
HALDIMAND COUNTY

Report GVL-02-2022 New Long-Term Care Legislation

For Consideration by Council in Committee on June 21, 2022



OBJECTIVE:

To advise Council of the recent changes to long-term care legislation and the impact that the changes will have on the operations of Grandview Lodge.

RECOMMENDATIONS:

1. THAT Report GVL-02-2022 New Long-Term Care Legislation be received.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

In Ontario, long-term care homes are regulated and funded by the provincial government, specifically the Ministry of Long-Term Care. Each home is granted a license to operate by the provincial government. Homes are required to follow specified legislation. Ontario has one of the most stringent pieces of long-term care home legislation in the world.

On April 11, 2022, The Fixing Long-Term Care Act, 2021 (FLTCA) was proclaimed into force to regulate Ontario's long-term care sector, replacing the Long Term Care Homes Act, 2007 (LTCHA) and associated regulations. The new Act also includes a new regulation, Regulation 246/22.

The new Act lays the foundation for long-term care residents to receive improved quality of care by supporting three pillars.

- Staffing and care
- Accountability, transparency, enforcement and licensing
- Building modern, safe, comfortable homes for residents

BACKGROUND:

Since 2019, there have been a number of public reports that focused on the quality and safety of services provided in long-term care homes; The Gillese Public Inquiry, Auditor's Food and Nutrition Report, and The Auditor General of Ontario COVID-19 Preparedness and Management. These reports led to a complete overview of the Long-Term Care Homes Act 2007, and provided recommendations to improve the quality of life for residents living in long-term care homes. On December 9, 2021, Ontario's Bill 37, Providing More Care, Protecting our Seniors, and Building More Beds Act, 2021 received royal assent. Bill 37 repealed the Long-Term Care Homes Act, 2007 and replaced it with the Fixing Long Term Care Act (FLTCA), 2021 as of April 11, 2022.

ANALYSIS:

The implementation of the FLTCA and O.Reg 246/22 is complex and resource-intensive. Many of the new and enhanced requirements set out in the FLTCA and its regulations are already in effect while others have been assigned a delayed enforcement date to allow homes time to implement the changes.

The table below outlines the key changes in provisions under the FLTCA and is intended to be a summary. Several source documents are included in the reference section and provide a complete description of the legislated requirements. Some of the key areas impacting the County are expanded on below the table. Overall, the FLTCA generally maintains many of the existing obligations of long term care homes from the previous legislation, including the requirement for various operational aspects such as recreational and social activities, religious and spiritual practices, housekeeping services, volunteer programs, and an infection prevention and control program. The changes in the FLTCA can be categorized into accountability and transparency, staffing and care, and compliance and enforcement.

NEW or ENHANCED REQUIREMENTS

Compliance and Enforcement	<ul style="list-style-type: none">• New compliance and enforcement tools• Opportunity to remedy non-compliance during inspection, if minimal risk of harm (non-compliance still documented)• Inspectors and Director may issue Administrative Monetary Penalties (AMPs) for non-compliance
Resident Bill of Rights	<ul style="list-style-type: none">• Additions and changes, including palliative care and support from caregivers
Mission Statement	<ul style="list-style-type: none">• 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
Complaints	<ul style="list-style-type: none">• Homes must post a complaint procedure in a conspicuous area of the home and provide it to all new admissions.• There are a number of updated requirements with respect to the complaint process including the requirement for documented records of all complaints towards the home or about resident care.• Complaints alleging harm or risk of harm to a resident must be forwarded immediately to the Director along with the documented record
Critical Incidents	<ul style="list-style-type: none">• Immediately inform Director of Emergencies (including fire, unplanned evacuation and intake of evacuees)
Whistle-Blowing	<ul style="list-style-type: none">• Protections against retaliation now apply to any disclosures made to resident and family councils and any other personnel of the ministry (there are already protections with respect to reports to inspectors and Director)

