
REPORT TITLE: **Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22**

FROM: Nancy Polsinelli, Commissioner of Health Services

RECOMMENDATION

1. That, to meet specific requirements set out in the new *Fixing Long Term Care Act, 2021 (FLTCA)*, five temporary staff resources for a 13-month contract at a cost of \$586,000 for the contract term to be funded by the Tax Rate Stabilization reserve in 2022/23 be approved; and,
2. That four permanent Full Time Equivalent (FTE) staff resources with a net cost of \$475,000 and the 2022 portion of \$237,000 to be funded from the Tax Rate Stabilization reserve, be approved; and,
3. That the net cost of \$475,000 for the aforementioned permanent FTE staff resources be included in the 2023 Regional Budget; and,
4. That two temporary staff resources for a period of 24 months to support the implementation and execution of regulatory changes across the Division at an estimated cost of \$230 thousand funded from the Tax Rate Stabilization reserve, be approved; and,
5. That the implementation plan for the increased four hours of daily direct care and additional 80 FTE staff resources between 2022-2024 be endorsed with no net tax impact to the Region of Peel; and,
6. That 4.10 FTE staff resources with an annual net tax levy impact of \$33,000 (gross cost of \$392,000) be approved in 2022 to fill the gap toward the provincial target of 36 minutes per resident per day of allied health professional services; and,
7. That the Regional Chair, on behalf of Regional Council, write a letter to advocate for increased permanent funding to support implementation of the legislative and operational changes outlined in the *FLTCA* to the Minister of Long Term Care, Minister of Health, and the local MPP's.

REPORT HIGHLIGHTS

- On April 11, 2022, the *Fixing Long-Term Care Act, 2021 ("Act")* and Ontario Regulation 246/22 replaced the previous *Long-Term Care Homes Act, 2007 (LTCHA)* and Ontario Regulation 79/10 as the governing legislation for long-term care (LTC) in Ontario.
- Implementation of the new *Act* and regulations will occur through a phased approach between 2022-23 to support implementation and strengthen LTC service delivery with a

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

focus on protecting residents' experience and quality of life. These changes largely focus on measures to improve staffing and accountability.

- Implementation of the new legislative changes will have important operational impacts for the Region of Peel's LTC service delivery, policies and procedures with some measures that began immediately on April 11, 2022, and with other measures being implemented in a phased approach over the next 12 months (into April 2023).
- While the changes in the *Act* and regulations are extensive, as detailed in Appendix II, there are several notable areas with the greatest operational impact for the Region including changes to screening requirements for staff and Regional Council, staffing requirements and increases to support direct hours of care, changes to compliance and enforcement, infection prevention and control (IPAC) measures, quality improvement requirements and requirements for medical directors.
- New staffing resources are among the most notable impacts to the Region of Peel (Region) as new requirements and regulations are operationalized. Additional staff will be required to improve quality management, infection prevention and control measures, and staff education.
- Increases to direct care staffing hours to meet the provincial target of 4 hours of care by nursing staff and targets for the average number of hours of direct care for residents by allied health care professionals are also outlined in the new *Act*. Changes to staffing requirements were previously announced by the Ministry of Long Term Care (MLTC), and the Region has planned for phased increases to staffing levels to support these requirements between 2022-2024/25 as mandated.
- While the MLTC has estimated annual costs to comply with regulatory changes, AdvantAge Ontario and LTC sector partners have highlighted that compliance costs are far greater than those presented by the Ministry. As a result, staff will continue to work closely with AdvantAge and other sector partners to advocate for more accurate and complete costing estimates from the MLTC and for the allocation of adequate funding to support LTC homes with implementation of the new legislative requirements.
- Staff will bring forward additional operational and resource requirements for inclusion in future budget deliberations as implementation of the new requirements in the *Act* and regulations proceeds.

DISCUSSION

1. Background

a) New Legislation Governing Long Term Care: *Fixing Long Term Care Act, 2021*

On April 1st, 2022, the MLTC released the final version of the new regulations under the *Fixing Long-Term Care Act, 2021*. The new legislation and accompanying regulation 246/22 came into force on April 11, 2022.

The new *Act* and its regulations lay the foundation for long-term care residents to receive better 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:

- improving staffing and care;
- protecting residents through better accountability, enforcement, and transparency; and,
- building modern, safe, comfortable homes for residents.

