



AdvantAge
Ontario

Advancing Senior Care

Response to Amendments to Ontario Regulation 246/22 under the *Fixing Long-Term Care Act*, 2021

March 10, 2024

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Introduction

As one of the largest seniors' care associations in the province, we appreciate the opportunity to share our thoughts on the Ministry of Long-Term Care's (the Ministry) proposed amendments to Regulation 246/22 (the Regulation).

Given Ontario's ongoing health human resources crisis, AdvantAge Ontario homes appreciate any effort by the Ministry to make it easier for staff to qualify to work in long-term care and to make it possible for qualified staff to perform a wider variety of functions in homes. We are also appreciative of efforts to provide greater clarity in the Regulation as to the expectations and obligations of licensees. But while these are the government's stated intentions with these proposed amendments, in several areas we are limited in our ability to provide meaningful feedback because the Ministry has not provided specific proposed regulatory language.

We have significant issues with the proposed changes to the Administrator qualifications. Removing the 100 hours of instruction seems to run counter to the Ministry's goals of improving long-term care.

One of the key ways to ensure leaders in long-term care are qualified is achieved through the long-term care home administration or management program. Running a long-term care home is more complicated than ever. New legislation and regulations, residents who are much more complex and heightened enforcement all mean that Administrators need even more guidance in order to be adequately prepared for the responsibilities they are assuming.

The 100-hour long-term care home administration or management program requirement was put in place in 2007 in recognition of the challenges of the role. These challenges have only grown over time. As we will explain in this submission, dismantling the requirements of this program will not serve the Ministry's objective of safe, secure homes that are in compliance with the *Fixing Long-Term Care Act, 2021*, nor will it help Administrators uphold their duty to care for vulnerable seniors.

Commentary and Recommendations

1. Staffing Qualifications

With respect to the therapy services staff qualifications, designated lead for the restorative care program and designated lead for the volunteer program, we have no comment and are broadly supportive of the Ministry's efforts to make it easier for staff to qualify for these roles as we believe the changes would not affect the quality of care delivered to residents.

i) Administrator Qualifications

Over the last four years, the long-term care sector has gone through considerable challenges, first with the traumatizing and enormously disruptive experience of the COVID-19 pandemic, and then with new long-term care legislation aimed at improving the delivery of resident-directed, safe, quality care.

To achieve this, the *Fixing Long-Term Care Act, 2021* (the Act) added significant amounts of responsibility and oversight, with the ultimate accountability for compliance with the new Act residing with Administrators. Removing the 100 hours of instruction that prepares Administrators for this role seems to run counter to the Ministry's goals of improving long-term care.

We have heard from members and seen through the increase in job postings on our Association's Careers postings page that many middle management staff have left the sector in the last two years. This has resulted in increasingly less experienced individuals stepping up into Administrator roles. These new leaders who are taking over as Administrators may not be as familiar with the requirements of the role. This underscores the need for instruction, such as that offered by the long-term care home administration or management program, which is a robust training program that prepares those stepping into the Administrator role for the serious responsibilities they are assuming. Conversely, if inexperienced, insufficiently trained Administrators step into the increasingly complex, highly technical long-term care operating environment, they will be placing the health and safety of seniors at risk.

It is the Administrator's job to ensure the home is in constant compliance with the many requirements and regulations and to uphold the home's obligations of duty of care for residents who are among the most vulnerable members of society. With Ontario's enhanced inspections regime, an Administrator can expect their home to be inspected multiple times per year, sometimes back-to-back, with inspections sometimes lasting multiple weeks. This person needs to be adequately prepared to handle this enhanced oversight while keeping the home operating smoothly. Understanding the Act and its Regulations and ensuring constant compliance requires specialized training.

Given the reasons stated above, the Association implores the Ministry to reverse course on certain of its proposed changes to the Administrator qualifications. Specifically, we strenuously oppose removing the 100-hour minimum as a requirement of the long-term care home administration or management program.

Administrator leadership programs are an important opportunity for knowledge transfer, with senior, experienced long-term care operators and experts educating the next generation of long-term care leadership. They teach Administrators how they are required to execute their roles to ensure the entire home is operating in a way that promotes resident safety and wellbeing and complies with all applicable provincial mandates, statutes and regulations. Topics covered in such courses include: facility, program and community leadership, ethics and values in management, information technology management, compliance and inspections, care management, legal and regulatory accountability, human resources leadership, internal operations and project management, client-centred care and emergency management.