Caregivers	<ul style="list-style-type: none"> • Definition of caregiver • Caregiver must be included in experience survey • Infection Protection and Control (IPAC) education required • Access during pandemic and outbreaks • Emergency Plan communication requirements
Visitor Policy	<ul style="list-style-type: none"> • Visitor Policy required and minimum required content set out • Required information for residents • Visitor log to be maintained for 30 days
Medical Director	<ul style="list-style-type: none"> • New responsibility re: oversight of resident clinical care • Required content in written agreement
Screening and Declarations of Staff, Volunteers, Director and Board of Management	<ul style="list-style-type: none"> • Additional offences subject to screening • Police checks for staff and volunteers hired during pandemic required within 3 months of April 11 • New screening requirements for directors and members of committee or board of management, including elected officials (delayed implementation) • Limitation period for screening for certain charges and convictions (5 years back)
Staff and Volunteer Records	<ul style="list-style-type: none"> • Additional content relating to screening records • Records for volunteers and board members who have responsibilities at more than one home must be kept at each home
Staff Orientation and Retraining	<ul style="list-style-type: none"> • Additional training for staff in IPAC, including signs and symptoms of infectious diseases, respiratory etiquette, what to do if experiencing symptoms of infectious disease, use of personal protective equipment including appropriate donning and doffing, handling and disposing of biological and clinical waste including used personal protective equipment
Volunteer Orientation	<ul style="list-style-type: none"> • IPAC training to include modes of infection transmission
Communications Equipment	<ul style="list-style-type: none"> • Every licensee of a long-term care home shall ensure that the home has access to reliable communications equipment, including for the purpose of obtaining emergency assistance, at all times, including in the event of a power outage
Infection Prevention and Control (IPAC)	<ul style="list-style-type: none"> • New IPAC Standard • Several new requirements which are outlined in Standard • The Standard is in effect now, with some exceptions, e.g. IPAC lead certification, IPAC lead training and education; minimum on-site hours for IPAC lead

Direct Hours of Care - Personal Support Workers, Registered Practical Nurses and Registered Nurses	<ul style="list-style-type: none"> • The target is for an average of four hours of direct care to be provided per resident per day • The target must be achieved no later than March 31, 2025, and once achieved, shall continue at that level • 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. (Provincial average)
Direct Hours of Care - Allied Health Care Professionals	<ul style="list-style-type: none"> • The target for the average number of hours of direct care to residents to be provided by allied health care professionals 36 minutes of direct care to be provided per resident per day. • The target must be achieved no later than March 31, 2023, and, once achieved, shall continue at that level • 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. Provincial average)
Emergency Preparedness	<ul style="list-style-type: none"> • Strengthened emergency and evacuation plans for homes • Expanded definition of emergencies • Requires updates to website information for the home • If current emergency plan complies with previous LTCHA, home is deemed to meet requirements under FLTCA for 3 months, after which must meet new emergency plan requirements
Palliative Care	<ul style="list-style-type: none"> • End-of-life care in effect now • Additional palliative care requirements in effect in 6 months • New requirements align with a more holistic approach to palliative care and require an explanation of palliative care options be provided to each resident or Power of Attorney
Quality	<ul style="list-style-type: none"> • Requirement of designated lead • Updated committee composition requirements • Publicly posted CQI reports

Staff continue to work with our professional associations and the Ministry of Long-term Care to clarify the ministry's expectations related to some of the above changes. Some of the more notable changes within the new legislation are the requirements related to five key areas which are explained in detail below:

1. Compliance & Enforcement
2. Enhanced Screening Measures for Board of Directors (Council)
3. Direct Hours of Care Target
4. Emergency Planning
5. Infection Prevention and Control (IPAC)

Compliance & Enforcement

The FLTCA has strengthened the tools for compliance and enforcement to improve resident care and safety. These tools will be used as part of the Ministry's Inspection Program and include:

- Remedied Non-Compliance (NEW)
- Written Notifications
- Compliance Orders (Updated)
- Administrative Monetary Penalties (NEW)
- Order Requiring Management (Updated)
- Increased Fines for Offences (NEW)
- Investigations
- Licence Suspension and Supervisor (NEW)

Remedied Non-Compliance

- Inspectors may address very low risk instances of non-compliance during an inspection without having to take further compliance action.
- This tool can only be used when a licensee is able to demonstrate they have remedied the non-compliance during the inspection and the inspector is satisfied the non-compliance caused no harm.

