



Hamilton

# INFORMATION REPORT

<b>TO:</b>	Chair and Members Emergency and Community Services Committee
<b>COMMITTEE DATE:</b>	January 19, 2023
<b>SUBJECT/REPORT NO:</b>	<i>Fixing Long-Term Care Act, 2021 (FLTCA) and Ontario Regulation 246/22 (HSC23008) (Wards 7 and 13)</i>
<b>WARD(S) AFFECTED:</b>	Wards 7 and 13
<b>PREPARED BY:</b>	Holly Odoardi (905) 546-2424 Ext. 1906
<b>SUBMITTED BY:</b>	Angela Burden General Manager Healthy and Safe Communities Department
<b>SIGNATURE:</b>	

## COUNCIL DIRECTION

Not applicable

## INFORMATION

Since 2019 there has been much focus and attention on Long-Term Care with significant efforts on public reports that focused both on the quality and safety of services provided to residents and supports for staff in the Long-Term Care sector across Ontario. The legislation, Fixing Long Term Care Act (FLTCA) 2021 and Ontario Regulation 246/22 have come into effect as a result, and have implications for the City of Hamilton as the operator of our two municipally-owned long term care homes, Macassa Lodge and Wentworth Lodge. Highlights of both are outlined in this report.

The FLTCA 2021 and Ontario Regulation 246/22 is the foundation for long-term care residents to receive better care, quality of care and enjoy a better quality of life by supporting the three pillars of the ministry’s plan to fix Long-Term Care:

- Staffing and care;
- Accountability, transparency, enforcement & penalties;
- Building modern, safe & comfortable homes for seniors

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Public reports that were used to inform the FLTCA 2021 and Ontario Regulations 246/22 include: Ontario's Long-Term Care COVID-19 Commission; Auditor General of Ontario's COVID-19 Preparedness and Management: Special Report of Pandemic Readiness and Response in Long-Term Care; Auditor General of Ontario's 2019 Annual Report: Food and Nutrition in Long-Term Care Homes; Public Inquiry into the Safety and Security of Residents in Long-Term Care Homes System (Gilliese Inquiry) and Auditor General of Ontario's 2015 Annual Report: Long-Term Care Home Quality Inspection Program.

Ontario's Bill 37, *Providing More Care, Protecting our Seniors, and Building More Beds Act, 2021*, repealed the *Long-Term Care Homes Act, 2007* and replaced it with the *Fixing Long-Term Care Act (FLTCA), 2021*, which received Royal Assent on December 9, 2021 and came into effect on April 11, 2022. The Ministry of Long-Term Care has taken a phased approach to regulation development and implementation. Phase 1 regulations came into force on April 11, 2022 and Phase 2 regulations were anticipated to be released in the fall of 2022 but have not yet been released.

### **Financial Impacts and Considerations**

The Ministry of Long-Term Care and Ontario Health West are the primary funding sources for Long-Term Care which is approximately 49% of the 2022 budget. The other funding sources for Macassa Lodge and Wentworth Lodge are the net levy at 26% and user fees of 25%, which includes accommodation revenue. Long-term care's portion of the overall Healthy and Safe Communities 2022 budget levy is 4%.

The new FLTCA 2021 and Ontario Regulation 246/22 includes a number of changes that will have financial implications for Long-Term Care Homes:

1. The FLTCA 2021 encompasses the provincial-level staffing plan with direct care targets embedded in its legislation. This legislation and regulations stipulate the requirement for minimum staffing levels for resident care and allied health services, which is an increase in previous staffing levels. The Long-Term Care Staffing Increase Funding Policy issued by the Ministry of Long-Term Care, specifies the terms of the funding commitments and covers the cost of the mandatory staffing increases.
2. The FLTCA 2021 and Ontario Regulation 246/22 mandates each long term care designate a number of new lead roles (Quality Lead and Infection Control Lead), and specifies workload and/or minimum number of hours per week that the designated lead must focus on specific activities. However there are no funding announcements or new funding sources to support these mandatory roles which has resulted in budget pressures for City of Hamilton's long term care division.

3. The FLTCA 2021 includes a number of Administrative Monetary Penalties for unmet legislative and regulatory obligations which were part of previous legislation and regulations but not enacted.

