



AdvantAge
Ontario

Advancing Senior Care

Response to Proposed Amendments to Ontario Regulation 246/22 under the *Fixing Long-Term Care Act, 2021* to align with *Health and Supportive Care Providers Oversight Authority, 2021*

January 15, 2024

Proposed amendments to Ontario Regulation 246/22

Introduction

As one of the largest seniors' care associations in the province, we appreciate the opportunity to have our voice heard on the proposed amendments to Ontario Regulation 246/22, which aims to enable a smooth transition for long-term care homes as the Health and Supportive Care Providers Oversight Authority (the Authority) comes into force.

Personal Support Workers (PSWs) play an essential role in providing high-quality care and companionship to residents, providing roughly 70 per cent of daily hours of care to residents. It is therefore vital that the enactment of the Authority not disrupt the PSW workforce in long-term care. We appreciate that this is the chief objective of the Ministry in setting out its proposed amendments to the Regulations. We also acknowledge and appreciate the fact that, in order to ensure this continuity of care, the Ministry has stated that their intent with this proposal is to ensure that anyone currently working as a PSW in long-term care will be able to continue to do so, regardless of whether or not they choose to register with the Authority.

As we have raised in previous submissions and in our ongoing dialogue with government, Ontario's long-term care sector is facing a number of challenges: we are struggling in the aftermath of the province's worst public health emergency in living memory—one that exacted a disproportionate toll on seniors in congregate care settings; we are continuing to bear the burden of persistent underfunding; and, our staffing situation has become so dire that it is now commonly understood to be a health human resources (HHR) crisis.

All of this is occurring as the long-term care sector adapts to a new regulatory regime and increasingly complex reporting requirements. The addition of the Authority has the potential to be a positive force in long-term care and in the health system more broadly. If done properly, it could create pride in the PSW profession, instill public confidence in the quality of care in long-term care and protect the vulnerable long-term care population from potential abuses. However, it also has the potential to exacerbate these challenges by creating more complexity and confusion and potentially discouraging PSWs from entering or remaining in the long-term care sector, which is why in both of AdvantAge Ontario's submissions on the Authority, we are advising government to move slowly and cautiously.

In this submission, we will raise our concerns with the amendments as proposed and suggest modifications and additional amendments that would enable a smooth transition going forward. As these proposed regulatory changes by the Ministry of Long-Term Care (the Ministry) are in response to the Ministry of Health's proposed regulations pertaining to the Health and Supportive Care Providers Oversight Authority (the Authority), the two AdvantAge Ontario submissions should be read together.

Commentary

Three criteria to work as a PSW in long-term care

The proposal sets out three criteria for a PSW to be eligible to work in long-term care: they are registered with the Authority; they are not registered with the Authority but meet the requirements under one of the eligible registration pathways; or, they qualify to work as a PSW

under an exception set out in the Regulation under the *Fixing Long-Term Care Act, 2021* (FLTCA).

The first criteria is straightforward enough, although we do have concerns with pathway 5(c), articulated in our submission to the Ministry of Health.

The second criteria is potentially problematic because it appears to place the burden of proving eligibility on homes and PSWs, and the Ministry of Health's proposal suggests that this could include administrative burdens such as competency assessments that would potentially expose homes to liability. This is also discussed in the submission to the Ministry of Health.

The third criteria states that a PSW may work in a home if they qualify under an exception set out in the Regulations. It then goes on to list those exceptions, which only apply to nurses, students and those who graduated from an approved PSW program by July 1, 2018. We discuss our issues with this criteria below.

“Eligible” Pathways

The use of the word “eligible” prior to “registration pathways” creates confusion. It gives the impression that some pathways may not be deemed eligible. To facilitate a better understanding of how these changes will be enacted, the Regulations should be phrased in a way that makes it clear that every pathway available for registration with the Authority will enable a PSW to work in long-term care, regardless of whether the PSW has registered with the Authority. To achieve this, the word “eligible” should be removed.

Exceptions under Regulation

The Proposal states that the Ministry will “maintain several provisions within section 52 of the Regulation that provide exceptions to personal support worker qualification requirements, or provisions that are not adequately captured under one of the Authority's proposed registration pathways including ...”

The words “including” and “several” create uncertainty, because it is not clear which exceptions will be maintained, but it is strongly indicated that some exceptions will be dropped from Regulation. In speaking with the Ministry, we now understand that those exceptions which will be removed include the exceptions for foreign-educated PSWs, those educated outside of Ontario and those grandfathered in for having been working as a PSW prior to 2011. These exceptions will be removed from the FLTCA regulation because they are captured in the “eligible registration pathways” in the Ministry of Health's proposal for the Authority.

