



**FOR LTC FAMILIES:
BRIEFING AND Q & A ABOUT THE
DIRECTIVES, GUIDELINES & POLICY FOR
ACCESS TO LONG-TERM CARE HOMES IN
COVID-19**

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Disclaimer

- The content in this presentation is provided for general information purposes only and does not constitute legal advice or an opinion of any kind.
- Individuals should seek their own independent legal advice regarding any specific legal issues.

Agenda

- LTC in Ontario and COVID-19 Orders.
- Visitor restrictions in LTCHs.
- Are the LTCH visitor restrictions legal?
- Common visiting issues in LTCHs during the pandemic.
- What can I do if the LTCH is not complying with the directives and visitor policies?
- Questions and Comments.

Difference between LTC and a RH

- **Long-Term Care Homes:**
 - publicly funded healthcare facilities
 - may be municipal, non-profit, for profit, charitable
 - Admission through the LHIN
 - Licensed and inspected by Ministry of Long-Term Care
 - governed by *Long-Term Care Homes Act*
- **Retirement Homes:**
 - tenancy, NOT a health facility,
 - private pay, agreement through lease and contract, leases and contracts, make own determination of who lives there
 - licensed and inspected by Retirement Home Regulatory Authority,
 - governed by *Residential Tenancies Act* and *Retirement Homes Act*

Important Provincial Legislation During COVID

- *Long-Term Care Homes Act (LTCHA)*
- *Health Care Consent Act, 1996 (HCCA)*
- *Substitute Decisions Act, 1992 (SDA)*
- *Personal Health Information Protection Act, 2004 (PHIPA)*
- *Health Protection and Promotion Act (HPPA)*
- *Emergency Management and Civil Protection Act (EMCPA)*

Regulations

- Many regulations passed related to COVID
- Regulations may be related to the various specific pieces of legislation

Orders: Federal

- Under the
 - *Quarantine Act*
 - *Aeronautics Act*
- Relate to international travel

Orders: Provincial

- Minister of Health
 - two orders related to supply of PPE; June 8, 2020 replaced version of March 27, 2020
- Chief Medical Officer of Health & Local Medical Officers of Health
 - Pursuant to s. 22 of the *HPPA*
 - Class orders – against a group of individuals
 - Individual orders – against one specific person or entity
 - Allow forced isolation, detention, where person exposed to, has, infectious disease

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Long-Term Care Homes Act

Home: The Fundamental Principle

- The fundamental principle to be applied in the interpretation of this Act and anything required or permitted under this Act is that a long-term care home is primarily the home of its residents and is to be operated so that it is a place where they may live with dignity and in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met.

Residents' Bill of Rights

- Twenty-seven (27) rights
- Specifically states that it is enforceable as a contract
- Guides interpretation of:
 - The Act and regulations
 - Agreements between the licensee and Crown/agent
 - Agreements between the licensee and resident/SDM

Residents' Bill of Rights

- Resident Right #14
 - Every resident has the right to communicate in confidence, receive visitors of his or her choice and consult in private with any person without interference.
- Resident Right #21
 - Every resident has the right to meet privately with his or her spouse or another person in a room that assures privacy.

Residents' Bill of Rights

- Resident Right #5
 - Every resident has the right to live in a safe and clean environment.

Enforcement of Rights

- Residents' Rights can be enforced as a contract against the LTCH.
- The government can set out regulations as to how the Residents Rights are to be respected and promoted by the LTCH.

Visitor restrictions in long-term care homes

Visitor Restrictions in LTC

- To date, LTC visiting requirements/restrictions can be found in three (3) separate documents:
- Important to ensure you are looking at the most recent version
 - 1) Directive #3
 - 2) Minister's Directive
 - 3) Ministry of LTC Documents
 - a. FAQ COVID-19 Visiting Policy FAQ
 - b. FAQ Staff, Student and Volunteer COVID-19 Testing in LTCHs

1) COVID-19

**Directive #3 for Long-Term Care Homes under the
*Long-Term Care Homes Act, 2007***

**Issued under Section 77.7 of the Health Protection
and Promotion Act (HPPA), R.S.O. 1990, c. H.7**

Issued: December 7, 2020

Directive #3: To LTCHs

- Issued by the Chief Medical Officer of Health under section 77.7 of the *Health Protection and Promotion Act (HPPA)*.
- Direction to LTCH's on various issues including:
 - Screening
 - Admissions and Transfers
 - Resident Absences
 - Visitors
 - Limiting work locations
 - Staff and resident cohorting
 - What constitutes an outbreak
 - Required steps in an outbreak
 - Communications

Directive #3: To LTCHs

- LTCHs must have a visitor policy in place that is compliant with Directive #3 and is guided by applicable policies and amended from time to time.
- LTCHs must comply with the Minister's Directive.

