



Advant**Age**
Ontario

Advancing Senior Care

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

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Introduction

As one of the largest seniors' care associations in Ontario, we appreciate the opportunity to share feedback on the Ministry of Long-Term Care's (the Ministry) proposed amendments to Regulation 246/22 (the Regulation) under the *Fixing Long-Term Care Act, 2021* (the Act).

We understand that the intended effect of these proposed changes is to support enhancements, greater flexibility in staffing, and stability within the sector. Moreover, that the intent for a subsection of the proposed amendments is to fully align section 52, Personal Support Worker (PSW) Qualifications, with the Health and Supportive Care Providers Oversight Authority (HSCPOA, or the Authority) registration pathways for PSWs.

The Association is generally supportive of the Authority and recognizes that it has the potential to be transformative for long-term care and other healthcare sectors that employ PSWs across Ontario. We have contributed our members' feedback since the legislation was introduced.

That said, in the context of the currently proposed amendments, we have several concerns in their current state, most significantly being a piecemeal approach to mandating registration whereby registration is only required for a subset of PSWs in the long-term care sector. Where we raise our concerns throughout this submission, we also provide recommendations and potential solutions for the Ministry's consideration.

As we have raised in several of our previous submissions and in our ongoing dialogue with government, the long-term care sector continues to face major challenges in recruitment and retention of staff. It is therefore critical that any negative impacts of the proposed amendments on the sector be carefully considered.

The commentary in this submission is organized into two sections: (1) Proposed amendments pertaining to Section 52 - Personal Support Worker Qualifications and (2) Proposed amendments pertaining to Section 80 - Registered Dietitians.

Commentary on Proposed Regulations

1. Proposed Section 52 – Personal Support Worker Qualifications

Over half of the PSWs in Ontario work in long-term care. Moreover, in the long-term care sector, PSWs make up over 70 per cent of the direct care staff and provide the vast majority of daily hours of care to residents.

More recently, in the face of chronic staffing shortages that were further exacerbated by the

COVID-19 pandemic, Resident Support Personnel (RSP) have been employed to provide much needed additional assistance with personal support services to low-risk residents.

As per the proposal, we understand that the current Section 52 of the Regulation would be revoked, and the proposed amendments would be substituted with an enforcement date of December 1, 2024. As a result, starting December 1, the PSW qualifications would be as follows:

- i. Subsection 52 (1): Registration with HSCPOA in the PSW class. There are currently four distinct registration pathways each with their own eligibility criteria and documentation requirements:
 - a. Ontario PSW Education: Completion of a program (at an Ontario District School Board, Private Career College, College of Applied Arts and Technology or Indigenous institution) that meets Ontario Ministry of Colleges and Universities (MCU) standards.
 - b. Employed as a PSW in Ontario: Employed in the three years before applying with 600 hours of PSW experience or completed a personal support service program of 600 hours. Verification from an eligible employer with respect to work history and that the PSWs skills are equivalent to those of a person who has completed an Ontario personal support service program meeting MCU standards is required.
 - c. Labour Mobility: Current registration in BC, Alberta or Nova Scotia and provided personal support care in the three years before applying for registration.
 - d. Competency Assessment: Completion of a personal support services program of 600 hours outside of Ontario, educated in Ontario but the personal support service program does not meet MCU standards, or educated as a PSW in Ontario prior to July 1, 2014.
- ii. Paragraph 52 (1) 2: Eligible for a HSCPOA registration pathway. That is, licensees are permitted to hire a person who “would meet the requirements to be registered in the [PSW] class that are set out under subsection 5 (2) to (7) and section 6 of Ontario Regulation 217/24”.
- iii. Subsection 52 (2): Is an RN or RPN, is enrolled in an RN or RPN program and has adequate skills and knowledge in the opinion of the Director of Nursing and Personal Care, or is enrolled in an Ontario PSW program meeting the MCU standards but must work under supervision.
- iv. Subsection 52 (4) through (7): Meets the exemption to be hired to provide personal support services if the licensee has the reasonable opinion that the person has the proper skills and knowledge (i.e., RSP). There are limitations on this hiring approach.

Notably, the Ministry’s proposal advances that the amendments to PSW qualifications are intended to foster consistency across sectors, boost labour mobility, and address HHR staffing challenges, without negatively impacting PSWs already in the system. However, as per the details below, there are a number of reasons why the proposed amendments may, in fact, have the very opposite effect on the sector.

600-Hour Program Requirement Removal

Recommendation #1: Keep the 600-hour program requirement language in Section 52 of the Regulation.

