to pay an administrative penalty under this Act shall pay the penalty to the Minister of Finance.

Enforcement of administrative penalty

(8) Subject to subsection (9), if a licensee who is required to pay an administrative penalty fails to pay it within the time specified in the notice, a copy of any of the following may be filed with a local registrar of the Superior Court of Justice and on filing is deemed to be an order of that court and is enforceable as an order of that court:

1. A notice of administrative penalty under subsection (1).
2. A decision of the Director under subsection 169 (6) or (7).
3. A decision of the Appeal Board under subsection 175 (2).

Same

(9) The notice of administrative penalty or decision filed under subsection (8) may only be filed upon the expiry of the period for reviewing the notice under subsection 169 (2) or appealing the notice or decision under section 171 or 176, as the case may be.

Post-judgment interest

(10) Section 129 of the *Courts of Justice Act* applies in respect of a notice of administrative penalty or decision filed with the Superior Court of Justice under subsection (8) and, for the purpose, the date on which the notice of administrative penalty or decision is filed under subsection (8) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

Crown debt

(11) An administrative penalty issued under this Act that is not paid within the time set out in the notice of administrative penalty is a debt due to the Crown and enforceable as such.

Suspension or revocation

159 (1) The Director may make an order suspending or revoking a licence.

Grounds

(2) A licence may be suspended or revoked under this section if,

- (a) the licensee has not complied with a requirement under this Act;
- (b) any person has made a false statement in the application for the licence, or the licensee or any person acting on behalf of the licensee has made a false statement in any report, document or other information required to be furnished under this Act or under any other legislation in relation to the long-term care home;
- (c) the conduct of the licensee, a person with a controlling interest in the licensee or, where the licensee is a corporation, the conduct of the officers or directors, affords reasonable grounds to believe,
 - (i) that the home is not being or will not be operated in accordance with the law and with honesty and integrity,
 - (ii) that the licensee, officers, directors or persons are not competent to operate a home in a responsible manner in accordance with this Act and the regulations or are not in a position to furnish or provide the required services, or
 - (iii) that the home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents;
- (d) a person has acquired control over, or interfered with, the operation of the long-term care home by exercising a security interest contrary to section 110;
- (e) a person is in a position to acquire or has acquired control over the operation of the long-term care home by exercising a security interest in accordance with section 110, and the conditions provided for in the regulations apply; or
- (f) a person has gained a controlling interest in the licensee without the approval of the Director, contrary to section 112, or a condition of such an approval has been breached.

When order effective, suspension

(3) An order suspending a licence takes effect immediately upon the licensee being served with a copy of the order, but nothing in this section impedes the licensee's ability to appeal the order under section 171 of this Act, subject to section 25 of the *Statutory Powers Procedure Act* if the order is appealed.

When order effective, revocation

(4) An order revoking a licence takes effect upon the expiry of the period for appealing the order under section 171 of this Act, subject to section 25 of the *Statutory Powers Procedure Act* if the order is appealed.

Supervision

(5) If the Director has made an order suspending or revoking a licence, the Director may also make an order providing for the long-term care home to be occupied and operated by a long-term care home supervisor,

- (a) for a period of time specified in the suspension order, subject to the regulations, if any; or
- (b) until the revocation of the licence becomes effective and the residents of the home are relocated.

May suspend and revoke

(6) If the Director has made an order suspending a licence, the suspension order does not preclude the Director from revoking the same licence after it has been suspended, and may be revoked if the Director is satisfied the licensee cannot or will not properly operate the long-term care home.

Supervisor, expiry or surrender

(7) Where a licence has expired or been surrendered by the licensee, the Director may appoint a long-term care home supervisor to assume control of the home, independent of the licensee.

Reasons for supervisor

(8) The Director may appoint a long-term care home supervisor under subsection (5) or (7), where, in the Director's opinion,

- (a) it would not be safe for residents to close the home immediately; and
- (b) the licensee is unable or unwilling to safely operate the home in accordance with all applicable requirements, including licence requirements, for the additional period necessary to close the home safely.

Who may be supervisor

(9) A long-term care home supervisor may be an employee of the Ministry, or an agent or contractor acting under the authority of the Ministry.

Provisions re supervisor

(10) The following apply with respect to a long-term care home supervisor:

1. The long-term care home supervisor has all of the powers of the licensee to occupy, manage, operate and administer the home, and the licensee does not have those powers and does not have access to the long-term care home while it is under the supervisor's control.
2. The long-term care home supervisor shall allow the Ministry full control of the home until the suspension is lifted, the licence expires, the licence is revoked or another solution is reached that is acceptable to the Director.
3. The licensee may not surrender its licence without the Director's prior approval, unless all applicable requirements under this Act and the regulations have been met.
4. The long-term care home supervisor may have any repairs made to the home that the supervisor considers necessary to prevent, eliminate or reduce harm to or an adverse effect upon the health of any person or impairment of the safety of any person.
5. The cost of repairs under paragraph 4 are a debt owed by the licensee to the Crown and may be set off against the compensation mentioned in paragraph 6 and against any other funding that would otherwise be provided to the licensee under this Act or the *Connecting Care Act, 2019*.
6. The licensee is not entitled to funding under this Act or the *Connecting Care Act, 2019* or payment for any service provided at the home, including a payment by a resident for accommodation, while the home is under the control of the long-term care home supervisor, other than reasonable compensation for use of the licensee's property.
7. Any other amount owed by the licensee to the Crown may be set off against the compensation mentioned in paragraph 6.
8. The Crown and the long-term care home supervisor shall not, by reason of the appointment of the long-term care home supervisor, the occupation or operation of the home by the long-term care home supervisor or the continuation of an employee's employment under subsection 160 (2), be responsible for a liability or a portion of a liability incurred or attributable to a period before the supervisor began occupying and operating the home.
9. If the Crown or the long-term care home supervisor pays any amount, a portion of which is attributable to anything that arose or occurred before the long-term care home supervisor began occupying and operating the home, the licensee shall owe the Crown a debt equal to that portion.