Written Notifications

- Written notifications communicate a finding of non-compliance. Previously, inspectors could issue a voluntary plan of correction to the home related to a specific issue and at the next inspection, follow up on that issue. If the issue remained unresolved, the inspector could issue a non-compliance order. Under the new legislation inspectors are no longer able to issue a voluntary plan of correction as a possible compliance action and instead may issue an immediate monetary penalty associated with the written notification.

Compliance Orders

- When there is a non-compliance finding the inspector may issue an order that requires the home to do anything or refrain from doing anything to achieve compliance with FLTCA.
- The home must prepare, submit, and implement a written plan for achieving compliance with timing at the discretion of the inspector.
- There are also two new areas of the compliance order that may include direction by the inspector for the homes to:
 - Arrange for specific staff to receive training.
 - Allow the Ministry to perform any work or activity at the licensee's expense.
- Administrative Monetary Penalties (AMP) An AMP is a civil penalty imposed by a regulator for a contravention of an Act, regulation or by-law. It is used upon discovery of an unlawful event (i.e. noncompliance), and is due and payable subject only to any rights of review that may be available under the AMP's implementing scheme.
- The AMP framework is set out in legislation and regulation and is intended to incent compliance with legislative and regulatory requirements. These monetary sanctions for non-compliance are

not to exceed \$250,000. During a follow-up inspection a fee for re-inspection may be charged (estimated at approximately \$500). Penalties are to be paid to the Minister of Finance.

- An AMP would be issued against a licensee for each non-compliance with an order where that non-compliance is re-issued on a follow-up inspection, which results in a further order. When a licensee returns to compliance, an AMP would not be issued.
- An AMP must be issued within 2 years after the day the inspector came to know about the most recent failure to comply.
- A licensee issued an AMP may request the Director to review the order or notice of an AMP in writing, within 28 days from the day the order or notice was served, under the review and appeal provisions.
- All the requirements in the LTCHA and its Regulation have been assigned a specific AMP amount with three specific penalty amounts identified based on the severity of the non-compliance which are \$1,100, \$5,500 and \$11,000 for the most serious non-compliances.

In the past ten (10) years Grandview Lodge has received one finding of non-compliance that staff believe would meet the criteria for an AMP to be issued.

Order Requiring Management

- The FLTCA may order a licensee to retain a temporary manager to assist in the management of the home if they determine that there are circumstances that are harmful to the health, safety, or welfare of residents or if there is an emergency situation.
- A temporary manager may also be brought into the home to manage the entire operations of the home at the cost to the home.

Investigations

- The Ministry is expanding its capacity to investigate and lay charges for offenses under the FLTCA, where applicable.
- Breach of an offence provision may lead to a Ministry investigation and subsequent prosecution.
- The Act identifies offences.
 - Failing to protect residents from abuse and neglect. This offence applies to licensees.
 - Providing false information in a report to the director. This offence applies to "every person", which includes corporations and individuals.
 - Failing to make a mandatory report to the Director (relating to suspected abuse or neglect of a resident or other matter set out in the FLTCA). This offence applies to licensees, a manager of the home under a management contract, officers and directors of the license or manager, members of Council, staff members of the home, and any person providing professional health or social work services to the licensee or to a resident.
 - Suppressing mandatory reports to the Director. Individuals convicted under this section are not liable to imprisonment but are liable to a fine of not more than \$200,000 for the first or any subsequent offence. This offence applies to licensees, a manager of the home under a management contract, officers and directors of the license or manager, members of Council, and staff members of the home.
 - Violating whistle-blowing protections, including protections against retaliation against residents and other persons for making disclosures to an inspector or the Director or a Residents' Council. The offences related to discouraging reporting, and encouraging failure to report, apply to licensees, a manager of the home under a management contract, officers and directors of the license or manager, members of Council, and staff members of the home. The offences relating to retaliation generally and retaliation against residents apply to "persons", which includes corporations and individuals.