## **Highlights of the FLTCA**

### **Hours of Direct Care - Staffing**

Prior to the new FLTCA 2021, the baseline of the average hours of direct care was approximately 2 hours and 45 minutes per resident per day. The FLTCA 2021 established a Provincial target of 4 hours of direct care, per resident per day, to be provided by registered nurses, registered practical nurses, and personal support workers by March 31, 2025 and also established a Provincial target of 36 minutes per resident, per day for the direct care provided by allied health care professionals,

In October 2021, the MLTC released “Ontario’s Long-Term Care Staffing Plan (2021-2025). This plan focused on financial investments to increase direct care time for residents with both nursing hours and allied health professionals’ hours as well as the launch of the Supporting Professional Growth Fund. This staffing plan aligns with the new legislation and regulations which set out to address the chronic staffing shortages in the LTC sector and the government’s plan to fix long-term care.

### **Emergency Planning**

In response to the pandemic over the past two plus years, the FLTCA 2021 and Ontario Regulation 246/22 includes requirements to strengthen emergency and evacuation plans. All LTC Homes must ensure that all staff, students and volunteers are trained on the emergency plans during orientation and annually thereafter.

Some of the new expectations include: an expanded list of 13 emergencies that require a plan; to participate in enhanced consultation requirements including new requirements to consult with health service providers, Residents’ Councils, and Family Councils.

There are additional requirements related to outbreaks of communicable diseases, outbreaks of public health significance, epidemics and pandemics which include:

- Identifying an area of the home to be used for isolating residents as required;
- A process to cohort staff and residents;
- A process to manage symptomatic residents and staff;
- A process for an Outbreak Management Team and identifying members of the Team and their roles and responsibilities.

Emergency plans related to the loss of essential services, fires, situations involving a missing resident, medical emergencies, violent outbursts, gas leaks, natural disasters,

extreme weather events, boil water advisories, infectious diseases, including outbreaks, epidemics and pandemics, and floods must be tested annually. All other emergency plans must be tested once every three years and are required to keep a written record of the tests and include any resulting changes for quality or process improvement. All of the plans require consultation, attestation and public posting.

## **Palliative Care**

The palliative care requirements with the FLTCA 2021 and Ontario Regulations 246/22 reflect a shift in practice towards a broader, more holistic approach to palliative care that includes an early palliative care and end-of-life care plan. The palliative care requirements align with the Ontario Provincial Framework for Palliative Care, which sets out a vision for palliative care in Ontario. The Residents Bill of Rights under The FLTCA has added a new right that includes for every resident to be provided with care and services based on a palliative care philosophy.

The new Act requires a resident's plan of care to cover all aspects of care, including palliative care and requires that the residents are provided with care or services that integrate a palliative care philosophy. The regulation sets out that new palliative care requirements and requires all LTC Homes to ensure: the interdisciplinary assessment of a resident's palliative care needs for their plan of care; explanation of the palliative care options; palliative care options must be available and consent for any action is received.

## **Quality**

As part of the MLTC's plan to fix long-term care, the FLTCA 2021 and Ontario 246/22 Regulations place greater emphasis on resident quality of care, quality of life, and continuous improvement. All LTC Homes are required: to establish an interdisciplinary quality improvement committee; ensure the home's continuous quality improvement initiative is co-ordinated by a designated lead; prepare annual quality reports to provide updates on the continuous quality improvements and publicly post these annual reports. The quality improvement committees are to include at a minimum: Administrator, Director of Nursing, Medical Director, Designated Lead, Registered Dietitian, and a representative from Pharmacy, Nursing, Personal Support Worker, Resident Council and Family Council. The new FLTCA 2021 requires all LTC Homes to ensure that at least once every year a survey is taken of residents, their families and caregivers to provide feedback on their experience with the home and the care, services, programs and goods provided at the home.

## **New Compliance and Enforcement Tools**

The FLTCA 2021 includes new and strengthened compliance and enforcement tools that will hold long-term care Homes to account, improve enforcement and compliance,

and ensure residents are safe and well cared for. Administrative Monetary Penalties (AMP's) are a type of enforcement tool intended to encourage compliance and increase accountability for repeated non-compliance with the new FLTCA. With these AMP's now in place, the belief is that deterring non-compliance will lead to improved quality of life for residents. AMP's are to be paid either through non-government funding or the Other Accommodations envelope. AMP's will be included in the inspection reports completed by the MLTC inspectors which are publicly available.