Directive #3: To LTCHs

- At minimum, LTCHs visitor policies must:
 - Be informed by the COVID-19 situation and flexible to change.
 - Be based on principles of safety, emotional well-being, flexibility, compassion, equity, non-maleficence, proportionality, transparency and reciprocity.
 - Include education on physical distancing, hand hygiene, IPAC, PPE etc.
 - Include allowances/limitations regarding indoor/outdoor visiting options.
 - Include criteria for number/type of visitors allowed per resident.
 - Include screening protocols.
 - Include visitor attestation to not experiencing COVID-19 symptoms.
 - State that if LTCH is not able to provide surgical mask, no visitors should be permitted in the LTCH.
 - Include process for communication with residents/families.
 - State that non-compliance could result in discontinuation of visits for non-compliant visitor.

Directive #3: To LTCHs

- For general visitors, LTCH visitor policy must include process of gradual resumption of visits:
 - Visits should be pre-arranged.
 - Residents can have up to 2 visitors at a time maximum.
 - Must only visit resident intending to visit and no other resident.
 - Should use face covering (outdoors).
 - Must use surgical mask (indoors).
 - Visits not permitted when:
 - Resident is self-isolating/symptomatic.
 - LTCH is in outbreak.
 - LTCH located in Orange/Red/Grey.

Directive #3: To LTCHs

- For essential visitors, LTCHs visitor policy must specify:
 - Be defined as persons performing essential support services (e.g. food delivery, inspector, maintenance, or health care services (e.g. phlebotomy)) or a person visiting a very ill or palliative resident.
 - Does not specifically mention designated caregivers.
 - Must use mask or full PPE when providing direct care to resident with COVID-19.
 - Only type of visitor allowed when:
 - A resident is self-isolating/symptomatic.
 - LTCH is in outbreak.
 - LTCH located in Orange/Red/Grey.

Directive #3: To LTCHs

- Communications
 - LTCHs must keep staff, residents and families informed of COVID-19, including frequent and ongoing communications during outbreaks.

**2) Minister's Directive:
COVID-19: Long-Term Care Home Surveillance
Testing and Access to Homes**

Effective: January 8, 2021

Minister's Directive

- Testing for:
 - Staff, Students and Volunteers
 - Occasional Entry
 - Caregivers and Support Workers
 - General Visitors
 - Previous COVID-19
 - Palliative and Emergency Situations
- Access Subject Requirements
- Statistical Information

Minister's Directive

- Every LTCH shall ensure that staff, students or volunteers take either:
 - Rapid Antigen Testing
 - Green: 1-2 times per week
 - Yellow/Orange/Red/Grey: 2-3 times per week

OR

- PCR Testing
 - Green/Yellow: every 14 days
 - Orange/Red/Grey: every 7 days
- *As close to the date as can be practically achieved*

Minister's Directive

- Every LTC shall ensure that caregivers/support workers demonstrate having received a negative COVID-19 test result before granting entry, whether the visit is indoors or outdoors:
 - Green/Yellow:
 - Negative PCR test in the **past week** and verbally attest to not subsequently testing positive; OR
 - Negative Antigen Test result on the day of visit.
 - Orange/Red/Grey:
 - Negative PCR test in the **past week** and verbally attest to not subsequently testing positive; OR
 - Negative antigen test result on the day of visit.

Minister's Directive

- Every licensee of a LTCH shall ensure that no person enters the home unless the requirements contained in this Directive have been met.

**3) Ministry of Long-Term Care's
COVID-19 Visiting Policy**

Effective: December 26, 2020

MLTC Visiting Policy

- Intended to supplement Directive #3 and Minister's Directive and provide support to LTCHs in implementing the directives:
 - Types of visitors:
 - Staff, volunteers and students are not visitors
 - Essential visitors (e.g. food delivery, inspector, health care service, persons visiting very ill or palliative resident, support worker, caregiver)
 - General visitors
 - Access to Homes
 - Screening
 - Testing
 - PPE
 - Managing safe visits
 - Non-adherence by visitors

MLTC Visiting Policy

- Caregiver
 - Type of essential visitor.
 - Different than a general visitor.
 - Family member, privately hired caregiver, paid companion, translator.
- Designated in writing by the resident or SDM (not the LTCH).
- Visiting to provide direct care to the resident:
 - Supporting feeding, mobility, personal hygiene, cognitive stimulation, communication, meaningful connection, relational continuity, assistance with decision-making.
- Must be 18 years or older.
- Maximum of two (2) designated caregivers per resident.

