

LTCHA 2007: An Executive Summary

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LTCHA 2007: An Executive Summary

INTRODUCTION

This executive summary identifies and explains the key requirements of the new *Long-Term Care Homes Act* (LTCHA). The executive summary also identifies products and resources that are available through OANHSS to support the home in meeting these requirements. (“LTCHA” includes both the act and regulations, unless specified otherwise.)

The executive summary does not summarize all of the content of the LTCHA. It focuses on operations, and the relations between the home and residents with respect to care and otherwise. Some of the topics this executive summary does not cover are funding, the process for issuing licenses and granting approvals (for municipal and First Nations homes), and the establishment of First Nations homes and the different types of municipal homes.

Accompanying this executive summary is a summary table that lists the key topics and requirements as a guide. For ease of reference, it provides the page number for each topic in the executive summary.

CONTEXT

The LTCHA is the governing act for the long-term care home sector. It governs the establishment and operation of homes, including resident care and services. In addition, it sets out resident rights and entitlements, and provides the basis for the Ministry’s compliance and inspection program.

The LTCHA came into force on July 1, 2010. The new act replaces the three previous acts that governed long-term care in Ontario. The LTCHA is comprehensive and prescriptive. There are almost 200 sections in the act itself and over 300 sections in the regulation. The LTCHA addresses almost all aspects of a home’s operations. The LTCHA is ‘command and control’ regulation. It sets out the care and services homes must provide to residents, and requirements relating to the management and administration of a home. The Ministry then determines compliance with these requirements through ongoing inspections.

Before the LTCHA, many requirements for homes were in the LTC Facility Program Manual. The Manual is no longer in effect, and much of its content is now in the LTCHA or regulations. The result is a very detailed act and regulation. Another result is less discretion for Ministry compliance inspectors. The LTCHA requires inspectors to record all instances of non-compliance.

The Ministry has redesigned its compliance inspection program. The name of the new program is the “Ontario Long-Term Care Quality Inspection Program” (or “LQIP”). Under LQIP, there are two types of inspections: Annual (also known as Resident Quality Inspection) and CCF (critical incident, complaint, and follow up). The LTCHA requires all homes to have an annual inspection by December 31, 2011. Paragraph #20 below relates to compliance in the context of the LTCHA. More information about the Ministry compliance program is available on the member’s area of the OANHSS website.

REQUIREMENTS

There are ten parts to the LTCHA, each of them dealing with a different topic, for example Plans of Care or Councils. The regulations contain the same parts, matching and applying to those in the act. This means that the sections relating to a topic are generally in the same place in the act, and the matching sections in the regulation are easy to find. However, the order and length of the LTCHA can make it difficult for homes to gain an entire picture of the requirements that apply to each major aspect of home operations. These aspects include clinical care, financial and other relations with residents, administration and staffing, and the home’s physical plant.

The guide does not follow the organization of the LTCHA. Instead, it sets out the key requirements of the LTCHA under the three groups below.

Resident Care and Services

This group of requirements relates to the care and safety of residents. It includes requirements for the programs and services that homes must provide to residents.

Resident Rights and Finances

This group concerns the home's relations with residents outside of the context of care, admissions and programs. It includes resident finances and agreements, as well as resident rights and entitlements.

Administration and Operations

This group relates to the infrastructure of homes. It includes such areas as staffing, reports, and procedures for responding to complaints. It also includes requirements for the home's physical plant.

Explanations or key requirements are below, set out by topic. Each topic includes a brief description of the requirement, or set of requirements, and notes to assist the home in responding to the requirements. The topics also include reference to the relevant area of the LTCHA, and helpful resources available through the OANHSS LTCHA Implementation Member Support Project ("OANHSS MSP"). The OANHSS resources are available through the member area of its website.

Resident Care and Services

1. Plans of Care

The LTCHA requires two kinds of care plans. The first is a 24-hour admission care plan. A home must develop this plan within 24 hours of a resident's admission to the home. Contents and requirements for this plan are in section 24 of the regulation.