Occupation of premises

(11) Without limiting the generality of subsection (10), the long-term care home supervisor,

- (a) despite sections 25 and 39 of the *Expropriations Act*, may immediately occupy, operate and manage the long-term care home; and
- (b) may apply without notice to the Superior Court of Justice for an order directing the sheriff to assist the long-term care home supervisor in occupying the home.

Does not apply to approvals

(12) This section does not apply to an approval under Part IX.

Supervisor, rules relating to employees

160 (1) This section applies,

- (a) subject to the regulations, if any, if a long-term care home supervisor occupies and operates a long-term care home pursuant to an order under section 159 with respect to the suspension of a licence;
- (b) if a long-term care home supervisor occupies and operates a long-term care home pursuant to an order under section 159 with respect to the revocation of a licence; and
- (c) subject to the regulations, if any, if a long-term care home supervisor occupies and operates a long-term care home pursuant to an appointment under subsection 159 (5) where a licence has expired or been surrendered by the licensee.

Continuation of employment

(2) The long-term care home supervisor may continue the employment of some or all of the employees of the licensee at the home.

Employees not continued by supervisor

(3) The non-continuation of an employee's employment under subsection (2) does not affect the employment relationship between the employee and the licensee or their respective rights against, and obligations to, each other, including under any contract of employment or collective agreement.

Long-term care home supervisor directs continued employees

(4) An employee whose employment is continued under subsection (2) remains the employee of the licensee, but during the period during which the long-term care home supervisor occupies and operates the home, the long-term care home supervisor is solely responsible for the direction of the employee and has the rights, obligations and authority that the long-term care home supervisor would have if the long-term care home supervisor were the employer.

Certain termination and severance pay

(5) The following apply with respect to all employees of the licensee at the home:

- 1. If the employee's employment is terminated by the licensee during the period during which the long-term care home supervisor occupies and operates the home, the Crown shall pay the employee any termination pay, severance pay and entitlements owing under subsections 61 (1) and 64 (1) of the *Employment Standards Act, 2000* that the licensee fails to pay.
- 2. The obligation to pay under paragraph 1 is limited to the portion of the pay and entitlements attributable to periods before the long-term care home supervisor began occupying and operating the home.
- 3. For greater certainty, paragraph 8 of subsection 159 (10) does not apply with respect to any amount the Crown pays under paragraph 1, but paragraph 9 of subsection 159 (10) does apply to such an amount.

Other termination pay, etc., for continued employees

(6) In addition to any amounts paid under paragraph 1 of subsection (5), the long-term care home supervisor may pay an employee whose employment is continued under subsection (2) any other termination pay or severance pay and entitlements the employee may be entitled to if the long-term care home supervisor lays the employee off or if the long-term care home supervisor ceases to occupy and operate the home and, for greater certainty, paragraph 9 of subsection 159 (10) applies with respect to the portion of such a payment attributable to a period before the long-term care home supervisor began occupying and operating the home.

Limit on changes to terms and conditions

(7) Changes to terms and conditions of employment or provisions of a collective agreement agreed to by the long-term care home supervisor apply only with respect to the period during which the long-term care home supervisor occupies and operates the home.

Employment of other staff, etc.

(8) Without limiting what else the long-term care home supervisor may do in operating and managing the home, the long-term care home supervisor may, if the long-term care home supervisor considers it necessary to avoid harm or a risk of harm to any resident, employ or contract for persons to work in the home or contract for the delivery of services to the home.

Not successor employer

(9) The making of an order under subsection 159 (5), the occupation and operation of the home by the long-term care home supervisor or the ceasing of that occupation and operation is not a sale of a business for the purposes of section 9 of the *Employment Standards Act, 2000*, section 69 of the *Labour Relations Act, 1995* or section 13.1 of the *Pay Equity Act*.

Related employers

(10) No person is entitled to make an application under subsection 1 (4) of the *Labour Relations Act, 1995* with respect to the long-term care home supervisor, and the long-term care home supervisor and the licensee shall not be treated as one employer under section 4 of the *Employment Standards Act, 2000*.

Minister's suspension

161 (1) If the Minister has reasonable grounds to believe that a long-term care home is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of its residents, the Minister may make an order suspending the licence for the home.

Application of other provisions, etc.

(2) Subject to the regulations and subsection (3), where the Minister makes an order under subsection (1), sections 159 to 177 apply with necessary modifications.