There are three AMP amounts:

1. \$110,000 for specified instances of critical-risk non-compliance
2. \$5,500 for high-risk instances of non-compliance
3. \$1,100 for all other instances of non-compliance

These amounts would multiply if the Long-Term Care Home does not comply with the same section of the legislation that resulted in the initial AMP within a three-year period.

With the new FLTCA 2021 there has been increased fines for Offences. Maximum fines upon conviction have doubled since the previous legislation. If convicted an individual could face a fine to \$200,000 for the first offence and up to \$400,000 for a subsequent offence. If convicted a corporation could face a fine up to \$500,000 for a first offence and up to \$1,000,000 for a subsequent offence. The Ministry of Long-Term Care is expanding its capacity to investigate and lay charges under the FLTCA 2021.

## **Complaints**

All LTC Homes are required to post their Complaints Policy in area of the Home that is easily accessible for all, as well, to post the the Ministry of Long-Term Care's toll-free number for making complaints if individuals choose to call. The Complaints Policy is to be reviewed and shared at the time of new resident admissions. The FLTCA and Ontario Regulation 246/22 have updated the requirements with respect to complaints to include: the licensee must forward all complaints that allege harm or risk of harm to one or more residents, including but not limited to physical harm, immediately to the Director; and to provide contact information for Ministry's Long-Term Care Family Support and Action Line and for the Patient Ombudsman to the complainant in regards to a complaint.

## **Infection Prevention and Control**

The new Infection Prevention and Control (IPAC) Standard, mandates certain requirements that licensees must follow in respect to IPAC programs in Long-Term Care Homes across the province. The FLTCA 2021 is grounded in current evidence and best practice and builds on the previous requirements in the *Long-Term Care Homes Act, 2007*, related to IPAC, and also added new requirements, including:

- Additional training and education for designated IPAC leads;
- Certification for designated IPAC leads three years after the regulation comes into force;
- Minimum hours required of work per week on site for designated IPAC leads;
- A new requirement for a quality management program for IPAC;
- Additional personnel and resource assignments as may be required for the IPAC program;
- A requirement that the IPAC program is implemented in a manner consistent with the precautionary principle as set out in the standards and protocols issued by the Director under subsection 102(2) of the Regulation and the most current medical evidence, and
- The requirement that the licensee shall implement any standard or protocol issued by the Director with respect to infection prevention and control, which would include the Standard. The Standard will be updated and amended regularly as new evidence or best practices emerge by the MLTC Director.

### **Screening Measures**

The FLTCA 2021 and Ontario Regulation 246/22 introduces enhanced screening requirements for staff, volunteers, and members of the licensee's board of directors, its board of management or committee of management or other governing structure and within City Council (for municipally operated LTC homes).

The FLTCA 2021 and Ontario Regulation 246/22 prohibits the hiring of staff, accepting volunteers, and in a municipally operated Home, the Councillors, if they have been convicted of prescribed offenses or found guilty of an act of professional misconduct. An employee, volunteer or Councillor who becomes aware of any charge, order, conviction commencement of a proceeding or a finding of guilt related shall promptly complete an Offence Declaration Form as stipulated in the FLTCA 2021 and Ontario Regulation 246/22.

The previous *Long-Term Care Homes Act 2007* had the requirement for all staff and volunteers to have police checks. With the new FLTCA, for municipal Homes, this requirement extends to Councillors who will become a member of the governing structure as a result of their election under the *Municipal Elections Act, 1996*. According to the FLTCA, that person must provide a police record check as required that was conducted no earlier than six months prior to the date their term of office begins and must be a criminal record check.

The leadership teams at Macassa and Wentworth Lodges have been working diligently to update policies and procedures, provide updated education to front line team members, and engage staff, Resident Councils and Family Councils on the FLTCA and Ontario Regulation 246/22.

Staff will continue to bring forward reports to Emergency and Community Services Committee to provide updates and/or requests to meet the mandatory requirements of the FLTCA 2021 and Ontario Regulation 246/22.

**APPENDICES AND SCHEDULES ATTACHED**

None