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

A comprehensive review of the draft legislation and regulations with its new mandates and requirements was completed by staff and submissions to the MLTC were made setting out concerns and suggestions related to the implications for the Region's own delivery of long-term care services. Regional recommendations centred on stronger commitment to emotion-based models of care, enhanced infection prevention and control practices and continuous quality improvement. Input on the draft regulations were completed and formally submitted to the MLTC on February 17, 2022 (see Appendix I).

b) Key Regulatory Changes Impacting LTC Service Delivery

Considering the transformative nature of the new legislative framework for LTC and the ongoing impacts of the pandemic, the Ministry is undertaking a phased approach to the rollout of regulatory changes from 0-12 months.

Appendix II summarizes key regulatory changes and outlines new requirements as well as the Ministry-defined timelines for their implementation within LTC homes. While the LTC sector works to better understand and operationalize the new regulatory requirements, staff have begun an in-depth analysis of these new requirements, as well as any compliance and cost implications from the new legislation and regulations.

Priority areas include updates to Residents' Bill of Rights, compliance and enforcement requirements, complaints, whistle blower protection, visitor and caregiver policy, infection prevention and control, building infrastructure, emergency planning, menu planning, quality improvement, communications, annual physical exam requirements, requirements for medical directors, palliative care, screening requirements including police checks for members of governing structures, and minimum staffing hours and qualifications.

While there are several important changes, those that are identified at this time with the greatest impact to regional service delivery include:

i. Changes to Screening Requirements

Updated screening measures now include police record checks and signed declarations for LTC staff and members of the governing structure, which in the Region's case, includes:

- A police check for present Regional Councillors within 6 months of the date the *Act* came into force i.e. before October 11, 2022;
- A statutory declaration related to any previous convictions for specified offences must be made by most staff, including Regional Councillors. This requirement does not apply to municipal Councillors if their term of office ends on November 14, 2022;
- All newly elected members of Council as of the 2022 election, who will serve as the board (committee) of management of the Region's five LTC homes, must have a police check conducted either no more than six months before appointment or within one month of the date of their appointment; and,

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

- All newly elected members must sign the statutory declaration regarding any qualifying offences etc. before their appointment.

Present Councillors will be forwarded instructions for the completion of police checks, which must be completed by October 11, 2022. New Councillors for the 2022-2026 term will be given instructions for completion of police checks and signed declarations prior to their appointment at inauguration. An action plan detailing screening requirements, process, and timelines pertaining to screening measures to bring the Region's Committee of Management members into compliance is being developed and will be shared upon completion.

ii. Increases in Direct Hours of Care

The new legislation increases the hours of direct care provided by registered nurses (RNs), registered practical nurses (RPNs) and personal support workers (PSWs) from the provincial average of two hours and 45 minutes per resident, per day (based on 2018 data) to a provincial average of four hours per resident, per day by March 31, 2025. Hours for direct care by allied health professionals (e.g. physiotherapist, activation staff, dietitians etc.) has been increased to 36 minutes per resident per day.

See Appendix IV table 1 and 2 for the Region of Peel's staffing needs by year to meet the Ministry's target for direct care and allied health professionals. It is expected that the Ministry funding will be sufficient to cover anticipated costs. As Long-Term Care is required to meet the Ministry's targets, it is recommended Council endorse the implementation plan for the increased hours of direct care and additional FTE resources to implement these changes.

iii. Compliance and Enforcement

The *Act* includes new and strengthened compliance and enforcement tools which will be used as part of the MLTC inspection program. If an Inspector or the MLTC Director finds non-compliance, they take into account the scope and severity of the non-compliance, and the compliance history of a licensee to determine the appropriate compliance action(s).

New actions and tools include remedied non-compliance for low-risk instances of non-compliance during inspections and increased fines for certain offences and license suspensions. Tools can also include compliance orders, written notifications, orders requiring management and investigations. In the event that an LTC home has their license suspended, the Ministry can take over the operations of a home.

The *Act* also sets out that the MLTC Director or an inspector can issue an administrative monetary penalty if the licensee has not complied with a requirement or compliance order under the FLTCA. The regulations set out how and when administrative monetary penalties will be administered, along with a table setting out specific monetary amounts (see Appendix III).