Appointment of supervisor

(3) Where the Minister makes an order under subsection (1) and makes a recommendation, the Lieutenant Governor in Council may appoint a person as a long-term care home supervisor where the Lieutenant Governor in Council considers it in the public interest to do so.

Who may be appointed

(4) For the purposes of subsection (3), the Lieutenant Governor in Council may appoint any person permitted to be a long-term care home supervisor under subsection 159 (9).

Term of appointment

(5) The appointment of the long-term care home supervisor is valid until termination by the Lieutenant Governor in Council.

Provisions re supervisor

(6) Unless the appointment provides otherwise, the provisions under subsections 159 (10) and (11) apply to a long-term care home supervisor appointed under this section.

Same

(7) The Lieutenant Governor in Council may specify the powers and duties of a long-term care home supervisor appointed under this section and the terms and conditions governing those powers and duties.

Minister's directions

(8) The Minister may issue directions to a long-term care home supervisor with regard to any matter within the jurisdiction of the supervisor.

Directions to be followed

(9) The long-term care home supervisor shall carry out every direction of the Minister.

Public interest

(10) In making a decision in the public interest under subsection (3), the Lieutenant Governor in Council may consider any matter they regard as relevant including, without limiting the generality of the foregoing,

- (a) the quality of the management and administration of the long-term care home;
- (b) the availability of financial resources for the management of the long-term care home and for the delivery of the necessary programs and services;
- (c) the accessibility to health services in the community where the long-term care home is located; and
- (d) the quality of the care and treatment of residents.

Due diligence, mistake do not prevent orders or penalties

162 (1) The authority to make an order or issue a notice under sections 155 to 161 against a licensee who has not complied with a requirement under this Act applies regardless of the following, and they shall not be considered in deciding whether to exercise the authority:

1. Whether the licensee took all reasonable steps to prevent the non-compliance.

2. Whether, at the time of the non-compliance, the licensee had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

Same, decisions

(2) The authority to make a decision under subsection 169 (6) or section 170 may be exercised regardless of the following, and they shall not be considered in deciding what decision to make:

1. Whether the licensee took all reasonable steps to prevent the non-compliance.
2. Whether, at the time of the non-compliance, the licensee had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

More than one order or notice

163 More than one order or notice under sections 155 to 161 may be made or issued in respect of the same instance of non-compliance with a requirement under this Act.

Enforcement under other Acts

164 An order may be made or a notice issued under sections 155 to 161 despite any other measures taken under the *Local Health System Integration Act, 2006* or the *Connecting Care Act, 2019*, in respect of the same instance of non-compliance with a requirement under this Act.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 164 of the Act is amended by striking out “the *Local Health System Integration Act, 2006* or”. (See: 2021, c. 39, Sched. 1, s. 203 (22))

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (22) - not in force

Order or notice not a bar to conviction

165 An order or a notice under sections 155 to 161 in respect of non-compliance with a requirement under this Act does not affect the liability of any person to conviction for an offence arising from the non-compliance.

Form and service of orders and notices

166 (1) An order or a notice under sections 155 to 161,

- (a) must be in writing;
- (b) must set out the grounds upon which it is made or issued;
- (c) must set out, if there is a right under section 169 to have it reviewed, a statement of that right and an explanation of how to exercise that right, including the deadline for requesting a review;
- (d) must set out, if there is a right of appeal under section 170, a statement of that right and an explanation of how to exercise that right, including the deadline for the appeal; and
- (e) must be served on the licensee against whom it is made or issued.

Additional content, notices

(2) A notice of administrative penalty shall set out, in accordance with the regulations, the amount of the penalty to be paid, and shall specify the time and manner of the payment.

Filing with court

167 (1) Subject to subsection (2), a certified copy of an order under sections 155 to 161 or a Director’s decision under subsection 169 (6) may be filed with a local registrar of the Superior Court of Justice and on filing is deemed to be an order of that court and is enforceable as an order of that court.

Same

(2) An order or decision filed under subsection (1) may only be filed upon the expiry of the period for reviewing the order under subsection 169 (2) or appealing the order or decision under section 171 or 176, as the case may be.

Offence

168 (1) Every person is guilty of an offence who fails to comply with an order under sections 155 to 161.

No imprisonment or probation

(2) Despite anything else in this Act, a person convicted of an offence under subsection (1) is not liable to imprisonment or to a probation order under subsection 72 (1) of the *Provincial Offences Act* as a result of the conviction or as a result of default in payment of the fine resulting from the conviction.

Due diligence, mistake not a defence

(3) It is not a defence to a charge under subsection (1) that the person took all reasonable steps to prevent the non-compliance, or at the time of the failure, the person had an honest and reasonable belief in a set of facts that, if true, would have resulted in there not being any non-compliance.

REVIEWS AND APPEALS

Review of inspector's order or notice

169 (1) A licensee against whom an order is made by an inspector under section 155 or against whom a notice of administrative penalty is issued by an inspector under section 158 may request the Director to review the order or notice of administrative penalty.

When and how request to be made

(2) The request for review must be in writing and shall be served on the Director within 28 days from the day the order or notice was served on the licensee.

Contents of request for review

(3) The request for review must include,

- (a) the portions of the order or notice of administrative penalty in respect of which the review is requested;
- (b) any submissions that the licensee wishes the Director to consider; and
- (c) an address for service for the licensee.