In the case of legacy PSWs, if their exception is removed, these PSWs will be subject to the three-year transition period to register with the Authority. After that, it is not clear what will happen to them. Those who do not choose to register should, in theory, be able to continue working in long-term care because the proposal states that anyone who meets the requirements under any of the eligible registration pathways may work in long-term care, but several of those pathways include competency assessments, including that which applies to legacy PSWs. Will internationally-trained and legacy PSWs choosing not to register still be subject to competency assessments in order to satisfy the requirement that they meet eligibility for a registration pathway? Specifically in the case of internationally-educated PSWs, if they are expected to complete the competency assessment even if they are not pursuing registration, they too should receive a three-year transition period.

The proposal should be more clear on these points, as subjecting this segment of the workforce to competency assessments even if they are not pursuing registration will be disruptive and could lead to attrition. Keeping the exceptions in regulation for internationally-educated PSWs is another solution to this problem, discussed below.

Transition Periods

The Ministry of Health's proposal includes a three-year transition period for legacy PSWs but not for internationally-trained PSWs. If the Ministry of Long-Term Care removes the exception in regulation for internationally-educated PSWs without providing a transition period or other transitional arrangements, there will be confusion as to whether internationally educated PSWs currently working in LTC homes would meet the qualification requirements to continue working in long-term care. This is because the qualification requirements for internationally-trained PSWs as laid out in the Ministry's proposal include a competency assessment requirement. The Ministry of Health should rectify this by providing a transition period for internationally-educated PSWs. Another solution would be for the Ministry of Long-Term Care to retain the exception that allows internationally-educated PSWs to work in long-term care (clause 52 (2) (e)).

Mandatory versus Voluntary

The proposal states that “under this approach, long-term care home licensees could decide whether registration with the Authority is compulsory to work as a personal support worker in their home.” As raised in our submission to the Ministry of Health, few homes will choose to make registration a mandatory condition of employment, because few PSWs will register if registration is voluntary, as is proposed. Limiting the pool of available workers will not work in a homes' favour, given the ongoing HHR challenges in homes across the province. What this mandatory provision of employment option will do, however, is create tension between homes and resident and family councils. Some homes have already reported hearing suggestions from families and residents that they should adopt such a policy, as there is a perception that registered PSWs will meet a higher standard. Once the Authority launches and becomes more widely known, these expectations will increase.

The Ministry of Health proposal also states that “the Ministry of Long-Term Care would be able to require PSW services be provided by registered PSWs depending on the circumstances. For example, where a specific vulnerable population is receiving services, or a health care environment needs enhanced consistency in PSW competencies.” It is arguable that long-term care is exactly such a setting: a vulnerable population in a setting requiring enhanced consistency in PSW competencies. Nonetheless, we wish to caution the Ministry against exercising this power. As we have told the Ministry of Health, if at any time in the future registration is to be made mandatory, it must be done across all health settings simultaneously. Long-term care cannot be put at a competitive disadvantage vis-à-vis hospitals and home and community care by being singled out as the only health care setting in the province where PSWs must register with the Authority. The result could be a mass exodus of PSWs from long-term care into other health settings and other professions, seriously imperiling our ability to care for and protect the safety of our residents.

The inclusion of the language that grants both Ministry's power to make registration with the Authority mandatory is unnecessarily vague, stating that the ministries could mandate this requirement “depending on the circumstances,” and giving only one example of such

circumstances. This is creating concern that at any moment, a registration mandate could be enacted on a portion of the PSW workforce, or a particular health care setting, or even a particular employer. The proposal should be more clear that the ministries will set out transparent criteria that would be used to assess the necessity of mandatory registration and that impacted parties will be consulted prior to any decisions being made.

Financial Implications

The Ministry's Analysis of Regulatory Impact statement purports that "these changes would be cost neutral for long-term care homes." This may be true with respect to the amendments to Regulation 246/22, but this claim is far less certain with respect to the establishment of the Authority itself. The Ministry of Health's proposal contemplates asking homes to verify eligibility for registration and even to conduct competency assessments when applicants lack the required educational credentials (or in the case of internationally-educated PSWs, even when they do have said credentials). These activities will take training and time and, unless they are properly funded by government, will divert resources away from frontline care.