- Preventing a person from providing information to an inspector or the Director where the provision of the information is required or permitted by the FLTCA. This offence applies to "every person", which includes corporations and individuals.
- Failing to ensure the licensee complies with the LTCHA. This offence applies to officers and directors of licensee corporations and members of Council
- Operating a long-term care home without a licence. This offence applies to a "person", which includes corporations and individuals.
- Obstructing an inspection. This offence applies to "every person", which includes corporations and individuals.
- Failing to comply with an order of an inspector or the Director. This offence applies to "every person" who is subject to an order and would include corporations and individuals.
- Operating a place that is not a long-term care home and describing it as a "long-term care home" or "nursing home", "home for the aged" or by a term that may cause confusion with one of those terms. This offence applies to "every person", which includes corporations and individuals.

Increased Fines for Offences

- Current fines have doubled; if convicted an individual could face a fine up to \$200,000 for 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.
- A reduction in penalties for directors and officers of non-profit, municipal, and First Nation homes, who are convicted of the offence of failing to ensure the licensee complies with the requirements of the FLTCA (fine not more than \$4,000). The reduction only applies to this specific offense.

License Suspension and Supervisor Appointment

- The Minister of LTC or the Director may suspend a license and appoint a LTC Supervisor to take over operations of the home.
- The appointment of a Supervisor will allow the ministry full control of the home until suspension is lifted, the license expires or is revoked.

In summary of the above technical details related to compliance, the new legislation has increased potential penalties to long-term care homes for offences under the FLTCA: up to \$1,000,000 for a corporation engaging in multiple offences. There are also administrative penalties of up to \$250,000 for noncompliance under the FLTCA, and powers to suspend or revoke licenses or place a home under management by the Ministry. Grandview Lodge will continue to train and educate staff in all necessary areas of compliance to ensure risk to the organization is mitigated and the appropriate level of care to residents is provided.

Enhanced Screening Measures for Board of Directors (Council)

Section 256 of O.Reg 246/22 requires members of the home's governing structure (members of Council), as a result of their election under the Municipal Elections Act, 1996, to provide a satisfactory police record check within a designated timeframe and imposes restrictions for anyone with previous offenses against a vulnerable sector. This is not something that is currently required for Haldimand County Council members. Staff are currently working with the Clerk to investigate ways to achieve this requirement, in consultation with the Ministry of Municipal Affairs.

Direct Hours of Care Target

This enhancement within the new legislation was addressed by Council in a previous report in December, 2021. It incorporated a phased-in increase to the direct care hours per resident per day, over a period of four years. The impact is increased staffing requirements in the home, funded by the provincial government. Staff continue to work on implementing the targeted staffing plan to meet the increased hours of care requirement. Recruitment continues to be challenging in an already overburdened sector with significant staffing shortages.

Emergency Planning

Every Licensee must record emergency plans in writing, make plans available on its website and make physical copies available upon request.

In updating the plan staff must consult with local entities that may be involved in or provide emergency services to the home, the local Medical Officer of Health, the Infection Prevention and Control Lead as well as Residents' Council and Family Council.

The types of emergencies that the home must ensure the emergency plan provides for has been expanded to include but is not limited to, outbreaks of communicable diseases, gas leaks, natural disasters and extreme weather events, boil water advisories and floods.