The second kind of care plan is the plan of care itself. The regulation refers to an "initial plan of care". This is the same as a plan of care. The home must complete the assessments necessary to develop a plan of care within 14 days of admission. The home must in turn develop the plan of care within 21 days of admission. The requirements for the 24-hour admission care plan no longer apply once the home develops a plan of care for the resident.

The plan of care must be in writing. The home must reassess the plan of care at least every six months. (Note however that RAI-MDS has a shorter interval, i.e. 92 days.) Homes must also reassess the plan of care if the resident's care needs change, or if care is not effective. Section 6 of the act and section 24 of the regulation set out the requirements and content for a plan of care.

Homes should note that that assessment of a resident requires his or her consent. Also, several sections apply to the 24-hour admission care plan as if it were a plan of care. These sections are set out under subsection 24(14) of the regulation. In addition, the resident or his or her SDM must have an opportunity to participate in the development of both kinds of care plan.

Homes must ensure that the resident's care team holds a care conference within six weeks of admission to discuss the plan care. Requirements for the care conference are in section 27 of the regulation.

Reference: section 6 of act; sections 24-28 of regulation

2. Prevention of Abuse

Homes must protect residents from abuse by anyone. Homes must also ensure that staff members do not neglect residents. Section 20 of the LTCHA requires homes to have a written policy that promotes zero tolerance of both abuse and neglect of residents. Home must take steps to ensure compliance with the policy, and communicate the policy to staff members, residents and SDMs. Section 20 of the LTCHA and section 96 of the regulation set out the minimum content for the policy.

If a home suspects that an incident of abuse or neglect may amount to a criminal offence, it must immediately notify the police.

Note that there are different types of abuse. Section 2(1) of the LTCHA and 2(1) of the regulation set out definitions of the different types of abuse (physical, sexual, emotional, verbal and financial). The definitions cover a wide range of conduct and actions.

Reference: sections 19-20 of act; sections 96-99 of regulation

OANHSS Member Support Project: Abuse and Neglect - Sample Policy, Procedures and Staff Training Package, January 2011

3. Restraints

Any restraining of residents must be in accordance with the LTCHA. There are extensive requirements that apply to the use of restraints. A home must have a written policy to minimize restraining and to ensure that any use of restraint complies with the LTCHA. Homes must keep records relating to the restraining of a resident. The LTCHA prohibits certain types of restraint, including use of restraint for as a form of discipline or for convenience. It also prohibits the use of certain devices that limit movement, such as vests or roller bars.

Extensive requirements apply to restraining by physical devices and by the use of personal assistance services devices (PASDs). After section 32 of the LTCHA comes into effect, these requirements will also apply to the use of barriers and locks that stop the resident from leaving or entering a part of the home.

Generally, to use a certain type of restraint, it must be in the resident's care plan. There are conditions that apply to including these types of restraints in a plan of care. There are also requirements that apply when a restraint is in use, for example with respect to time and ongoing evaluation of restraint.

Homes cannot use barriers or locks or other devices to stop a resident from leaving or entering a part of the home, unless it is pursuant to section 32 of the LTCHA (or the common law duty to prevent serious harm). Section 32 is not yet in force. This section also contains requirements that apply to the transfer of a resident to a secure unit.

Reference: sections 29-36 of act; sections 109-13 of regulation

OANHSS Member Support Project: Minimizing Restraining - Sample Policy, Procedures and Staff Training materials (December 2011)

4. Programs and Services

The LTCHA requires a home to provide certain "organized programs." These programs relate to resident care and well-being. This is a challenging area of the LTCHA because there are general requirements that apply to all programs, and specific requirements that apply to each program. Also, these requirements are in different

places in the LTCHA and regulation. In addition, there are other requirements for assistance or services that the LTCHA does not treat as an organized program.