Fully aligning Section 52 with the HSCPOA registration pathways would effectively remove the language of the 600-hour PSW program requirement from the Regulation. While we understand that MCU would continue to set the standards for PSW programs, members are concerned that PSW programs, whether new or established, would chip away at their program length, trying to meet MCU's vocational standards in less time and by expending less resources.

The overall intent of these proposed amendments is to enhance the quality of care and life for residents in long-term care. In a sector where the skills, knowledge, and competencies required are rapidly evolving and increasing to meet growing resident acuity, it seems counterintuitive to remove the minimum program duration requirement for the group of care providers who deliver the vast majority of daily hours of care to residents.

Legacy Provision Removal

Recommendation #2: The Ministry should reconsider their proposed approach which removes the ability for PSWs to work under the current legacy provision (Section 52 (3) of the Regulation).

We understand that the proposed amendments would remove Subsection 52 (3), known as the legacy provision, from the Regulation. In our January 15, 2024, submissions to both the ministries of Health and Long-Term Care regarding the Authority, we stressed that any registration mandate must be applied equally to all PSWs in the province, regardless of health care setting. To reiterate our sentiments from these previous submissions, if registration were to be made mandatory in just long-term care, for example, we would suffer a degree of workforce attrition that would have a devastating impact on homes' ability to provide consistent, high-quality care to residents.

Despite these previously highlighted concerns, the now proposed removal of the legacy provision would effectively do just that: impose a registration mandate on a portion of the PSW workforce in long-term care. As we understand, this would be the only registration mandate for any PSW anywhere in Ontario.

Maintaining registration as voluntary for the PSW workforce across the healthcare system yet *requiring* registration for a subset of PSWs to keep their jobs — in a sector that is already experiencing significant HHR challenges — will create tension and animosity, and contribute to workforce disruption and attrition.

First, the PSWs that would be impacted by the removal of the legacy provision are long-standing employees, many of whom are more advanced in age and have worked in the sector for several decades, including throughout the considerably challenging COVID-19 pandemic. From data collection and our discussions with member homes, we understand that well over 1,000 PSWs are working under this provision, just among our members alone. Consequently, there exists a significant concern that many of those impacted will opt to exit the sector, whether through retirement or moving to another sector where registration remains voluntary, rather than undergoing the administrative burden of registration.

Second, the government's stated objective of establishing the Authority is to protect vulnerable populations by guaranteeing that a PSW in the province will have a minimum level of qualification, oversight, and be subject to a complaints and disciplinary process to which the public can appeal. As such, it is foreseeable that a mixed workforce of unregistered and registered PSWs, and a bifurcation of the profession in long-term care — specifically whereby some PSWs are *required* to register to keep their job, and others are not held to that same standard — will perpetuate a false assumption of a quality-of-care difference that may not actually exist.

Many homes have worked with their PSWs who are hired under the legacy provision over the course of their employment to ensure that they possess the competencies and skills necessary to perform the work of a PSW in long-term care. Should the government move forward with this approach, these PSWs will be singled out to verify qualifications that they have spent years honing. It is also critical to note that this proposal effectively forces decades-long PSWs to verify their skills, yet there are no registration mandates for new hires who have considerably less experience in the sector in comparison.

Third, to build on the above-mentioned concerns, as these proposed amendments seem to target many homes' older PSW workforce, how unions will perceive these regulations must be taken into consideration. Specifically, there is potential for unions to perceive these regulations as ageist. Additionally, we have serious concerns that unions may perceive this approach as constructive dismissal. Member homes have raised that they anticipate significant arbitration- and litigation-related costs should these amendments move forward. Moreover, should these legacy PSWs opt not to register or upskill to meet another registration pathway, come December 1, 2027, when the *Employed as a PSW in Ontario* pathway closes, homes would be required to pay severance if they had to cease the employment of these PSWs for not meeting the PSW qualifications.

In addition to our above-mentioned concerns, there is a significant evidence base on the importance of continuity of care for residents in long-term care, for both quality of life and care. This proposed approach is risking the attrition of longstanding PSWs who have in-depth knowledge of the home, their residents, and the broader long-term care sector.

AdvantAge Ontario member homes see the value in a PSW oversight authority; in fact, in our ongoing dialogue with members, many have raised that registration should be mandated across the entire PSW workforce — that is, across the entire health system. However, through this current consultation, it was repeatedly stressed that a piecemeal approach to mandating registration for PSWs hired under the legacy provision is a needlessly confusing approach and will have negative impacts on our sector.

Approach to Leveraging Resident Support Personnel

Recommendation #3: Add provisions to the Regulation that specifically deal with RSP — separate from PSW qualifications — and any restrictions on the services that they provide.

