

Goodmans^{LLP} Update

Ontario Proposes New Legislation to Reform Ontario's Long-Term Care Sector

On October 28, 2021, the Ontario government introduced proposed legislation designed to reform Ontario's long-term care sector. The proposed legislation acts upon advice provided by the Long-Term Care COVID-19 Commission that concluded earlier this year, and earlier reports of Ontario's Auditor General.

The proposed legislation will repeal the current *Long-Term Care Homes Act, 2007* and enact new legislation: the *Fixing Long-Term Care Act, 2021* (the "Act"). The legislation also makes amendments to the *Retirement Homes Act, 2010*.

Proposed Fixing Long-Term Care Act, 2021

The Ontario government describes the measures in the proposed Act as falling under three key pillars:

1. Improving staffing and care
2. Protecting residents through better accountability, transparency and enforcement
3. Building modern, safe, comfortable homes for our seniors

In keeping with the findings of the Long-Term Care COVID-19 Commission, the proposed Act includes a pronounced focus on ensuring care is provided by not-for-profit and mission-driven organizations. A commitment to the promotion and delivery of long-term care by not-for-profit and mission-driven organizations is set out in the preamble to the proposed legislation.

1. Improving staffing and care

In its November 2020 Budget, the Ontario government announced funding to increase the average daily direct care from a nurse or personal support worker (PSW) per long-term care resident to four hours a day by 2025. The Act proposes to enshrine this commitment in legislation, and to increase care provided by allied health care professionals to an average of 36 minutes per resident per day by March 31, 2023. The proposed Act provides that higher (but not lower) targets of average care may be established by regulation.

The Act also sets the following formula to calculate the average daily direct care: total number of hours of direct care actually worked by registered nurses, registered practical nurses and PSWs in all long-term care homes, divided by the total number of resident days in all long-term care homes for the applicable calculation period.

The Act requires the Minister of Long-Term Care to publicly report progress towards the average daily care targets, regularly review progress and consider ways to mitigate barriers to achieving the targets. Should any target not be met, the Minister will be required to provide a plan with proposed strategies or steps to be taken to assist in achieving the targets.

2. Protecting residents through better accountability, transparency and enforcement

The Act proposes an expanded Residents' Bill of Rights which includes a right to ongoing and safe support by caregivers and a right to be provided with care and services based on a palliative care philosophy.

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The Act also introduces new tools to measure and improve quality of care, including requiring licensees to implement continuous quality improvement initiatives as established by regulation. Licensees will also be required to survey residents, their families and caregivers annually about their experience with the care, services, programs and goods provided at the home. The proposed Act will require licensees to make every reasonable effort to act on the results of the survey.

The Minister of Long-Term Care will be empowered to create a Long-Term Care Quality Centre tasked with supporting mission-driven organizations, and advancing and sharing research on innovative and evidence-informed person-centered models of care. The Quality Centre's mandate may also be expanded by regulation.

The proposed act would enhance enforcement as follows:

- eliminate the Voluntary Plans of Correction provided for in the *Long-Term Care Homes Act, 2007*;
- give the Director of Long-Term Care and inspectors the authority to issue an Administrative Monetary Penalty where the Director or inspector is of the opinion that the licensee has not complied with a requirement under the Act;
- expand the grounds under which a temporary manager can be imposed to assist with the operating of a long-term care home to include situations in which there are circumstances present in the long-term care home that are prejudicial to the health, safety or welfare of residents, or 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. The proposed legislation would also clarify that a manager may be ordered to temporarily manage the entire operations of the long-term care home or only a specific issue related to the operation of the home (e.g., infection prevention and control, financial, etc);
- give the Director of Long-Term Care and Minister the authority to suspend a licence and take over a long-term care home without having to revoke the licence and close the home. This change would allow a long-term care home supervisor to be appointed, who would be required to allow the Ministry full control of the home, until the suspension is lifted, the licence expires or is revoked, or another solution is found; and,
- double the fines on the conviction of an offence for individuals (up 100 per cent to \$200,000 for first offence, \$400,000 for second offence) and corporations (up 150 per cent to \$500,000 for first offence, \$1,000,000 for second offence). These fines, as financial deterrents for non-compliance align with or exceed enforcement rules in other provinces.

3. Building modern, safe, comfortable homes for our seniors

The Act would permit the Minister of Long-Term Care to develop a policy outlining how many beds are needed in the province and where these beds are most needed. This policy could be used for select areas of need instead of requiring a Minister's determination for each individual licensing request.

The proposed legislation would allow people to request a review by the Minister of a Director of Long-Term Care's decision to issue or not issue a licence.

To ensure timely decisions and allow the Ministry to be responsive to urgent need, the proposed legislation would streamline the process for Director approval of management companies where help is required for the day-to-day operation of a home.

Transition, regulations and expected timing

Long-term care homes licenced under the *Long-Term Care Homes Act, 2007* will be automatically deemed to have been licenced under the newAct, and will not need to apply for a new licence.

The proposed legislation provides for many matters, including those discussed above, to be further addressed or clarified by regulation. Among the notable matters addressed is the definition of "controlling interest", which is currently enshrined in *Long-Term Care Act, 2007*. Whether a new definition of "controlling interest" will be adopted in the regulations under the *Fixing Long-Term Care Act, 2021* has yet to be announced.

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The initial regulations under the Act will be the subject of public notice and at least 30 days' of public consultation. There is no requirement in the proposed legislation for the consultation to include public meetings. However, the government has indicated that the proposed regulations will be posted on its Regulatory Registry.

The Ontario Legislature is currently scheduled to be in session until December 9, 2021. Accordingly, we expect that the legislation will pass this year. However, the legislation will not come into force upon passage, but rather upon some later date to be selected by the Cabinet. We do not expect the legislation to come into force until after the initial regulations are ready to be enacted. Given the requirement for public notice and consultation with respect to the regulations, we do not expect that the proposed legislation will be enacted until the first quarter of 2022 at the earliest.

For more information on the *Fixing Long Term Care Act, 2021*, please contact [Michelle Roth](#).

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