Fixing Long-Term Care Act – Highlights from the amendments to the general regulation

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Background

On April 11, 2022, the *Fixing Long-Term Care Act, 2021* (the Act) was proclaimed into force. See our articles highlighting the reforms proposed in the Act, considerations for long-term care home employers, changes imposed by the Phase 1 Regulations, and recent regulatory developments announced by the federal government.

On April 11, 2023, O. Reg. 66/23 came into force to amend the *General* regulation (O. Reg. 246/22) under the Act. This article summarizes the notable changes to the Regulations, and the key takeaways for long-term care home licensees.

Summary of notable changes

Staffing Qualifications

As introduced in O. Reg. 246/22, licensees originally had 12 months to comply with the new staffing qualifications set out in the Act or the regulation. O. Reg. 66/33 extends this provision by granting an additional six months to comply. As a result, licensees will now be required to terminate staff members who do not meet the applicable requirements under the Act and the regulations within 19 months of March 31, 2022.

Personal support workers

The Ministry has further clarified the qualifications for personal support workers (PSW). As of April 11, 2023, PSW's must have completed a personal support worker program, and such program must meet the program requirements set by the Ministry of Colleges and Universities for an Ontario post-secondary institution or district school board to issue a PSW certificate.

Restorative care program

The qualification of the designated lead responsible for co-ordinating the home's restorative care program has been clarified to require a post-secondary diploma, degree

or certificate in recreation and leisure studies, kinesiology, therapeutic recreation or other related field from an Ontario post-secondary institution, or a post-secondary diploma, degree or certificate granted in another jurisdiction that, *in the reasonable opinion of the licensee*, is equivalent to a diploma, degree or certificate granted by an Ontario post-secondary institution.

Recreational and social activities program

The qualifications of the designated lead for the recreational and social activities program have been updated to require the licensee to ensure that the designated lead has experience in a health care or other relevant setting; holds a post-secondary diploma, degree or certificate in recreation and leisure studies, therapeutic recreation, kinesiology, gerontology or other related field from an Ontario post-secondary institution, or in the licensee's reasonable opinion, an equivalent diploma, degree or certificate granted in another jurisdiction. Despite these new requirements, the person employed as the designated lead for the recreational and social activities program before April 11, 2023, may continue in that role without meeting the new requirements if, in the reasonable opinion of the licensee, the person has the appropriate skills, knowledge and experience to continue in that position.

Licensees will be required to ensure that staff members providing recreational and social activities in a home also have a post-secondary diploma, degree or certificate in recreation and leisure studies, therapeutic recreation, kinesiology, gerontology or other related field from an Ontario post-secondary institution, or in the reasonable opinion of the licensee, an equivalent diploma, degree or certificate granted in another jurisdiction.

Housekeeping, laundry, maintenance

The designated lead for the housekeeping, laundry services and maintenance services is no longer required to have a post-secondary degree or diploma. Instead, licensees shall ensure that the designated lead for housekeeping, laundry services and maintenance services has the skills, knowledge and experience to perform the role, including knowledge of evidence-based practices, and experience in a managerial or supervisory capacity, or, in the reasonable opinion of the licensee, the appropriate skills, knowledge and experience to perform the duties required.

Food services

Licensees must ensure that during ever hour in which the part or parts of the home where meals or meal portions are prepared are operating, there must be at least one cook, food service worker or nutrition manager who has successfully completed food handler training. In addition, licensees are now required to ensure that cooks have chef training or culinary management diploma or certificated granted by a college of applied arts and technology or a private career college; holds a certificate of qualification in the trade of 'Cook' or 'Institutional Cook' issued under the *Apprenticeship and Certification Act, 1998,* the Ontario College of Trades and Apprenticeship Act, 2009, or the *Building Opportunities in the Skilled Trades Act, 2021,* or in the reasonable opinion of the licensee, has the appropriate skills, knowledge and experience to perform the duties required of the position.