A home must provide the eight programs set out in sections 8-12 and 14-16 of the LTCHA. The home must also provide the four interdisciplinary programs set out in section 48 of the regulation. Both groups of programs must meet the general requirements in section 30 of the regulation. Section 30 requires a written description for the program, and sets out content for the description. If the program uses supplies or aids, these must be appropriate for the resident. Also, the home must evaluate and update the program on an annual basis. Each program must also meet the requirements in the regulation that apply to it. These specific requirements are set out in sections 31 through 95 of the regulation.

The LTCHA also requires homes to develop procedures and approaches to address resident needs in three additional areas (responsive behaviour, altercations, and referral assistance). These areas are not subject to the general requirements for programs.

Homes should carefully review the specific requirements for each program. There are requirements relating to staff qualifications (e.g. PSWs and food service workers) and time that staff members must spend on-site. There are also requirements relating to the lead for each program. Finally, homes should be mindful of the requirements for 24-hour nursing care in section 45 and note that these differ according to the size of the home.

Although not directly related to resident care, the LTCHA requires homes to have a quality improvement system. Homes must also take an annual survey of residents and families to measure satisfaction with the home and its care and programs. In addition, homes must have an infection prevention and control program.

Below is a list of programs, with references to the relevant sections of the LTCHA and regulation.

NAME OF PROGRAM OR SERVICE	ACT	REG	NAME OF PROGRAM OR SERVICE	ACT	REG
Nursing and personal support services	8	30, 31-47	Falls prevention and management		30, 49
Restorative care	9	30, 56-64	Skin and wound care		30, 50
Recreational and social activities	10	30, 65-67	Continence and bowel management		30, 51
Nutrition and hydration	11	30, 68-78	Pain management		30, 52
Medical services	12	30, 79-84	Responsive behaviours		53
Religious and spiritual practices	14	30, 85	Altercations		54-55
Accommodation services	15	30, 86-92	Information and referral assistance	13	
Volunteer program	16	30, 94-95			
Quality improvement program	84	228	Satisfaction survey	85	
Infection prevention and control	86	229			

Reference: sections 8-16, 84-86 of act; sections 30-95, 228-29 of regulation

OANHSS Member Support Project: Required Programs Sample Policies, Procedures and Staff Training materials – Falls Prevention and Management, Skin and Wound Care, (November 2010), Pain Management (December 2010) Continence and Bowel Management, Restorative Care (December 2010), Nutrition and Hydration (December 2010), Responsive Behaviour (January 2011)

5. Admissions

The LTCHA provides the framework governing admission to a home. It sets out requirements for determining eligibility of applicants for long-term care, the home's approval of admission, and CCAC authorization of admission to a home. Homes must approve an admission under section 44 of the LTCHA, unless the home lacks the facilities to meet the applicant's needs, or lacks the nursing expertise to meet his or her care needs. Under section 162 of the regulation, homes have an opportunity to seek more information from the CCAC to support a decision about approval.

Section 45 of the LTCHA sets out the rules for admission to a secure unit. These rules are not yet in effect. This is an area that may create future challenges for homes. Of particular concern is the requirement for an applicant or resident to have the opportunity to receive advice from a third party rights advisor, before a home can admit him or her to a secure unit on the consent of a SDM. The effect of this and other requirements will depend on the government's approach and support for processes relating to secure units. Homes will also have to satisfy a set of conditions before admitting an applicant or resident to a secure unit.

The regulations include requirements that apply to transfers, waiting lists and the short-stay program. The regulations also set out the process and requirements relating to specialized units. These are units that the Ministry designates to offer certain types of care or services. The LHINs are responsible for making recommendations to the Ministry for the designation of long-stay beds as a specialized unit. The home must enter into an agreement with the LHIN for the operation of a specialized unit.