Recommendation #4: Grandparent those PSWs who are already hired and employed as PSWs under the current RSP provision in Section 52 for a period of three-years, or-

Recommendation #5: Alternatively, the Ministry should consider not proceeding with retroactive application of the proposed Section 52 or allow for licensees to hire or employ PSWs with appropriate experience through this policy mechanism outlined in proposed subsection 52 (4) through (7).

As stated in previous submissions, AdvantAge Ontario homes are supportive of the permanent flexibility in leveraging RSPs. Albeit, additional to the concerns of retroactive application outlined later in this submission, we have several concerns relating to the proposed approach in practice, which are set out directly below.

First, the addendum provided in the proposal came with the description “information on how the approach would work in practice”. This addendum outlines a process in which the Director of Nursing and Personal Care ensures (a) the determination of a resident risk level, and (b) the appropriate assignment of services based on the risk assessment in consideration of the RSP training and knowledge.

The addendum then states that a RSP (a) may provide personal support services to low-risk residents; (b) may provide personal support services to moderate risk residents, with supervision; and (c) personal support services to high-risk residents must be provided by a PSW or nurse. The scope, significance, and implications of the words “information on how the approach *would* work in practice” is unclear. There is no wording in the Act or the proposed regulations to indicate a RSP cannot provide a personal support service to a certain type of resident. If the Ministry wishes to enforce such a restriction, it should set this out in regulation.

Likewise, neither the Act nor the proposed regulation contains a requirement for RSP supervision. Supervision of a RSP may be appropriate in many circumstances, but if the Ministry wishes to provide for supervision in particular contexts, it should do so explicitly through regulation. Again, while we appreciate the flexibility afforded to homes in utilizing this role, the proposal and its accompanying addendum is confusing and could leave homes ambiguous to their requirements in complying with leveraging this role.

Second, despite there being no title protection for “PSW” in the Act or other legislation, due to the removal of the mention of PSWs in the proposed subsection 52 (4), it appears that the Ministry considers individuals hired or employed under proposed subsection 52 (4) through (7) as RSPs, and not PSWs.

As a result, it seems that licensees will not be able to use this policy approach to continue to employ individuals as PSWs who are already hired and employed as PSWs under the current RSP provisions. This is an artificial and confusing distinction in the context of these employees currently hired as PSWs who may be providing a full range of personal support services to residents of all risk levels.

Despite this, they now would need to lessen their scope or qualify under the *Ontario PSW Education* or *Employed as a PSW in Ontario* HSCPOA registration pathways. This determination will be burdensome for licensees and does not seem to appear in the Ministry’s regulatory impact assessment.

Retroactive Application and Lack of Transition Periods Identified

Recommendation #6: Should the Ministry move forward with retroactive application of the proposed Section 52, we strongly recommend adding that

language in the Regulation.

Recommendation #7: Implement a clear and appropriate transition period for homes to properly understand the changes to PSW qualifications in Section 52 and subsequently comply.

There is a strong legal presumption that legislatures do not intend legislation to apply retroactively; that is, to apply in such a way as to change the legal effect of a past event or circumstance, in this case the hiring of a person as a PSW based on that person meeting the qualification requirements in place at the time of hiring. In the typical course, a regulation would apply to circumstances that happen on and after the date it comes into effect. That is, to the hiring of PSWs from the commencement date forward, without application to PSWs already hired.

In speaking with the Ministry, we now understand that the intent of the proposed Section 52 amendments is to apply retroactively to PSWs and RSPs already working in the long-term care system.

However, certain wording in the proposed Section 52 is inconsistent with this retroactive intent. Currently included wording, like “may hire” and “intends to hire persons” relates to future action and does not appropriately reflect retroactive application. Though this is a technical interpretive point, the Ministry should clarify the application of Subsection 52 (4); specifically, whether it applies to individuals that the licensee has already hired.

Beyond our above technical point, we outline the broader conceivable issues and impacts relating to the proposed approach below.

We understand that in the case of currently employed PSWs hired under the legacy provision in the Act, there is a three-year window where they can meet a HSCPOA pathway or register under a pathway. However, our prominent concern for the proposed Section 52 is that on the proposed enforcement date — in this case December 1, 2024, which is fast approaching — every home across the province will effectively be in non-compliance with the new PSW qualification requirements if they have not gone through the determination or verification processes with respect to their PSW or RSP employees because a transition period is not stated explicitly.