No automatic stay pending review of an order

(4) Despite section 25 of the *Statutory Powers Procedure Act*, a request for a review does not stay an order unless the Director orders otherwise in writing upon being satisfied that a stay will not cause harm or a risk of harm to a resident.

Stay, administrative penalty

(5) If a licensee requests a review of a notice of administrative penalty, the requirement to pay is stayed until the disposition of the review.

Director's decision

(6) On a review of an order or notice of administrative penalty, the Director may rescind, confirm or alter the order or notice, and the Director may substitute their own order or notice for that of the inspector.

Reduction of administrative penalty

(7) In confirming or altering a notice of administrative penalty, the Director may find that the penalty is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances, and in that case shall reduce the amount of the penalty.

Serving decision

(8) The Director shall serve the Director's decision, including reasons if the order or notice of administrative penalty is confirmed or altered, on,

- (a) the licensee; and
- (b) the Agency if it provides funding to the licensee under the *Connecting Care Act, 2019*, in respect of a decision that relates to an order made under clause 155 (1) (d).

Automatic confirmation of order

(9) If the Director does not serve the licensee with a copy of the Director's decision within 28 days of receiving the request for review, the Director shall be deemed to have confirmed the order or notice of administrative penalty and, for the purposes of an appeal to the Appeal Board by the licensee, the Director shall be deemed to have served the licensee with a copy of that decision on the expiry of the 28-day period.

Appeal from order, notice, decision

170 A licensee may appeal any of the following to the Appeal Board:

1. An order made by the Director under sections 155 to 159 and, subject to the regulations, if any, an order made by the Minister under section 161.
2. A notice of administrative penalty issued by the Director under section 158.
3. A decision of the Director under section 169.

When and how appeal to be made

171 To appeal to the Appeal Board, the licensee shall give the Appeal Board and the Director a notice of appeal within 28 days from the day the licensee was served with a copy of the order, notice of administrative penalty or decision that is being appealed from.

No automatic stay of order or decision

172 (1) Despite section 25 of the *Statutory Powers Procedure Act*, an appeal to the Appeal Board does not stay an order or decision unless the Appeal Board orders otherwise in writing upon being satisfied that a stay will not cause harm or a risk of harm to a resident.

Exception

(2) Subsection (1) does not apply with respect to an order to suspend or revoke a licence under subsection 159 (1) or to suspend a licence under subsection 161 (1), but does apply with respect to an order under subsection 159 (5).

Applying to remove stay — new circumstances

(3) The Director may apply for the removal of a stay ordered by the Appeal Board under subsection (1) on the grounds that the circumstances have changed since the order was made.

Removal of stay

(4) Where the Director has applied under subsection (3) and the Appeal Board is satisfied that the circumstances have changed, it shall remove the stay unless it is satisfied that continuing the stay will not cause harm or a risk of harm to a resident.

Stay, administrative penalty

(5) If a licensee appeals to the Appeal Board a notice of administrative penalty issued by the Director under section 158 or a decision of the Director under section 169 respecting a notice of administrative penalty, the requirement to pay is stayed until the disposition of the appeal.

Parties

173 The parties to an appeal are,

- (a) the licensee;
- (b) the Director; and
- (c) in the case of an appeal from an order made under section 156, the Agency if it provides funding to the licensee under the *Connecting Care Act, 2019*.

Hearing

174 (1) After receiving a notice of appeal, the Appeal Board shall promptly appoint a time and place for a hearing.

When hearing to begin if licence revoked

(2) In the case of an appeal of an order to revoke a licence under section 159, the hearing shall begin within 90 days after the day the Appeal Board receives the notice unless the parties agree to a postponement.

When hearing to begin if licence suspended

(3) In the case of an appeal of an order to suspend a licence under section 159 or 161, the hearing shall begin within 30 days after the day the Appeal Board receives the notice unless the parties agree to a postponement.

Notice of hearing

(4) The Appeal Board shall give each of the parties at least seven days notice of the time and place of the hearing.

Recording of evidence

(5) The oral evidence taken before the Appeal Board at a hearing shall be recorded and, if required, copies of a transcript of the evidence shall be furnished on the same terms as in the Superior Court of Justice.

Health Insurance Act

(6) Subsections 23 (1), (2), (4) and (6) of the *Health Insurance Act* apply to the proceedings and decisions of the Appeal Board under this Part.

Decision of Appeal Board

175 (1) After a hearing, the Appeal Board may rescind, confirm or alter the order or decision of the Director, and may substitute its own opinion for that of the Director, and may direct the Director to take any action that the Appeal Board considers that the Director ought to take in accordance with this Act and the regulations.

Same, administrative penalty

(2) Despite subsection (1), after a hearing the Appeal Board may rescind, confirm or alter a notice of administrative penalty issued by the Director under section 158 or a decision of the Director under section 169 respecting a notice of administrative penalty according to what it considers reasonable in the circumstances, but the Board shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

Appeal to court

176 (1) Any party to the proceedings before the Appeal Board may appeal from its decision to the Divisional Court in accordance with the rules of court.

No automatic stay on appeal to court

(2) Despite section 25 of the *Statutory Powers Procedure Act*, an appeal to the Divisional Court does not stay the decision appealed from unless the Divisional Court orders otherwise upon being satisfied that a stay will not cause harm or a risk of harm to a resident.