Reference: sections 39-55 of act, sections 152-210 of regulation

6. Absences and Discharge

The regulation sets out the permitted length of resident absence from the home. The term "absence" includes a casual or vacation absence, and also an absence for medical or psychiatric care or assessment. The home must ensure that the resident receives exactly the same accommodation that he or she had before the absence. This rule does not apply where the resident exceeds the permitted length of absence. The home also has certain obligations with respect to staying in contact with an absent resident (or his or her care provider) and for taking steps to ensure a resident receives care during an absence.

The LTCHA sets out the situations in which a home can discharge a resident. Homes must also meet certain requirements before discharging a resident, for example giving notice and the making of alternative care arrangements. A home cannot discharge a long-stay resident unless it does so in accordance with section 145 of the regulation. The home may discharge a resident if the home cannot provide a safe and secure environment for the resident or for those who come in contact with the resident. Other grounds for discharge are the resident's failure to comply with rules for casual absences, and where the resident leaves the home and informs the home that he or she will not return. The regulation also sets out the circumstances in which a home must or must not discharge short-stay residents.

Reference: sections 138-51 of regulations

Resident Rights and Finances

7. Resident Bill of Rights

The home must respect and promote the resident rights set out in section 3 of the LTCHA. This is not new. All three of the previous acts governing homes contained a bill of rights. Subsection 3(4) of the LTCHA states that residents may enforce the bills of rights against the home as though there was a contract between them in which the home agreed to fully respect and promote the rights in the bill of rights. The implications of this are unclear, although it suggests that a resident may take legal action against a home for any failure to respect the bill of rights.

Homes must have a mission statement that is consistent with the principle that the home is primarily the home of its residents and is a place where they may live with dignity, safety and comfort (see section 1 of the LTCHA). The home must develop the mission statement in collaboration with the resident and family councils. If there was a mission statement in place as of July 1, 2010, the home must develop a new statement in accordance with the LTCHA before July 1, 2011.

Reference: sections 1, 3-4, & 89 of act.

8. Resident and Family Councils

Homes must ensure that there is a resident council for the home. Only residents can be members of the council. The LTCHA sets out the powers of councils, which include advising residents about their rights under the LTCHA, resolving disputes between the home and residents, and reporting concerns to the Director. Resident councils may review reports by Ministry inspectors, reconciliation reports, and financial statements that the home submits to the Director or LHIN. The home must respond in writing to the resident council if the council advises the home of any concerns or recommendations. The home must provide the council with an assistant.

Family councils are not mandatory. The home must assist in establishing a family council, if a family member or person of importance to a resident requests one. The LTCHA lists who may not be a member of the family council. This list includes staff members of the home and Ministry employees. Homes must on an ongoing basis advise families and persons of importance to residents of the right to establish a family council. Homes must also convene semi-annual meetings to advise these persons of this right. The powers of family councils are similar to those of the resident council, as are a home's obligations with respect to responding and providing assistance to them.

The home must meet general requirements that apply to both types of council. These include meeting with a council upon request, the duty to consult with councils, and not inferring in council meetings or business.

Reference: sections 56-68 of act; section 211 of the regulation

9. Information for Residents

Homes must give (and explain) a package of information to every resident and SDM at the time of admission. The home must also make the package available to family members and persons of importance to residents. Residents and SDMs must receive any revisions or updates to the package.

The act and regulations set out the minimum content for the package. It is a long list. There is also a long list of information that the home must post in a conspicuous and easily accessible place in the home. The home must communicate this information to any resident who cannot read it.

Reference: sections 78-79 of the act; sections 224-226 of regulation

OANHSS Member Support Project: Checklists for Ensuring Completeness of Resident information (packages and posting) (October 2010)

10. Resident Charges

Section 91 sets out the basic rules that apply to resident charges. Homes cannot charge residents for anything that the Ministry or LHIN requires the home to provide to a resident, and for which the home receives funding. Homes can also not charge residents for goods and services that the LHIN or a government program pays for or covers (e.g. through OHIP or ODB, or the Assistive Devices Program). The regulation sets out maximum amounts that the home can charge residents for accommodation.