In the Ministry’s Analysis of Regulatory impact statement, it was purported that “the proposed amendments are largely refining or clarifying in nature and anticipated to result in a *net minor or neutral regulatory impact* to licensees.” Given the intent for retroactive application and enforcement date of December 1, 2024, this analysis of regulatory impact is unrealistic.

As we know, PSWs make up the largest segment of the long-term care workforce. It will take considerable time and effort on behalf of the home to assess their PSW workforce to determine (a) who is opting to register with HSCPOA, and for those who are not, (b) determine who would meet the various HSCPOA registration pathways. We also anticipate homes having to provide considerable education and support to their PSW workforce on both registering and in the determination of meeting registration pathways.

Moreover, it is critical to note that each HSCPOA registration pathway requires a Level 2 Criminal Record Check and Judicial Matters Check that is dated no more than 12 months before the date of application. Alternatively, a Vulnerable Sector Check dated no more than 12 months before application will also be accepted. In our recent discussions with the Ministry, we have

expressed our members' on-going challenges in obtaining Police Record Checks and Vulnerable Sector Checks, particularly the increased delays in processing times and application rejections. Consequently, this proposed amendment comes with not only the additional costs associated with these checks, but also the increased administrative burden of obtaining these checks.

Regarding RSPs, the home would need to review and determine the personal support services that are appropriate for each RSP to provide, and which residents may receive these services. Further, a written policy setting out the process used for the determination and considerations to guide this determination would need to be developed. Lastly, the proposed regulation stipulates that records be kept regarding RSPs, and that statistical information respecting their use be reported to the Director monthly or upon request. Setting up this recording and reporting system will take considerable time and effort.

“Would” Meet the Requirements

Recommendation #7: Amend proposed paragraph 52 (1) 2 to reflect that a person must meet one of the HSCPOA PSW class registration pathway requirements, not all of them.

Recommendation #8: Provide clarity and guidance to the sector on how to comply with proposed paragraph 52 (1) 2, which permits a licensee to hire a person who “would meet the requirements” to be registered in the HSCPOA PSW class.

One of the proposed PSW qualifications, paragraph 52 (1) 2, permits a licensee to hire a person who “*would meet the requirements*” to be registered in the HSCPOA PSW class. Notably, each HSCPOA registration pathway has distinct eligibility criteria and required documentation.

We understand that the intent is likely not to require a person to meet *each* of these separate requirements. Though, the current wording does not reflect this intent. Accordingly, the wording of paragraph 52 (1) 2 should reflect that a person must meet one of the requirements, not all of them.

Beyond the above technical issue for consideration, we anticipate that this proposal will add complexity and confusion into the hiring process for homes. Notably, HSCPOA’s *Employed as a PSW in Ontario* pathway will only be available for a three-year period as it is being revoked on December 1, 2027. However, until its revocation, under this proposed PSW qualification that permits homes to hire a person who “would meet the requirements” to be registered with HSCPOA, homes could continue to hire PSWs who *meet* this pathway. Subsequently, much like the current PSW workforce under the legacy provision in the Act, these PSWs would need to meet another pathway or register under the *Employed as a PSW in Ontario* pathway prior to its revocation to remain working in the sector.

We would like clarification on this approach as it would complicate the hiring process; would homes need to stipulate upon interviewing or hiring a candidate that meets the *Employed as a PSW in Ontario* pathway that in order to keep their job in the sector past December 1, 2027, they must either (a) meet the *Ontario PSW Education* registration pathway by upskilling, (b) register with the *Employed as a PSW in Ontario* pathway, or (c) transition to work under a lesser scope as a RSP?

Further, as noted above, the HSCPOA registration pathways all have distinct required documentation. Notably, the *Employed as a PSW in Ontario* registration pathway requires a

confirmation of employment and verification of skills from an employer.

Because homes could continue to hire PSWs that *meet* this pathway during the three-year period before its revocation on December 1, 2027, we would like clarity on how a licensee is to determine, and prove, they “would meet” this pathway as it requires a verification form.

We advance that a licensee couldn’t, and that the actual verification form would be necessary for hiring, even though registration with HSCPOA would not be until December 1, 2027, under the three-year window. Here, we are concerned with how homes will prove their compliance should they continue to hire PSWs that meet this pathway until its revocation.

Four Hours of Care

Recommendation #9: RSP should be included in the government’s supplemental funding to RNs, RPNs, and PSWs and count toward a home’s hours of direct care per resident to support the government’s four hours of direct care commitment.

The Association has prepared several submissions regarding the RSP role within the last year. In these submissions, we have raised that, to sustain the RSP role in long-term care, there needs to be an appropriate funding structure in place. We would like to take this opportunity to again stress this point.