Applying to remove stay — new circumstances

(3) The Director may apply for the removal of a stay ordered by the Divisional Court under subsection (2) on the grounds that the circumstances have changed since the order was made.

Removal of stay

(4) Where the Director has applied under subsection (3) and the Divisional Court is satisfied that the circumstances have changed, it shall remove the stay unless it is satisfied that continuing the stay will not cause harm or a risk of harm to a resident.

Stay, administrative penalty

(5) Despite anything else in this section, if a party appeals a decision of the Appeal Board made under subsection 175 (2) to the Divisional Court, the requirement to pay is stayed until the disposition of the appeal.

Record to be filed in court

(6) Where any party appeals from a decision of the Appeal Board, the Appeal Board shall forthwith file in the Divisional Court the record of the proceedings before it in which the decision was made which, together with the transcript of evidence if it is not part of the Appeal Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(7) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Appeal Board and may exercise all powers of the Appeal Board to direct the Director to take any action which the Appeal Board may direct him or her to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Director or of the Appeal Board, or the court may refer the matter back to the Appeal Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Funding not to be considered

177 The sufficiency of the funding provided to a licensee from any source shall not be considered in any review or appeal under this Part.

MISCELLANEOUS AND ACCESS TO INFORMATION

Recognition

178 The Director may, in accordance with the regulations, recognize long-term care homes with an excellent record of compliance with the requirements under this Act.

Publication

179 The Minister shall make available to the public the information provided for in the regulations.

Reports, etc., to be public

180 The Director shall publish, in any format or manner the Director considers appropriate,

- (a) every direction under subsection 56 (1);
- (b) every inspection report under section 152;
- (c) every order under this Part;
- (d) every written notification under subsection 154 (1);
- (e) every written plan for achieving compliance, prepared by the licensee, that the Director has ordered in accordance with clause 155 (1) (b) following a referral under paragraph 4 of subsection 154 (1); and

- (f) any information specified by the Director about administrative penalties issued under this Act and about convictions and penalties imposed on conviction.

Copy constitutes evidence

181 (1) In any proceeding, other than a prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector or the Director is admissible as evidence of the order, decision or inspection report and of the facts appearing in the document without further proof.

Same

(2) In any proceeding, other than a prosecution, a copy of a record or thing made under clause 150 (1) (b) that appears to be certified as a true copy of the original by an inspector or the Director is admissible as evidence of the record or thing and of the facts appearing in it without further proof.

Same, prosecution

(3) In any prosecution, a copy of an order, decision or inspection report made under this Act or the regulations that appears to be signed by an inspector or the Director, is admissible as evidence, in the absence of evidence to the contrary, of the order, decision or inspection report and of the facts appearing in the document without further proof.

Same

(4) In any prosecution, a copy of a record or thing made under clause 150 (1) (b) that appears to be certified as a true copy of the original by an inspector or the Director is admissible as evidence, in the absence of evidence to the contrary, of the record or thing and of the facts appearing in it without further proof.

Admissibility of certain documents

(5) In any proceeding, a certificate as to the result of an examination or test conducted under clause 150 (1) (f) that states the name and qualifications of the person who conducted the examination or test and that appears to be signed by that person is, without further proof of the office or signature of that person, admissible as evidence, in the absence of evidence to the contrary, of the facts stated in the certificate, if the certificate has been served on the other parties to the proceeding within a reasonable time before the certificate is adduced.

Compellability, civil suit

182 The Director, an inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector, is not a compellable witness in a civil suit or any proceeding unrelated to the administration of Part X of this Act, except an inquest under the *Coroners Act*, a proceeding, inquiry or investigation under the *Ombudsman Act* or a proceeding, inquiry, investigation or audit of an officer of the Assembly acting under any other Act, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations.

Regulations

183 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part.

Specific inclusions

- (2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
- (a) governing the actions to be taken by an inspector under subsection 154 (1) and the orders to be made by an inspector or Director under sections 155 to 159, including, without limiting the generality of the foregoing, specifying factors to be taken into account in determining what actions to take or orders to make, and specifying how such factors are to be taken into account;
 - (b) requiring the payment of, and governing the charging of fees for, inspections;
 - (c) governing administrative penalties under this Act and respecting all matters concerning the administration of a system of administrative penalties under this Act;
 - (d) governing the occupation and operation of a long-term care home by a long-term care home supervisor pursuant to an order under section 159, including, without limiting the generality of the foregoing,
 - (i) governing the continuation or non-continuation of the employment of employees under subsection 160 (2),
 - (ii) providing for any matters arising from the change in occupation and operation by the licensee to the occupation and operation by the long-term care home supervisor or from the cessation of the occupation and operation by the long-term care home supervisor, including matters relating to employees of the licensee or the supervisor,
 - (iii) clarifying what “attributable” means for the purposes of sections 159 and 160,
 - (iv) for the purposes of clause 160 (1) (a), making exemptions from any other provision under section 160 and specifying alternative or additional conditions and requirements in respect of the employment of employees and in respect of any other matter affected by section 160;

- (e) governing suspensions by the Minister under section 161, including clarifying and modifying the application of other provisions of this Act to such suspensions;
- (f) governing the reasonable compensation that may be provided under paragraph 6 of subsection 159 (10);
- (g) providing for anything that under this Part may or must be provided for in regulations, or that is to be done in compliance with or in accordance with the regulations.