To charge a resident for goods and services, or for preferred accommodation, the home must enter into a written agreement with the resident, or a person authorized to enter into an agreement on behalf of the resident. The home must keep accommodation agreements separate from agreements relating to goods and services other than accommodation (e.g. phone, cable, tuck shop, hair styling, and massage). A resident is responsible to pay for basic accommodation, even if there is no agreement in place. Residents may apply for a reduction in the charge for basic accommodation. During an absence, residents remain responsible for payment of accommodation charges. Homes must give residents 30 days written notice in advance of any increase to accommodation charges.

Homes must ensure that no more than 60% of beds are designated as preferred accommodation.

Homes must provide residents each month with an itemized statement showing the charges the home made to the resident in that month. If the home holds a trust account on behalf of a resident, the home must provide him or her with a quarterly statement setting out trust fund activity.

Reference: section 91 of the act; sections 245-261

OANHSS Member Support Project: Model Accommodation Agreement Package (October 2010) & Model Purchase of Services Agreement Package (November 2010)

11. Regulated Documents and Agreements

The majority of homes will have written agreements in regard to accommodation charges and in regard to goods and services that are available to residents for a charge. Homes must keep these two types of agreement separate. These agreements are “regulated documents” under section 80 of the LTCHA and section 227 of the regulation. Section 80 requires these documents to comply with all requirements in the regulation. The home must have a lawyer certify this compliance.

Both types of agreements must meet requirements in section 227 of the regulation. Homes must limit the content of an accommodation agreement to certain types of clauses. For goods and services agreements, homes must include certain types of clauses, but may add other clauses.

A document or form that contains a consent to treatment is also a regulated document. A lawyer must certify that such forms meet all the requirements in the regulation. Note that section 80 appears to prohibit any person (not just the home) from presenting a regulated document to a resident (or his or her representative) for signature, unless that document meets all the requirements of the regulation. As a result, homes should make sure that any third parties that provide health care or treatment in the home and use written consent forms are aware of and comply with the requirements for regulated documents. Homes must comply with the requirements for regulated documents starting on January 1, 2011.

Note that an agreement is voidable by a resident for 10 days after the resident and home sign it. Homes must ensure that an applicant or resident is not led to believe, or is not threatened, that a failure to sign an agreement, the voiding of an agreement, or a refusal to give consent will result in discharge or refusal of admission.

Reference: sections 80-83 of act; section 227 of regulation

OANHSS Member Support Project: Model Accommodation Agreement Package (October 2010) & Model Purchase of Services Agreement Package (November 2010)

12. Trust Accounts

Requirements for trust funds are in section 241 of the regulation. Homes must maintain at least one trust account at a financial institution and deposit any money entrusted to the home on behalf of a resident. Homes must not mix resident funds that it holds in trust with other funds or accounts of the home. The trust account must not bear interest or exceed deposit insurance limits. Homes must not hold more than \$5,000 in a trust account for any resident at any time or charge a resident any transaction fees with respect to the account. Section 241 requires homes to maintain a separate ledger for each trust account and a separate book of account for each resident. Homes must withdraw petty cash trust money from a resident's trust account sufficient to meet his or her daily cash needs. Homes must have a written policy and procedures for managing trust accounts and petty cash trust money.

A home must provide residents with written receipts for any money that it receives from or on behalf of a resident for deposit in a trust account. The home must also provide a quarterly statement setting out trust fund activity.

The resident may authorize (in writing) the home to withdraw money from his or her trust account to pay for accommodation, goods and services. The regulation sets requirements relating to the authorization. The home does not have to provide a receipt for withdrawals relating to an authorization. However, the home must include any withdrawals on the quarterly statement.

Trust accounts must receive an audit on an annual basis.

Note that section 133 of the LTCHA permits a municipal home to receive, hold and administer resident property in trust, subject to any restrictions in the regulation.