Failure to comply to the *Act* may result in non-compliance, written notifications, compliance order, and/or administrative monetary penalties for repeat non-compliance. Under the new regulations associated fines with these areas of non-compliance range from \$5,500, up to \$11,000 . If convicted for an offence under the

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

Act, an individual LTC home administrator can face a fine of up to \$200,000 for the first offence and up to \$400,000 for a subsequent offence. If convicted, a corporation could face a fine of up to \$500,000 for a first offence and a fine of up to \$1,000,000 for a subsequent offence. These penalties are a type of enforcement tool intended to encourage compliance and increase accountability for repeated non-compliance.

iv. Infection Prevention and Control (IPAC)

The new legislation outlines additional requirements for required training and education for designated IPAC leads and outlines specific requirements around minimum hours of IPAC oversight and quality management of IPAC.

While the Region has 2.5 FTE in the approved budget for IPAC, this is not adequate to meet the required minimum hours. As a result, additional staffing resources will be needed to meet these requirements (as noted below).

v. Quality Improvement

The new legislation sets out requirements for LTC homes to establish an interdisciplinary quality improvement program, report on and develop continuous quality improvement initiatives coordinated by a designated lead who will support and enhance current Continuous Quality Improvement (CQI) initiatives, monitor progress, and prepare interim/annual reports for each home. The new regulations also outline requirements for a continuous quality improvement committee to monitor and report on quality improvement efforts. These changes will require dedicated staff supports (outlined below) and updates to CQI policies and procedures to meet these requirements.

vi. Medical Directors

The new legislation outlines additional requirements for the medical director role, identifying new responsibilities, training requirements, and minimum onsite hours to improve the oversight of medical care and services within LTC. These changes may result in the need for increased compensation for LTC medical directors.

c) Advocacy to Support Increased Funding

The estimated costs associated with Ontario Regulation 246/22 are primarily operational and administrative in nature. While the Ministry's total estimated annual available funding for the homes to comply with the regulatory changes is between \$20M to \$23.8M, or approximately \$38K on average for each long-term care home per annum AdvantAge Ontario (the provincial association representing community-based not-for-profit provider of long-term care, community services and housing for seniors), estimates that the cost per home is significantly higher than the Ministry's estimate. Based on their analysis, complying with the new regulatory changes will approximately cost each home \$590-650K per home, per year.

At this time, the Ministry has only announced \$20 million in one-time funding to retain and hire IPAC professionals, which is not sufficient for the IPAC requirements alone. In addition, the Province has also committed to investing over \$40 million in additional nutritional support funding for long-term care homes so residents can receive more

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

individualized food choices, more fresh produce and local foods in season, and additional menu flexibility.

In response, the Region of Peel had recommended through the Regulatory Registry that, the MLTC should engage the LTC sector in a comprehensive cost and benefit analysis of operationalizing changes outlined within regulations.

Together with AdvantAge Ontario and other LTC sector partners, the Region will work collaboratively to advocate to the MLTC to complete a more accurate and complete costing estimate, to ensure that adequate funding is allocated to each home to support implementation of the new legislative requirements.

2. Next Steps

While the Region's Long Term Care division has begun to review and analyze implications from the new legislation and regulatory framework, the work to support its implementation on the ground will require a specific skill set and level of expertise to offer dedicated support. A temporary team will be secured to develop an action plan and work with the LTC division to operationalize all requirements across the Region's five LTC homes.

To ensure compliance and sustainability of these new provisions, policies are being revised in a phased approach. Currently staff are conducting a comparative analysis of specific programs and policies with legislative requirements of the *Act* and O. Reg. 246/22 to identify gaps and opportunities for revisions. This analysis will help to determine key operational and financial impacts from the regulations, relevant policies, action plans for implementation, roles and responsibilities and status updates.

Education and staff training of revised/new programs and policies will be conducted to build awareness for staff, residents, families and visitors of any new or revised standards and practices.

To support implementation, compliance, and ongoing improvements to resident quality of life, staff will continue working with sector partners including AdvantAge and the Association of Municipalities of Ontario on coordinated advocacy efforts for funding, further considerations for Council screening requirements, and other related priorities i.e. emotion-based care. As implementation of the new requirements in the *Act* and regulations proceeds, staff will continue to bring timely status updates to Council.