PART XI ADMINISTRATION, MISCELLANEOUS

Directives by Minister

184 (1) The Minister may issue operational or policy directives respecting long-term care homes where the Minister considers it to be in the public interest to do so.

Public interest

- (2) In deciding to issue an operational or policy directive, the Minister may consider any matter that the Minister regards as relevant, and without limiting the generality of the foregoing, may consider,
- (a) the proper management and operation of long-term care homes in general;
 - (b) the availability of financial resources for the management and operation of the long-term care home system and for the delivery of long-term care home services; and
 - (c) the quality of care and treatment of residents within long-term care homes generally.

Binding on licensees

(3) Every licensee of a long-term care home shall carry out every operational or policy directive that applies to the long-term care home.

General or particular

(4) An operational or policy directive of the Minister may be general or particular in its application, but may not be made with respect to one particular home or licensee.

Non-application of *Legislation Act, 2006*

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to operational or policy directives.

Public availability

(6) The Minister shall make every operational or policy directive available to the public.

Law prevails

(7) For greater certainty, in the event of a conflict between an operational or policy directive issued under this section and another requirement under this Act, a provision of any applicable Act, or rule of any applicable law, the requirement, Act or rule prevails.

Director — appointment

185 (1) The Minister may appoint one or more persons as the Director.

Regulations

(2) The regulations may provide for which Director is the Director for the purposes of any provision of this Act or of the regulations.

Altering or revoking orders

186 The power to make orders under this Act includes the power to alter or revoke such orders from time to time and make others.

Personal information, collection

187 (1) The Minister and the Director may directly or indirectly collect personal information, subject to any conditions provided for in the regulations, for purposes related to the administration of this Act or for such other purposes as may be provided for in the regulations.

Use of personal information

(2) The Minister and the Director may use personal information, subject to any conditions provided for in the regulations, for purposes related to the administration of this Act or for such other purposes as may be provided for in the regulations.

Disclosure

(3) The Minister and the Director shall disclose personal information subject to any conditions provided for in the regulations for purposes related to the administration of this Act or for such other purposes as may be provided for in the regulations, but the Minister or the Director shall not disclose the information if, in their opinion, the disclosure is not related to those purposes.

Power of Director, Minister or inspector to disclose

(4) The Minister, the Director or an inspector may communicate or allow to be communicated or disclosed information acquired, furnished, obtained, made or received under this Act or the regulations.

Agreements

(5) Subject to any conditions provided for in the regulations, the Minister may enter into agreements to collect, use or disclose personal information for purposes related to the administration of this Act or for such other purposes as may be provided for in the regulations.

Confidentiality

(6) An agreement under subsection (5) shall provide that personal information collected, used or disclosed under it is confidential and shall require mechanisms for maintaining the confidentiality of the information.

Restriction on terms

188 (1) A person who owns or operates a place that is not a long-term care home shall not describe the place as a “long-term care home”, “nursing home”, “home for the aged” or by a term that may cause confusion with one of those terms.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence.

Affidavits

189 A person or a member of a class of persons designated by the Minister as a commissioner or commissioners for taking affidavits for the purposes of this Act is a commissioner for taking affidavits within the meaning of the *Commissioners for Taking Affidavits Act* with power to take affidavits and statutory declarations for the purposes of this Act.

Service

190 Anything that is required to be served under this Act may be served personally or by a method provided for under the regulations.

Immunity

191 (1) No action or other proceeding, other than an application for judicial review under the *Judicial Review Procedure Act* or any right of appeal or review that is permitted under this Act, shall be commenced against the Crown, the Minister or any other Minister of the Crown, the Director, a long-term care home supervisor or any staff of a long-term care home supervisor, or any employee or agent of the Crown, including a local health integration network and the Agency, or any officer, director or employee of a local health integration network or the Agency, for anything done or omitted to be done in good faith in the execution or intended execution of a power or duty under this Act.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 191 (1) of the Act is amended by striking out “including a local health integration network and the Agency, or any officer, director or employee of a local health integration network or the Agency” and substituting “including the Agency, or any officer, director or employee of the Agency”. (See: 2021, c. 39, Sched. 1, s. 203 (23))

No remedy

(2) Despite any other Act or law, no costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person against the Crown, the Minister or any other Minister of the Crown, the Director, a long-term care home supervisor or any staff of a long-term care home supervisor, or any employee or agent of the Crown, including a local health integration network and the Agency, or any officer, director or employee of a local health integration network or the Agency, in connection with anything referred to in subsection (1), except as provided for under this Act.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 191 (2) of the Act is amended by striking out “including a local health integration network and the Agency, or any officer, director or employee of a local health integration network or the Agency” and substituting “including the Agency, or any officer, director or employee of the Agency”. (See: 2021, c. 39, Sched. 1, s. 203 (24))

Section Amendments with date in force (d/m/y)

2021, c. 39, Sched. 1, s. 203 (23, 24) - not in force

Penalties

192 (1) Except where subsection (2) applies, every individual who is convicted of an offence under this Act is liable,

- (a) for a first offence, to a fine of not more than \$200,000 or to imprisonment for a term of not more than 12 months, or to both; and
- (b) for a subsequent offence, to a fine of not more than \$400,000 or to imprisonment for a term of not more than 12 months, or to both.