Reference: section 133 of the act; section 241 of the regulations

OANHSS Member Support Project: Model Purchase of Services Agreement Package (November 2010)

Administration and Operations

13. Required Staff Positions and Qualifications

All homes must have an administrator. On-site requirements for the administrator differ according to the size of homes. For homes with over 97 beds, the on-site requirement is 35 hours per week. Attending meetings or training outside the home related to the administrator role is working on-site, as long as the administrator is available by phone. Homes must comply with the on-site requirement as of January 1, 2011. However, there are on-site requirements that apply to the six month period between July 1, 2010 and January 1, 2011. For a home with 100 beds or more, the "six month" requirement is also 35 hours per week.

Homes must ensure that an administrator it hires after July 1, 2010 must meet the requirements set out in subsection 212(5) of the regulation. A summary of these requirements is set out below.

- (a) Education (3 year post secondary degree or 2 year health or social services diploma)
- (b) Three years of experience as a manager or supervisor in health or social services, or another sector having completed the course below in (d)
- (c) Leadership and communication skills
- (d) Completion or enrolment in a program in long-term care home administration or management that has a minimum of 100 hours of instruction time

After July 1, 2010, a home may hire a person as an administrator who does not meet these requirements where he or she meets the conditions set out below.

- (a) The person was working as an administrator on July 1, 2010 and continues to do so.
- (b) The person has three years work experience as an administrator, before or after July 1, 2010.
- (c) The person has completed a program in long-term care administration or management, or is enrolled in a program in long-term care home administration or management that has a minimum of 100 hours of instruction time (before or after July 1, 2010).

All homes must have a Director of Nursing and Personal care who is a registered nurse. There are on-site requirements for the director, which follow the same approach to those for administrators, but with different thresholds for hours per week and number of beds. Homes must ensure that directors hired after July 1, 2010 have the qualifications set out in subsection 213(4) of the regulation

All homes must also have a medical director who is a physician. The regulation requires homes to have a written agreement with the medical director and provides content for the agreement. It also sets out the responsibilities and duties of medical directors.

Reference: sections 70-74 of act; sections 212-14 of regulation

14. Training and Screening

Homes must train new staff in the areas set out in section 76 of the LTCHA and section 218 of the regulation. Staff must also receive retraining in these areas on an annual basis (subject to a two exceptions set out in section 219 of the regulation). Homes must assess the further training needs of staff at least annually. A home may decide the best way to address these further needs. Staff members who provide direct care to residents must receive additional training in specific areas.

To determine who must receive orientation and training, a home should refer to section 222 of the regulation, and the definition of "staff" in section 2(1) of the LTCHA. Some persons are exempt from training. However, the home must still provide those people with information relating to certain areas set out in subsection 76(2) of the LTCHA.

Homes must provide orientation to volunteers in specific areas set out in section 77 of the LTCHA.

Starting on July 1, 2011, homes must have police conduct a criminal reference check within six months before hiring a staff member or accepting a volunteer. The check must include a vulnerable sector screen, which adds time to the reference check process. Additional requirements for criminal reference checks and screening are set out in section 215 of the regulation.

Reference: sections 75-77 of act; sections 216-223 of regulation

OANHSS MSP: Worksheet for mandatory training (November 2010) & Various Training Presentations on Required Programs (different release dates), Volunteer Orientation and Training regarding new Long-Term Care Quality Inspection Program and Mandatory Training Requirements (December 2010)

15. Complaints and Reports

Homes must have written procedures in place to manage complaints. These procedures must meet the requirements in section 101 of the regulation. Homes have an obligation to investigate and respond to written and verbal complaints relating to the care of a resident or the operation of the home. Homes must immediately forward written complaints about the care of a resident or the operation of the home to the Director. Homes must investigate and respond to reports concerning abuse or neglect of a resident, and report the result of the investigation and response to the Director. Section 104 of the regulation sets out requirements for a report to the Ministry.