Licensees are required to ensure that food service workers, other than cooks, have successfully completed or are enrolled in a Food Service Worker program at a college of applied arts and technology or a Food Service Worker program provided by a private career college, has satisfied the qualification requirements in sections 84(1)(b) and (c), or have, in the reasonable opinion of the licensee, the appropriate skills, knowledge and experience to perform the duties required of the position.

The nutrition managers at the home must now either be an active member of the Canadian Society of Nutrition Management or a registered dietitian. However, a person employed as a nutrition manager prior to April 11, 2023, can continue in that role without meeting the qualifications if they are actively pursuing membership in the Canadian Society of Nutrition Management or registration as a dietician by the College of Dietitians of Ontario. Nutrition managers who have worked in that role since July 1, 2010 may continue in that role without any required changes to their qualifications.

The new regulations also revise the formula for the minimum number of hours that a nutrition manager is required to be on site per week.

Medication management and drug administration

The quarterly evaluation of the medication management system in the home has been clarified to require, in addition to a review of drug utilization trends and patterns and identified improvements, a review of the reports of any medication incidents, incidents of severe hypoglycemia and unresponsive hypoglycemia, the use of glucagon and adverse drug reactions, the factors contributing to the incident and all instances of restraint by the administration of a drug when immediate action is necessary to prevent serious bodily harm to a resident or others.

O. Reg 66/23 now specifies that every use of glucagon, incident of severe hypoglycemia and incident of unresponsive hypoglycemia (in addition to every medication incident and adverse drug reaction involving a resident) is documented, reported to the resident, the resident's substitute decision-maker, if any, the Director of Nursing and Personal Care, the Medical Director, the resident's attending physician or registered nurse, and the prescriber of the drug and pharmacy. The requirement for a quarterly review of all medication incidents and adverse drug reactions remains unchanged, except such a review must also include the aforementioned hypoglycemia-related issues.

The security and storage of drug supply has been further clarified to specify that PSW's shall not have access to the secure, locked drug storage site. The administration of drugs is clarified to ensure that no person administers a drug to a resident in the home unless:

a. where the administration involves the performance of a controlled act under subsection 27(2) of the *Regulated Professions Act, 1991,* the person is authorized to administer the drug by virtue of a health profession act, the *Regulated Health Professions Act, 1991*, or any other relevant regulation; or
b. where the administration does not involve the performance of a controlled act under subsection 27(2) of the *Regulated Health Professions Act, 1991,* the person is,

a. a member of a regulated health profession acting within their scope of practice, or
b. a PSW who has received training in the administration of drugs in accordance with written policies and protocols, who, in the reasonable opinion of the licensee, has the appropriate skills, knowledge and experience to administer drugs in a long-term care home who has been assigned to perform the administration by a member of the registered nursing staff, and is under the supervision of that member in accordance with any practice standards and guidelines issued by the College of Nursed of Ontario.

Nursing staff may now permit nursing students to administer drugs to residents where the licensee has verified with the Ontario post-secondary institution that the nursing student has received education or training about administration of drugs, has been trained by a member of the registered nursing staff in the written policies and protocols for the medication management system, can safely administer drugs (to the satisfaction of the registered nursing staff permitting the administration), and is doing so under the supervision of a member of the registered nursing staff. For additional clarity, the administration of a controlled substance still can only be administered in accordance with the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada).