In consulting with our membership, we heard many compelling examples as to why the 100-hour long-term care home administration or management program is of benefit to Administrators, homes and residents. One member told us that she came from a high-level position within government and had a significant amount of health care knowledge, but that the course is what equipped her to operate a long-term care home, because the material covered is

specific to long-term care and not available anywhere else. Another member with a Masters level education in seniors' care found the program very rigorous and credited it with preparing her to work in the field. Yet another member emphasized the practicality of the instruction received, which differs greatly from the more academic education credentials that Administrators must also possess.

Another related item that we would like clarification on is the Ministry's decision to remove the language requiring a home to terminate an Administrator who has failed to complete the program in administration or management within the specified time. We are operating on the assumption that even without this clause, a home would still be required to terminate an Administrator who, 12 months after their hiring, has failed to complete the program. If so, removing the clause creates unnecessary confusion.

Regarding the clarification that an Administrator will have 12 months from the date of their hiring to complete a long-term care home administration or management program, we support this change.

We would also recommend that the Ministry require not only 100 hours of training to be an Administrator, but that existing Administrators be required to update their credentials every five years by completing a refresher version of the long-term care home administration or management program. In just the last five years, the long-term care operating environment has changed dramatically. Requiring Administrators to refresh their credentials would strengthen their leadership abilities and improve compliance with newer regulations and requirements, which would all lead to an improved resident experience. It is for this reason that AdvantAge Ontario does not support the proposal to move the date for which an Administrator is considered grandfathered and exempt from these proposed Regulations from 2010 to 2024. We believe that Administrators should be required to keep up to date on the latest developments in their sector and on best practices for the safe, successful operations of a long-term care home, and that a grandfathering provision runs counter to this goal.

The other area of the proposed changes to Administrator qualifications that we support are the clarifying amendments around educational credentials, which enable those with wider educational backgrounds and graduates of two-year programs to become Administrators. This will be a net positive in attracting more people to work in long-term care. But we wish to emphasize that the broadening of this eligibility underscores the need to maintain the 100-hour long-term care home administration or management program, where Administrators of all backgrounds receive practical instruction that is specific to long-term care.

Recommendations

1. The Ministry should not make any changes to the 100-hour minimum requirement for the long-term care home administration and management program.
2. The Ministry should consider a requirement that Administrators take a refresher course on long-term care management or administration every five years.
3. If the Ministry wishes to reduce barriers to long-term care administration it should consider providing funding to homes to educate their Administrators.

ii) Nursing Students as Externs

AdvantAge Ontario member homes have a number of concerns regarding the proposal to allow nursing students to work as externs in long-term care homes. While this could be a helpful

solution to the staffing challenges faced by most homes—and could contribute to efforts to build and nurture the long-term care workforce of the future—the Ministry’s failure to provide detailed language that will appear in the Regulation makes it difficult to offer commentary or provide an unqualified endorsement of the proposal. As such, we will outline our concerns and make recommendations that we expect to see reflected in the Regulation.

First, the Regulation should in some way state that this provision is meant to be permissive, not obligatory: homes should be *permitted* to hire nursing students as externs but in no way required to do so. This is because, for some homes, the burden on clinical staff of training and overseeing nursing student externs will outweigh the potential benefits these students provide. Homes need to be given the latitude to make the staffing decisions that best meet their needs.

Second, the Regulation should clearly define “externs” and ensure they are understood as separate and distinct from nursing students on clinical placement. There is already a definition of “nursing student” in subsection 140 (9) of the Regulation. The Ministry could use the first part of the definition (a) to apply to an extern and the second part (b) to apply to nursing students on a clinical placement. Clear wording, direction and cross referencing in the Regulation with respect to the definition of “nursing student” and “extern” will support homes in easily differentiating between these two roles.

Third, it is unclear whether this proposal differs substantially from subsection 52 (3) (c) which states that a licensee may hire as a personal support worker “a person who is enrolled in an educational program for registered nurses or registered practical nurses and who, in the opinion of the Director of Nursing and Personal Care, has adequate skills and knowledge to perform the duties of a personal support worker.” If the nursing student extern is to be given more responsibility than a personal support worker, this should be clearly stated in the Regulation—but the extent of that responsibility is something that homes should be consulted on prior to it entering into force.

This consultation is particularly important given that a home’s Registered Nurses will be required to play a supervisory role over the nursing student externs. Registered Nurses may not wish to provide supervision during the administration of medications, and/or may demand extra compensation for the added responsibility of supervising nursing student externs. Additionally, when taking on this further responsibility, a Registered Nurse is technically also taking on additional risk for which, in the event of an error, they could potentially be disciplined by the College of Nurses of Ontario. This could result in the revocation of their license to practice.