MLTC Visiting Policy

- General visitor
 - Not an essential visitor.
 - Visiting to provide non-essential services.
 - For social reasons (e.g. family members or friends), different from direct care, including care related cognitive stimulation, meaningful connection and relational continuity.

MLTC Visiting Policy

- Visits for essential visitors *subject to direction from the local public health unit.*
 - Green/Yellow and no outbreak: 2 caregivers per resident at a time.
 - Orange/Red/Grey or outbreak: 1 caregiver per resident at a time (*i.e.* can still designated 2).

MLTC Visiting Policy

- Two general visitors per resident at a time *subject to direction from local public health unit* and provided:
 - Resident is not self-isolating or symptomatic.
 - Home is not in outbreak.
 - Local public health unit is Green/Yellow.
- No general visitors are permitted if:
 - Home has an outbreak.
 - Resident is self-isolating or symptomatic.
 - Local public health unit is in Orange/Red/Grey.

MLTC Visiting Policy

- In addition to providing proof of a negative COVID-19 test, caregivers and general visitors also have to:
 - Verbally attest to the home that, in the last 14 days, they have not visited another:
 - Resident who is self-isolating or symptomatic.
 - LTCH in an outbreak.
 - Complete (re)training (PPE, hand washing etc.).
 - Verbally attest to (re)reading home's visitor policy every month.

MLTC Visiting Policy

- PPE
 - Caregivers
 - LTCHs are responsible for providing surgical/procedure masks, gloves, gown and eye protection (i.e. face shield or goggles) for essential visitors.
 - General Visitors
 - Visitor responsible for bring mask (any type) (outdoor visit).
 - Homes are responsible for providing mask (indoor visit).

If the LTCH is not able to provide PPE, no visitors should be permitted inside the LTCH (Directive #3).

MLTC Visiting Policy

- Managing Safe Visits
 - Caregivers
 - LTCH may not require scheduling, or restrict the length or frequency, of visits.
 - General visitors
 - LTCHs have discretion to:
 - Schedule visits.
 - Limit length (minimum of 30 minutes).
 - Limit frequency of visit (minimum of 1 visit per week per resident).
 - Determine where visit will take place.

MLTC Visiting Policy

- Supervising Visits
 - Home are not required to supervise visits.
 - Gives discretion to homes to supervise visits to manage health and safety during visits:
 - Monitoring floor of visitors to ensure physical distancing.
 - Supporting resident during visit etc.
 - Where a home needs to supervise visits, should be implemented in a manner that respects Residents' Bill of Rights
 - #14. Every resident has the right to **communicate in confidence**, receive visitors of his or her choice and **consult in private** with any person without interference.

MLTC Visiting Policy

- Non-Adherence by Visitors
 - LTCHs have discretion to end a visit by a visitor who repeatedly fails to adhere to the home's visitor policy provided:
 - LTCH has explained the applicable requirement to the visitor
 - Visitor has resources to adhere to the requirement(s)
 - Sufficient space to physically distance
 - Home supplied PPE and demonstrated how to correctly use it
 - Visitor has been given sufficient time to adhere to the requirement(s).

MLTC Visiting Policy

- Temporarily Prohibiting a Visitor
 - LTCHs have discretion to temporarily prohibit a visitor in response to repeated and flagrant non-adherence to the home's visitor policy.
 - In exercising this, LTCHs must consider whether matter can be resolved through other means.
 - Should only be used when all reasonable efforts have been exhausted.

Are the long-term care home visitor restrictions legal?

Are the LTCH visitor restrictions legal?

- We have significant concerns about the legality of the directives and visitor policies.

Are the LTCH visitor restrictions legal?

- Directive #3
 - Question whether CMOH has authority to authorize LTCHs to restrict visitors and caregivers through a directive made under the *HPPA*, as opposed to an order.
 - Issues related to the primacy of the *Long-Term Care Homes Act*

Are the LTCH visitor restrictions legal?

- Minister's Directive
 - *LTCHA*, s. 174.1 gives Minister authority to issue an operational/policy directive where in public interest to do so.
 - Also states, where there is a conflict between Minister's directive and another requirement under the *LTCHA*, the latter prevails.