Same

(2) Every individual who is convicted of an offence under section 28 is liable to a fine of not more than \$200,000.

Directors, etc.

(3) Despite subsection (1), the following rules apply if an individual is convicted of an offence under this Act by virtue of section 75:

- 1. If the individual is a member mentioned in subsection 75 (2), or a director or officer of a corporation that is the licensee of a non-profit long-term care home, the individual is liable to a fine of not more than \$4,000.
- 2. In every other case, the individual is liable to a fine of not more than \$200,000 for a first offence, and not more than \$400,000 for a second or subsequent offence.

Same, corporations

(4) Every corporation that is convicted of an offence under this Act is liable to a fine of not more than \$500,000 for a first offence and to a fine of not more than \$1,000,000 for a subsequent offence.

Compensation or restitution

(5) The court that convicts a person of an offence under this Act may, in addition to any other penalty, order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

Other conditions

(6) Despite clause 72 (3) (c) of the *Provincial Offences Act*, the court that convicts a person of an offence under this Act may prescribe conditions described in that clause even though the offence is not punishable by imprisonment.

Presiding judge

(7) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of a prosecution under this Act.

Protection of information

(8) In a prosecution for an offence under this Act or where documents or materials are filed with a court under section 151 of this Act or sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,

- (a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

Definition of personal health information

(9) In this section,

“personal health information” means personal health information as defined in the *Personal Health Information Protection Act, 2004*.

No limitation

(10) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act.

Regulations

193 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

Specific inclusions

(2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- 1. respecting the management and operation of long-term care homes;
- 2. defining physical, sexual, emotional, verbal and financial abuse for the purposes of the definition of “abuse” in subsection 2 (1);

3. defining “caregiver” for the purposes of any provision of this Act;
4. defining and governing what constitutes having a “controlling interest” in a licensee for the purposes of this Act;
5. providing for exceptions to the definition of “staff” in subsection 2 (1);
6. providing that provisions of this Act specified in the regulation do not apply with respect to,
 - i. all persons falling within the definition of “staff” in subsection 2 (1),
 - ii. specified persons or classes of persons falling within that definition;
7. defining “accommodation”, “basic accommodation” and “preferred accommodation” for the purposes of any provision of this Act;
8. defining “neglect” for the purposes of any provision of this Act;
9. defining any word or expression used in this Act but not defined in this Act;
10. governing the manner of responding to complaints and reports;
11. defining “drug” for the purposes of this Act or for the purposes of any provision of this Act;
12. designating rights advisers or providing for the designation of rights advisers;
13. clarifying the meaning of “non-profit” and “for-profit” for the purposes of any provision of this Act;
14. requiring licensees to provide or offer certain types of accommodation, care, services, programs and goods to residents, and governing the accommodation, care, services, programs and goods that must be provided or offered, including establishing standards or outcomes to be met;
15. governing the records, including health records, kept by licensees with respect to residents, including requiring specified records to be kept;
16. requiring that parts of the licensed bed capacity of long-term care homes be set aside for various classes of accommodation, and regulating the amount of bed capacity that must be set aside for each class;
17. governing the construction, establishment, location, safety, equipment, maintenance and repair of and additions or alterations to long-term care homes, including, without limiting the generality of the foregoing,
 - i. requiring the approval of the Director before work is begun or at specified stages of the work,
 - ii. requiring the approval of the Director before beginning to use a newly constructed home or the parts of a home that have been repaired, added or altered, and
 - iii. requiring information, plans and other material to be furnished to the Director;
18. requiring licensees to establish trust accounts for residents, and governing the administration of the trust accounts, including, without limiting the generality of the foregoing, setting limits on the amount that may be held in a trust account;
19. for the purposes of protecting the privacy of any individual, limiting,
 - i. the requirement to post an inspection report or order under clause 85 (3) (1),
 - ii. the obligation to give an inspection report to the Residents’ Council or Family Council under section 152, and
 - iii. the requirement to publish an inspection report or order under section 180;
20. requiring licensees to file financial statements with the Director, and governing the content of those statements;
21. governing methods of service for the purposes of section 190, and providing for when anything is deemed to have been served;
22. requiring any report required under this Act to be provided in the form and manner provided for in the regulations, including requiring any report to be made under oath;
23. requiring the payment of a fee for the following, and governing the amount of a fee or how the amount of a fee is determined, including providing for costs incurred in the course of deciding the matter:
 - i. the issuance of a licence or the transfer of a licence or beds under a licence,
 - ii. any approval of the Director, or any decision of the Director as to whether or not to give an approval, or any inspection of a home conducted because the Director considers an inspection desirable in deciding whether or not to give an approval, unless this Act specifically provides that no fee is payable,
 - iii. an audit or financial review, including an audit or financial review done as part of an inspection;

24. requiring licensees of long-term care homes to pay annual or other periodic licence fees, and governing the amounts of those fees, or how the amounts of those fees are determined;
25. governing the closing of a long-term care home, including, without restricting the generality of the foregoing, imposing requirements that must be satisfied before the surrender of a licence or approval;
26. providing for exemptions from this Act or any provision of this Act, subject to any conditions that may be set out in the regulation;
27. providing for any transitional matters the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act;
28. providing for anything that under this Act may or must be provided for or designated in regulations, or that is to be done in compliance with or in accordance with the regulations.