This raises the question of the circumstances under which the Ministry is considering allowing nursing student externs to administer drugs. The consultation materials suggest that this will be permitted, but do not provide any detailed view of the circumstances in which drugs can be administered. Subsection 140 (4) of the Regulation permits nursing students on clinical placement to administer a drug, subject to meeting the subsection’s requirements. In the event that nursing student externs are permitted to administer drugs, homes would like to know how the requirements might differ from those of a clinical placement nursing student. Given the potential for liability issues surrounding this, we believe that before moving forward with this proposal, the Ministry should consult with homes and educational institutions to obtain a clearer sense of how and under what circumstances a nursing student extern should be allowed to administer drugs.

2. Staffing Flexibility

i) Registered Practical Nurses and RAI-MDS

AdvantAge Ontario member homes noted that in most cases, Registered Practical Nurses are already conducting RAI-MDS assessments to support capacity building, to allow other regulated health care professionals to work to their full scope of practice and to facilitate faster resident transfers.

As such, we are supportive of formalizing this change in the Regulation but are unclear as to why this one particular aspect of RAI-MDS has to be in regulation while anything else related to RAI-MDS is left out.

3. Pandemic Recovery and Stabilization

i) Emergency Situations

The emergency situations proposal is a great example of the challenges stakeholders face in providing meaningful feedback without being given an adequate amount of detail to react to.

We understand that this proposal seeks to broaden the definition of “emergency” to move beyond the COVID-19 pandemic, so as to prepare the Ministry to respond to emerging threats as they evolve. But without providing any detailed language that will appear in Regulation, we do not have enough information on which to base a response.

The Ministry’s stated goal of providing “greater clarity to licensees” is commendable, but this proposal is not clear. There is a reference to “a mechanism to trigger the potential use of these provisions,” but no indication of what that mechanism would be.

As a result of these omissions, we cannot provide meaningful comment on the proposal, and strongly urge that any changes related to pandemic preparedness be consulted on properly and broadly with the sector prior to being finalized. During the COVID-19 pandemic, there was widespread confusion with respect to the opaque policy environment created by the overlapping jurisdictions of the Ministry of Health, the Ministry of Long-Term Care, Public Health Ontario, and other parties. These impacts should be considered and avoided before making policy changes that the sector would have to abide by in the future.

ii) Resident and Family Councils

The requirement that resident and family councils be “involved in the review” of existing visitor policies and any future revisions is something we can support in theory. Of course, resident and family councils should be able to have a say on when and how visitors should be allowed into their homes. However, in practice this could become a very difficult scenario for Administrators to navigate. Section 267 of the Regulation already sets out extensive requirements relating to visitor policies. Requiring a home to consult resident and family councils on any provincial directives over which the home has little or no control, which is what happened during the pandemic, is not realistic and only invites conflict.

This policy is especially futile in emergency situations when the Ministry will often issue directives with immediate or 48-hour entry into force requirements. During the pandemic, for example, the Ministry issued a visitor policy directive on a Friday evening that was to take effect

the following Monday morning. In this situation it is entirely unreasonable to expect a home to convene and consult resident and family councils, and to make any meaningful changes to something over which they have no power.

Asking homes to manage families and conduct “reviews” on policies for which the Ministry has already predetermined the outcome risks taking more precious staff time away from direct resident care and creating more opportunities for conflict between family members and long-term care staff.

4. Clarifying and Technical Amendments

i) Air conditioning

The air conditioning amendments appear to be an effort to remove old, redundant provisions and clean up and clarify those that still apply. As the Regulation reads like a legal document, it is our hope that as these new provisions enter into force, the Ministry will provide guidance to homes that states in clear language the expectations and requirements around air conditioning. This should happen before temperatures in Ontario start to rise in the summer.

ii) Air Temperature

The clarifications to when resident room air temperatures need to be checked and recorded are helpful and endorsed and take into account previous AdvantAge Ontario feedback regarding the complexity of the original regulation. This clarification is noted and appreciated.

Conclusion

AdvantAge Ontario member homes appreciate the opportunity to be consulted on proposed amendments to Regulations under the *Fixing Long-Term Care Act, 2021*. In areas where the Ministry has provided the exact language proposed under Regulation, we have provided specific feedback, commentary and recommendations. In other areas, where specific regulatory language is lacking, we have not been given the opportunity for meaningful consultation. We understand the Ministry’s intentions with respect to these areas but cannot provide commentary on whether the proposed amendments will fulfill those intentions or assess the impact the proposed changes will have on homes and residents. As always, we remain available to discuss this submission in greater detail and looks forward to working with the Ministry to clarify the questions we have raised and craft regulations that put the rights and wellbeing of seniors first.

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.

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