Are the LTCH visitor restrictions legal?

- Ministry of Long-Term Care's COVID-19 Visiting Policies
 - Unclear what legal authority is being relied on to issue and enforce these policies in LTCHs.

Are the LTCH visitor restrictions legal?

- *Canadian Charter of Rights and Freedoms*
 - Section 7: life, liberty and security of a person.
 - Section 15: equality before and under the law and equal protection and benefit of law.
- *Ontario Human Rights Code*
 - Section 1: discrimination based on family status.
 - Section 11: failure to accommodate.

Common visiting issues in long-term care homes during the pandemic

Issues During Pandemic

- Prohibiting caregivers in LTCHs entirely or heavily restricting visits by caregivers.
 - Examples:
 - LTCH falsely claiming local public health unit directed them to prohibit all designated caregivers.
 - Requiring caregivers to be ‘approved’ by the LTCH.
 - Requiring caregivers to specify what specific direct care they will be providing.
 - Requiring caregivers to schedule their visits or only allowing caregivers in on particular days/times/lengths of time.
 - Only allow residents to designate 1 caregiver total (as opposed to 2 designated caregivers coming one at a time).
 - Telling caregivers they are only allowed to come in once per day because it requires too much PPE.

Issues During Pandemic

- LTCHs requiring all visits from all caregivers to be supervised.
- Not allowing caregivers to provide direct care because they cannot socially distance.
- Not allowing caregivers to use the washroom while at the LTCH providing care.
- Reprisal against residents/caregivers who raise concerns about LTCHs having non-compliant visitor policies.
 - Threatening to permanently prohibit the caregiver because their ‘difficult’.

Issues During Pandemic

- Lack of communication.
 - Examples:
 - Changes in residents' condition.
 - COVID-19 outbreaks in the LTCH.
 - Changes to LTCHs Visitor Policies.

What can I do if the long-term care home is not complying with the directives and visitor policies?

Complaint Process

- Homes have complaint process provided to resident/SDM
- Can use that process but it is NOT mandatory
- Home must investigate and report on complaints
- Complaints in writing must be provided to the Ministry

Complaints to Ministry of Long-Term Care

- Anyone can make complaint to the Ministry Action Line (866-434-0144) regarding a LTCH's failure to comply with the directive and visitor policies.

Regulated Health Professionals

- Complaints can be made about regulated health professionals such as doctors and nurses.
- Complaints are made to their colleges, such as the College of Physicians and Surgeons of Ontario; College of Nurses of Ontario.
- Personal support workers are unregulated, no body to complain to.

Complaint to Local Medical Officer of Health

- May be particularly helpful if the LTCH is not complying with screening protocols, social distancing, hand hygiene, infection prevention and control practices (IPAC) and proper use of personal protective equipment (PPE).

Patient Ombudsman

- Complaints about long-term care homes, hospitals, and home-care can be made to Patient Ombudsman.
- They look at situation, see if they can help resolve – do not take “sides”.
- Complaints must be in writing.
- Patientombudsman.ca.

Resident Detention and Absences

Detention

- We have significant concerns about the legality of the detention in long-term care homes
- HPPA gives Medical officers of health authority to detain in HPPA s. 22
- Everywhere else except long-term care, retirement homes, and disability congregate living are doing via HPPA s. 22 order

Directive #3

- Long-term care home residents were detained since March 22 2020 except for medically necessary appointments
- Allowed short absences starting in September as long as no outbreak, illness– then restricted to requiring approval from home
- Shortly after that – stopped short absences in areas Orange and above

Legality*

- Long-term care homes DO NOT have detention authority
- HPPA does not allow CMOH to detain using a directive
- There is no appeal process as is available in HPPA s. 22 orders
- Contravenes Charter

*For more information please see ACE Winter 2021 newsletter which will be available on its website shortly

Medically Necessary Absences

- No requirement to prove “necessity” of appointment
- Can include overnight visit to an emergency room
- LTCH cannot deny request
- Resident to be actively screened but **DOES NOT** require testing or self-isolation
- Must be provided with mask by home, if tolerated, and be reminded of public health measures, i.e. distancing, hand hygiene

Thank You

Caregivers play a significant role in our LTC system, one that cannot be understated.

Thoughtful consideration needs to be put into determining how residents can safely interact with loved one's during the pandemic, one that respects that totality of resident's rights.



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Questions and Comments