RSP are currently funded through the Allied Health Professional Staffing Supplement Funding. However, RSP being eligible for the supplementary funding for RNs, RPNs, and PSWs would in turn support homes in moving more quickly towards the four-hour of care goal and would recognize the challenges many homes continue to have in finding PSWs.

Education and Resource Needs

Given the very complex nature of these regulations and the different requirements for the long-term care sector than other sectors as it relates to the PSW Authority, we recommend that the Ministry host webinars that would be recorded and share materials to take the sector through the new qualifications and registration structure for PSWs.

Beyond written descriptions of the regulations, we recommend visual aids to illustrate the different pathways as well as scenarios of PSWs with differing education and work backgrounds and how they would fit into this Authority.

It is crucial that any education is recorded and materials are shared so that staff can access this education at any time.

2. Proposed Section 80 – Registered Dietitians

Recommendation #10: Provide the sector with guidance on what needs to be in the written back-up plan regarding registered dietitians in proposed subsection 80 (4) so to decrease ambiguity and ensure compliance.

Recommendation #11: Amend the wording in proposed clause 80 (5) (a) referring to the failure of the written back-up plan regarding registered dietitians for enhanced clarity and simplicity.

Recommendation #12: Provide clarity and guidance to the sector on what needs to be included in the written record of actions taken in accordance with the written back-up plan regarding registered dietitians in clause 80 (6) (a).

With respect to the proposed amendments to registered dietitians, we are supportive of the Ministry's efforts to introduce more flexibility in how homes utilize this role. This is particularly appreciated in respect to our rural and northern membership, who experience pronounced challenges with meeting the current on-site requirement for registered dietitians.

While we are supportive of this proposal, we outline our considerations on the amendments for the Ministry below.

The new subsection 80 (4) requires a written back-up plan for situations where the home is not able to ensure a registered dietitian is on site. It is unclear what sort of actions the Ministry would expect a home to put in a plan to meet the requirement, especially given that the registered dietitian is a staff member of the home and would have obligations as an employee to fulfill their duties. Guidance from the Ministry on what needs to be in this plan will greatly support homes in complying.

Furthermore, the proposed clause 80 (5) (a) requires the licensee to make reasonable efforts to comply with subsection (2) and refers to the failure of the back-up plan to "ensure compliance with subsection (2)." It is redundant to refer to the failure of the plan; clearly, the licensee has not complied with subsection 80 (2) if the registered dietitian cannot come on site. The intent of the proposed provisions appears to be that having taken reasonable steps to comply with subsection 80 (2), the licensee is exempt from that requirement if it meets the requirements of subsection 80 (5). Referring to the failure of the plan unnecessarily complicates the section. Below is proposed alternative wording with changes in red:

(5) The requirement for the registered dietitian to be on site at the home under subsection (2) does not apply if,

(a) the licensee has made reasonable efforts to comply with subsection (2) ~~and the back-up plan described in subsection (4) fails to ensure compliance with subsection (2)~~;

Finally, clause 80 (6) (a) requires the licensee to keep a written record of the actions and strategies it took in accordance with its plan to comply with subsection (2). It would be helpful for the Ministry to provide clarification on what these records would entail. Notably, is the intent for homes to record their reasonable efforts to comply in those situations where the registered dietitian performs their duties and is not on site? If so, this should be stated more explicitly.

Conclusion

We greatly appreciate the opportunity to be consulted on proposed amendments to the regulations under the *Fixing Long-Term Care Act, 2021*.

Our member homes overall appreciate the establishment of an Authority to regulate and oversee PSWs; however, the regulatory changes and amendments for PSWs currently being proposed are problematic for a number of reasons, as evidenced in this submission — most significantly being the impact on over 1,000 legacy PSWs who may choose to exit the system.

We understand the government's intent behind aligning the Regulation with the HSCPOA registration pathways, and we recognize the efforts made in affording homes more flexibility in staffing for RSP and registered dietitians. However, as in the proposal's current state, homes will not be adequately set up for success; importantly, homes will not be afforded the appropriate time to understand and subsequently implement the new regulations properly.

As such, we strongly urge the Ministry to carefully consider the impacts that the proposed Section 52 will have on the sector prior to moving forward.

We remain available to discuss this submission in greater detail and look forward to working with the Ministry to clarify the questions we have raised.

About Us

For more than 100 years, AdvantAge Ontario has been the voice of not-for-profit seniors' care in Ontario. We represent more than 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 86 per cent of all not-for-profit long-term care homes. We are the only association representing the full continuum of seniors' care in the province

Information Contact

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