Additional requirements related to outbreaks of communicable diseases, outbreaks of a disease of public health significance, epidemics and pandemics include,

- Identifying and area of the home to be used for isolating residents as required
- A process to divide staff and residents into co-horts as required
- Staffing contingency plans during an emergency for all programs required under the new legislation and regulations
- Policies to manage staff who may be exposed to an infectious disease
- 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.

Additional requirements to be included in the emergency plan include,

- The plan activation section must clearly state how the plan is activated and deactivated
- Requirements specific to resourcing supplies, personal protective equipment (PPE) and equipment for the emergency response, as well as a process to ensure that required items have not expired
- A plan for food, fluid and drug provision in an emergency
- Identification of emergency service providers roles and responsibilities
- Evacuation plan including safe evacuation location, transportation of residents and critical medications, supplies and equipment to evacuation location
- A communications plan to ensure frequent and ongoing communication throughout the emergency
- A plan to support those experiencing distress during the emergency
- The plan must address recovery from an emergency, including a debriefing period for Residents, staff and stakeholders and how to restore normal operations in the home

An annual attestation indicating to compliance with section 90 of the FLTCA must be completed by the home's administrator and submitted to the Director annually.

Additionally, staff must conduct a planned evacuation at least once every three years and keep a record of the test and any changes made to improve the plan. Grandview Lodge has an existing plan in place

and is currently working to revise it in accordance with the new legislation. Additionally, Grandview Lodge conducts drills and home evacuations related to fire emergencies but will be elevating that plan to comply with the new emergency management requirements.

Infection Prevention and Control (IPAC)

The new legislation builds on existing requirements related to IPAC and also added new requirements including:

- Additional required training and education for designated IPAC leads
- Certification for designated IPAC leads three years after the regulation comes into force
- Minimum required hours of work per week on site for IPAC leads
- A requirement for a quality management program for IPAC
- A requirement that the IPAC program is implemented in a manner consistent with the precautionary principal 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
- The requirement that the licensee shall implement any standard or protocol issued by the Director with respect to IPAC which would include the *Infection Prevention and Control Standard*

Infection Prevention and Control

The main sections of the IPAC Standard include

- IPAC Program
- IPAC Resources
- Surveillance
- Outbreak Preparedness and Management
- IPAC Policies and Procedures
- PPE
- Training and Education
- Evaluation and Quality Improvement
- Routine Practices and Additional Precautions
- Hand Hygiene Program
- Immunization and Screening

This IPAC Standard will be updated and amended regularly as new evidence or best practices emerge.

Grandview Lodge is currently very close to meeting all of the new IPAC requirements and will continue to work towards full compliance of the new requirements.

Most of the changes outlined above will require varying degrees of training and education to specific staff groups, development of new policies or procedures and/or additional communication with staff, family members and residents. As we continue to learn the impact of changes through ongoing review, clarification and implementation of the new legislation and associated regulations, staff will report back to Council if necessary to outline other significant changes that may need to be communicated.

FINANCIAL/LEGAL IMPLICATIONS:

There are no actual budgetary increases to either the Operational Budget or Capital Budget associated with the legislated changes however there is a potential financial impact to Haldimand County should Grandview Lodge receive an issuance of non-compliance that meets the criteria for issuance of an Administrative Monetary Penalty (AMP), outlined above.

STAKEHOLDER IMPACTS:

The new legislation is intended to positively impact residents in long term care by providing improved care requirements and care options and imposing more transparency and accountability onto homes. The legislation directly impacts all homes regardless of whether they are private, not-for-profit, municipal, etc.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

1. [Further details related to AMPs may be found in O.Reg 246/22: GENERAL, Section 349, pages 161 – 163](#)
2. [Fixing Long-Term Care Act, 2021](#)
3. [O. Reg. 246/22: GENERAL \(ontario.ca\)](#)
4. [The Gillese Public Inquiry](#)
5. [Auditor's Food and Nutrition report](#)
6. [The Auditor General of Ontario COVID-19 Preparedness and Management](#)

ATTACHMENTS:

None.