The LTCHA contains strong protections for whistle-blowing. Homes must not retaliate in any way against a person who makes a report or discloses information to the Director. Also, homes must also not take steps to discourage reporting.

A person (including the home) who suspects that an event set out in section 24 of the LTCHA has occurred, or may occur, must report this to the Director immediately. These events include abuse or improper treatment of a resident, and misuse of a resident's money.

Homes must inform the Director following a critical incident in the home. Depending on the type of incident, the home must either inform the Director immediately or within one business day. The home must follow-up with a report describing the incident, including the action the home took to respond to the incident.

Reference: sections 21-28 of act; sections 100-107 or regulations

OANHSS Member Support Project: Sample Policy and Procedure for Managing Complaints and Resource Documents about whistle blowing provision and non-retaliation (January 2011)

16. Drugs and Pharmacy Service Provider

Homes must have a system in place to manage medications. The system must include written policies and protocols in specific areas, for example storage, dispensing and administration of drugs. Homes must retain a pharmacy service provider for the home. There must be a written agreement in place with the provider. The regulation sets out mandatory content for the agreement, including the responsibilities of the provider.

All drugs that the home acquires, receives or stores must be provided through the pharmacy service provider or the Government of Ontario. A prescription is required for a resident to use a drug, or for a person to administer a drug to a resident. The regulations contain a number of rules for the obtaining and keeping of drugs, including rules for safe storage, packaging, records and disposal.

Homes should note section 132 of the regulations that relates to natural health products. If a resident wishes to use natural health products, homes must have written policies to govern the use, administration and storage of these products.

Reference: sections 114-137 of regulation

17. Compliance and Enforcement

Part IX (sections 141-151) of the LTCHA provides the framework for the Ministry's compliance program. It sets out the process and rules for inspections, and the powers of inspectors. Section 152 of the LTCHA sets out the actions an inspector can take if he or she finds non-compliance. These actions include a written notification, a request that the home develop a voluntary improvement plan, or referral to the Director. Inspectors may also issue compliance orders.

The Director has more extensive powers than inspectors. To address non-compliance, the Director may order the home to return funding, or withhold funding to the home. The Director may also order a home to retain a person acceptable to the Director to assist in the management of the home. The Director has the power to revoke a home's license. Note that the Director has separate and specific enforcement powers in the context of approvals for municipal and First Nations homes.

A home may request the Director to review an inspector's order. Homes may appeal decisions of the Director to the Health Services Appeal and Review Board.

For the day to day operation of the home, it is important for the home to understand the approach of the Ministry's compliance program. More information about the Ministry compliance program is available on the member's area of the OANHSS website.

Reference: sections 141-51 of act; sections 298-301 of regulation

OANHSS MSP: Training/overview presentations for staff and managers on new Long Term Care Quality Inspection Program (new term for Ministry "compliance program") (October 2010)

18. Licensing

Homes require a license to operate. Licenses have a fixed term, which do not exceed 25 years. The length of the term depends on the structural classification of the home (new beds, class A beds, etc.). At least three years before a home's term expires, the Director will give notice to the home that it will not receive a licence or that it will receive a new license.

Homes cannot operate more beds than the number allowed in its licence. Homes must ensure that all of these beds are occupied or available for occupation. Where beds are unoccupied or unavailable for occupancy for more than 14 days without the Director's approval, the Director may reduce the number of beds allowed under the license.

Only the Director can transfer beds and this must be in accordance with the rules set out in the LTCHA. A non-profit entity cannot transfer beds to a for-profit entity, unless the transfer meets specific conditions in the regulation.

Municipal and First Nations homes do not have licenses. However, the establishment of such a home requires the approval of the Minister of Health and Long-Term Care. Most of the requirements relating to licenses also apply to approvals.