There are also going to be costs associated with registration in general, as the Ministry of Health submission makes clear by stating the Authority will establish a fee in order to be self-funded. As noted in the Ministry of Health submission, unions will require homes to pay those costs, as they do for nurses.

The Analysis of Regulatory Impact should be updated in both proposals to be unequivocal in stating that any extra costs resulting from the amendments and new regulations will not be borne by PSWs or homes, but by the ministries of Health and Long-Term Care.

Two-Tiered Workforce

While AdvantAge Ontario member homes can see the merits of both a voluntary and mandatory registration regime (see our submission to the Ministry of Health), a voluntary regime will create a two-tier workforce, whereby some PSWs will be registered and others will not. This is a less than ideal situation. It will create the impression that some PSWs meet a lower standard and provide a lower quality of care.

Resident Support Aide Regulations

In November 2023, the Ministry asked the long-term care sector for its advice on extending a pandemic provision that enabled Resident Support Aides (RSAs) to perform personal support work in long-term care. AdvantAge Ontario agreed that these people should be able to continue to work in long-term care, but with limitations on the tasks they can perform, given that they did not graduate from a Ministry of Training, Colleges and Universities approved PSW course. The Ministry of Health proposal suggests that, under pathway 5(c), these individuals may be eligible for registration with the Authority under yet-to-be-determined criteria for people with PSW experience. If RSAs become eligible to register with the Authority, according to the Ministry's proposal they will be automatically eligible to work in long-term care.

Our response to this—and to the Ministry's specific question as to how much work experience should be considered comparable to education—are discussed in greater detail in our submission to the Ministry of Health. The MLTC needs to ensure that the establishment of the regulations of the MOH Authority interacts seamlessly with the yet-to-be-finalized RSA regulations so as to not confuse members.

Enacting the New Regulations

For the new regulations to come into force, the pathways for registration and expectations of homes and PSWs—both those seeking registration and those not seeking registration—need to be clear. At present, they are not. There should also be a period of time in which homes are educated by the Ministry and given opportunities to share this information with their workforce. This information should cover every type of situation that a PSW in long-term care may find themselves in.

But as you will see in our submission to the Ministry of Health, in order to minimize confusion and disruption and give the Authority a chance to succeed, the new Regulations to establish the Authority are not in this state, nor is it possible to say they are perfectly aligned with the amended regulations proposed by the Ministry of Long-Term Care. There are critical details missing, including the question of verification and competency assessments. This especially impacts the pathways for internationally-trained and legacy PSWs.

The Authority has the potential to be transformative for health care in Ontario, particularly long-term care. With oversight of PSWs and a professionalization of the workforce, we can improve the care that is provided to seniors and help to restore the sector's reputation which has been so badly damaged by the pandemic. This is why we are calling on the government to take the time needed to get this right, and not rush to enact either of the two proposals before important decisions can be made in consultation with all the impacted parties.

If the government insists on moving ahead, it should do so only with those pathways around which there is some clarity: Ontario- and pan-Canadian-educated PSWs. But going this route would create even more division among the PSW workforce and may confuse and deter internationally-trained PSWs.

Conclusion

AdvantAge Ontario member homes appreciate the benefits of establishing an Authority to regulate and oversee PSWs; however, the regulatory changes and amendments for PSWs proposed by both the Ministry of Health and the Ministry of Long-Term Care are complicated, lacking clarity in key areas and incomplete with respect to critical details. Their enactment should be delayed until these essential details can be addressed and clarity can be provided to health care employers and their workforce. If the government insists on moving ahead, it should do so in a phased approach that first opens registration to Ontario- and Canadian-educated PSWs, so that the questions surrounding internationally-educated and legacy PSWs can be properly explored and addresses.

The government has stated that it has presented these proposals in such a way so as to not disrupt the workforce; it needs to carefully consider whether moving ahead with a complicated and only partially sketched out registration and regulatory regime will undermine this goal. AdvantAge Ontario is always available to answer any questions related to the Ministry's consultation and appreciates this opportunity to share our feedback on the proposed regulatory change.

About Us

For more than 100 years, AdvantAge Ontario has been the voice of not-for-profit seniors' care in Ontario. We represent close to 500 providers of long-term care, seniors' housing, supportive housing and community service agencies, including 98 per cent of all municipal long-term care homes and 83 per cent of all not-for-profit long-term care homes.

Contact Information

Lisa Levin
Chief Executive Officer
905.851.8821 x 230
llevin@advantageontario.ca