RISK CONSIDERATIONS

Due to the ongoing implications of the COVID-19 pandemic such as increased workload, staff burnout, availability and capacity, there is a risk that timelines to implement new legislative changes may be impacted. For example, the new regulations require that every licensee of a long-term care home shall ensure that, on or before June 22, 2022, all resident bedrooms are served by air conditioning. The Region of Peel has been provided with an extension until the end of July to achieve this requirement. There is a risk that this extended deadline may not be met and the Region of Peel may require an additional extension.

Additionally, due to the enhanced screening requirements for staff, volunteers, and members of the licensee's board of directors (Regional Council), its board of management, or committee of

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

management or other governing structure, support from the Union is needed to help mitigate risk of grievances and arbitration if staff do not support the new requirements.

Cooperation from councillors, as the committee of management, will require a police check and signed declaration, to prevent the risk of the Region being found in non-compliance with penalties possible. Furthermore, without the dedicated resources and expertise to support the implementation of the new regulatory changes, there is a risk that compliance requirements may not be met in a timely manner.

FINANCIAL IMPLICATIONS

The following key financial implications will result from the new legislative changes:

1. **Fixing Long Term Care Act Staffing Requirements:** Five temporary staff will be required for a 13-month contract for quality improvement initiatives and four permanent FTEs will be required for IPAC (2.5 FTE) and education initiatives (1.5 FTE). The cost for temporary staff will amount to \$586,000 for the contract term to be funded by the Tax Rate Stabilization reserve in 2022/23. The total annual net tax impact for four FTE is estimated to be \$475,000 and will be included in the 2023 base budget if approved. The cost for the remainder 2022 will be \$237,000 and will be funded from the Tax Rate Stabilization reserve. The inclusion of these staff in the 2023 Budget will have a net tax impact of \$475,000.

Additionally, two temporary staff are required to support the implementation and execution of the new legislative changes across the homes for a 24-month period. The estimated costs for the two temporary staff are estimated at \$230,000 to be funded from the Tax Rate Stabilization reserve.

2. **4 Hours of Direct Care:** As assessed in Appendix IV, a total of 80 FTE are required by 2024 (5.12 FTE in 2022, 37.54 FTE in 2023, 37.34 FTE in 2024). The annual cost of the 5.12 FTE is estimated at \$460,000 with the cost for the remainder of 2022 at \$230,000. The estimated costs for the staffing are \$3.76 million and \$3.83 million for 2023 and 2024 respectively and will be included in the annual operating budgeting process for those budget years. The incremental staffing costs are expected to be fully covered by the calculated provincial funding. There is a risk that the funding received may differ from the calculations based on provincial high-level announcements, any funding gap will need to be covered by the net tax levy.
3. **Allied Health Professionals Direct Care Hours:** As assessed in Appendix IV, a total of 4.10 FTE are required by 2022 to reach the provincial target of 36 minutes by 2022/23. The incremental annual staffing costs are estimated to be \$392,000 with annual funding estimated at \$358,000. This will leave a funding shortfall and net tax levy impact of \$33,000. For 2022, there is no net impact as the \$358,000 in funding already received exceeds the cost of the staffing for the remainder of the year. There is a risk that the funding received may differ from the calculations based on provincial high-level announcements.
4. **Supporting Professional Growth Fund** – An amount of \$187,776 is expected annually as part of 4 hours of care monthly funding payments which will be used to backfill the staff training hours. The funding is anticipated to fully cover the backfill costs with no cost to the Region.

Ontario's Fixing Long-Term Care Act, 2021 and Ontario Regulation 246/22

APPENDICES

Appendix I –Region of Peel Submission to the Regulatory Registry: FLTCA Regulations Phase I

Appendix II –Summary of Key Regulatory Changes under the *Fixing Long Term Care Act, 2021* and Timelines for Implementation

Appendix III –LTC Administrative Monetary Penalties

Appendix IV- Comparison of Regional Staffing Against Provincial Staffing Targets and Recommendation

Authored By: Navreen Chohan, Advisor, Long-Term Care and Niyati Salker, Advisor, Strategic Policy and Performance Division



Nancy Polsinelli, Commissioner of Health Services