Transitional regulations

(3) A regulation under paragraph 27 of subsection (2) may provide that it applies despite this or any other general or special Act.

Public consultation before making initial regulations

194 (1) The Lieutenant Governor in Council shall not make the initial regulation with respect to any matter about which the Lieutenant Governor in Council may make regulations under this Act unless,

- (a) the Minister has made available to the public a notice of the proposed regulation;
- (b) the notice complies with the requirements of this section;
- (c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and
- (d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate.

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

- (a) a description of the proposed regulation and the text of it;
- (b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;
- (c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;
- (d) a statement of where and when members of the public may review written information about the proposed regulation; and
- (e) all other information that the Minister considers appropriate.

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 30 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

- (a) the urgency of the situation requires it;
- (b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or
- (c) the proposed regulation is of a minor or technical nature.

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report.

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this Act if, in the Minister's opinion,

- (a) the urgency of the situation requires it;
- (b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or
- (c) the proposed regulation is of a minor or technical nature.

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under this Act,

- (a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and
- (b) the Minister shall give notice of the decision to the public as soon as is reasonably possible after making the decision.

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate.

Making notice public

(9) The Minister shall make the notice mentioned in clause (7) (b) available to the public.

No review

(10) Subject to subsection (11), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section.

Exception

(11) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section.

Time for application

(12) No person shall make an application under subsection (11) with respect to a regulation later than 21 days after the day on which the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), if applicable.

Amendments

195 (1) The Minister may decide that the procedures set out in section 194 shall apply to a regulation that is not the initial regulation with respect to a matter if the Minister decides that it is advisable in the public interest to do so, and in such a case section 194 applies with necessary modification.

No review

(2) A court shall not review any decision by the Minister under this section as to whether or not to make the procedures set out in section 194 apply to a regulation.

General provisions re regulations

196 (1) A regulation under this Act is, if it so provides, effective with reference to a period before it is filed.

Same

(2) A regulation under this Act may be general or particular in its application.

Incorporation by reference

(3) A regulation under this Act may adopt by reference, in whole or in part and with such changes as are considered necessary, any code, standard, guideline or similar document and may require compliance with the code, standard or guideline.

Rolling incorporation by reference

(4) Where a regulation has adopted by reference any code, standard, guideline or similar document that is made by a body that is not part of the Government of Ontario, the regulation may require compliance with the code, standard or guideline as amended from time to time, whether the amendment was made before or after the regulation was made.

**PART XII
TRANSITIONAL**

Transitional — compliance

197 (1) Any actions or orders made by an inspector or the Director under sections 152, 153, 154, 155 and 156 of the *Long-Term Care Homes Act, 2007* continue to be in effect until the action or order is complied with or expires.

Licensee must comply

(2) A licensee is required to continue to comply with any actions or orders as referred to in subsection (1).

Transitional — interim manager

198 (1) Where the Director has made an order providing for the long-term care home to be occupied and operated by an interim manager under subsection 157 (4) of the *Long-Term Care Homes Act, 2007* that was in effect immediately before the coming into force of this section, that order continues until the revocation of the licence becomes effective and the residents of the home are relocated.

Supervisor

(2) For the purposes of subsection (1), all references in the order under subsection 157 (4) of the *Long-Term Care Homes Act, 2007* to “interim manager” shall be read as “long-term care home supervisor”.

Transition, licences

199 (1) On the day this section comes into force, each existing licence under the *Long-Term Care Homes Act, 2007* shall be deemed to have been replaced with a licence under this Act.

Same home, same number of beds

(2) A replacement licence under subsection (1) shall be for the same home and the same number of beds as was licensed under the *Long-Term Care Homes Act, 2007*.

Term of replacement licence

(3) The term of a replacement licence under subsection (1) shall be the same term as the licence under the *Long-Term Care Homes Act, 2007* that it replaces, and the replacement licence expires on the same expiry date.

Transition, municipal homes

200 (1) On the day this subsection comes into force, every home established and maintained under Part VIII of the *Long-Term Care Homes Act, 2007* shall be deemed to have been continued under an approval granted under Part IX of this Act.

Same

(2) In the case of a home being maintained by one or more municipalities, the approval shall be deemed to have been granted to the municipality or municipalities.

Same

(3) In the case of a home being maintained by a board of management, the approval shall be deemed to have been granted to the board of management.

Further transitional, Charitable Institutions Act

201 Despite its repeal, clause 5 (1) (d) of the *Charitable Institutions Act* shall continue to apply with respect to a change in the use of, or sale or other disposition of, a long-term care home that was an approved charitable home for the aged under that Act before it was repealed.

Further transitional, Homes for the Aged and Rest Homes Act

202 Despite its repeal, subsection 14 (2) of the *Homes for the Aged and Rest Homes Act* shall continue to apply with respect to a sale or other disposition of a long-term care home that was a home or joint home under that Act before it was repealed.

PART XIII (OMITTED)

203 OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

PART XIV (OMITTED)

204 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

PART XV (OMITTED)

205 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

206 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

Français

[Back to top](#)