Finally, the destruction of a controlled substance, subject to any applicable requirements under the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada) now must be destroyed by a team of one member of the registered nursing staff, and *at least one* of:

a. another member of the registered nursing staff appointed by the Director of Nursing and Personal Care;
b. a physician;
c. a pharmacist;
d. a member of the Colleges of Nurses of Ontario who is a registered nurse in the extended class;
e. a member of the College of Pharmacists who is a pharmacy technician, or
f. a member of the Royal College of Dental Surgeons who is a dentist I n the general class

Resident experience

The major changes focused on resident experience surround revisions to the air conditioning requirements. O. Reg. 246/22 has re-written the definition of “air conditioning” to be much more comprehensive, especially with reference to air conditioning supply and peak summer temperature conditions. Licensees are now required to ensure that air conditioning is “installed, operational and in good working order during at least the period from May 15-September 15 in each year” in every resident bedroom *and* every designated cooling area, in the case of a home without central air conditioning. For homes that do not have central air conditioning, licensees are required to ensure that the home has at least one separate designated cooling area for every 40 residents, which must be made accessible to residents from May 15 - September 15, in addition to days where the outside temperature will be 26 degrees

Celsius *at any point during the day*, and at any time the temperature inside an area of the home reaches 26 degrees Celsius.

Residents now have the right to request that portable/window air conditioning units in their respective bedrooms be removed, so long as the other residents in the room consent to the uninstallation. Prior to uninstallation, licensees are required to amend the plan of care for each resident in the room to outline any risk factors that may lead to heat related illness as a result of the uninstallation, and specific strategies that staff will implement to prevent or mitigate any risk factors that may lead to heat related illness. It is important that licensees make and keep written records relating to the uninstallation of a portable/window air conditioning unit, including, at a minimum, the date the unit was uninstalled and the circumstances that led to the unit being uninstalled. The portable/window air condition units that are uninstalled must remain accessible and available for use at the request of any resident residing in the bedroom, or when required to cool and maintain the temperature of the bedroom for the health, safety and comfort of the residents in that bedroom.

Section 23.1(8) of O. Reg. 246/22 creates a new Administrative Monetary Penalty of $25,000 for licensees who have failed to comply with the air conditioning requirements for those licensees are not exempted. The new administrative penalty scheme for second or subsequent failures to comply with the new air conditioning requirements are also increased and set out in subsection 23.1(1) of O. Reg. 246/22 (second failure is $50,000, third failure is $75,000, fourth failure is $100,000 and each subsequent failure is $125,000).

In addition, it has been clarified that in situations where residents are exhibiting a skin condition that is likely to require or respond to nutritional intervention (*i.e.,* pressure injuries, foot ulcers, surgical wounds, burns, etc.), licensees shall ensure that the resident is assessed by a registered dietician. The licensee shall ensure that any changes that the registered dietician recommends to the resident's plan of care relating to nutrition and hydration are implemented.

Technical amendments

In the case of an imminent closure of a home where a resident has requested basic accommodation, a placement co-ordinator is now authorized to allow the temporary admission of a resident of a home into preferred accommodation where:

i. the resident's current home is facing a closure;
ii. the second home is one where the resident has applied for admission for basic accommodation only, but only preferred accommodation is available; and
iii. the resident/resident's substitute decision maker, if any, consents to the admission. If the resident is admitted to preferred accommodation, the licensee is eligible to charge the resident for preferred accommodation where: (a) the resident/substitute decision-maker, if any, refuses an offer to transfer to basic accommodation when available; or (b) the resident or substitute decision-maker, if any, makes the decision that the resident stay in preferred accommodation.

Takeaways

The regulatory changes continue to tighten operational standards and have financial implications for licensees. When these regulatory changes were first proposed in February 2023, the ministry estimated that the proposal would generate an estimated average direct compliance cost for licensees of approximately $15,900 per licensee in the first year of implementation, and $4,200 per year in subsequent years. The ministry estimated that the total direct compliance cost for all licensees across the province would be approximately $33.5 million over a ten-year period (approximately $53,000 per licensee over ten years). Of course, the financial implications will vary slightly depending on the existing infrastructure and staffing practices of each home.

BLG's Senior Living & Housing Group will continue to monitor the progress of the Act, and any further regulatory changes. If you have any questions or inquiries as to how the expert team at BLG can support your organization through this time of continued change, please reach out to your BLG lawyer, or any of the key contacts listed below.

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