Reference: sections 95-117, 129-132 of act; 266-281 of regulations

19. Records and Reports

The home must submit an annual report to the Director. The report must confirm the information the Director has on file for the home, and any information that the home should have reported to the Director under the LTCHA during the year, but did not. Homes must also provide an audited reconciliation report each year.

Homes must maintain an up-to-date written record for each resident in the home. The retention period for these records is at least 10 years after discharge and the records must remain at the home for at least the first year after the home discharges the resident. Homes must keep the records for current residents at the home.

Homes must also maintain records for each staff member. Content for these records is set out in section 234 of the regulation. The home does not have to keep records for certain individuals who come within the definition of “staff” in section 2(1) of the LTCHA. Homes should review section 234 of the regulation in this context. Homes must keep the records for current staff members at the home. The retention period for staff records is 7 years.

Reference: sections 88 & 92 of the act; sections 231-40

20. Facility Related Requirements

Section 5 of the LTCHA requires homes to provide a safe and secure environment for residents. Sections 9 through 23 of the regulation set out requirements that apply to the physical environment of the home. These requirements apply to such features as doors, elevators, bed rails, windows, shower grab bars, and lighting. Note that some of these requirements may not be consistent with the LTC Facility Design Manual, so even a newer home should not simply assume that its physical plant complies with the regulations. Homes should also be mindful of the timelines with respect to meeting some of the requirements (e.g. elevators, generators, and availability of response system).

Homes should note that they require approval of the Director before renovating the home, or for other work on the home or its equipment that may have a significant effect on residents.

Section 87 of the LTCHA requires homes to have emergency plans in place. The plans must include measures for dealing with emergencies and the evacuation and relocation of staff and residents, in addition to other things, such as fires and bomb threats, set out in section 230 of the regulation. Section 230 also sets out requirements for content, development and testing of plans.

References: section 5 & 87 of the act; sections 9-23, 230 & 305 of the regulation

21. Duties of Directors and Officers

Section 69 of the LTCHA requires every director and officer of a corporation holding a license under the Act to meet a standard of care in discharging their duties. Directors and officers must, “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.” In addition, directors and officers must, “take such measures as necessary to ensure the corporation complies with all requirements” in the LTCHA. (Note that these requirements also apply in the context of municipal homes and First Nation homes.)

The LTCHA holds directors and officers to an objective standard of care. In other words, it requires directors to exercise the care of a reasonably prudent person. This is similar to the standard of care in the Ontario Business Corporations Act, the Occupational Health and Safety Act, and other statutes.

Section 69, and more specifically clause 69(1)(a), does not impose a higher standard of care on non-profit directors than what these directors faced before the LTCHA came into force. However, section 69 does link a standard of care to the specific requirement of ensuring compliance with the LTCHA. This was not the case with the three previous acts governing long term care homes.

Section 69 requires directors to act reasonably and prudently, and “take such measures as necessary” to ensure compliance with the LTCHA. These measures would include establishing governance processes and structures to oversee and monitor compliance. In addition, boards should follow a reasonable and informed decision making process, and each director should act prudently and diligently (ask questions, seek additional information and expert advice where necessary, encourage dialogue and independent judgment, and ensure the board adopts other ‘good governance’ principles and procedures).

References: sections 69 and 182 of the act

OANHSS Member Support Project: The three-part package on governance accountabilities including a presentation on duties and liabilities, Quick Reference Guide on LTCHA, and presentation on quality and compliance monitoring under the LTCHA for boards and senior managers (January 2011). Note: CD of January 20 Webinar on these topics also available)

LTCHA SCOPE AND KEY REQUIREMENTS

Release Date: January 20, 2010

LTCHA SCOPE AND KEY REQUIREMENTS

RESIDENT CARE & SERVICES	RESIDENT RIGHTS AND FINANCES	ADMINISTRATION AND OPERATIONS
<p>1. Plans of care [2]</p> <ul style="list-style-type: none"> • Admission care plan • Plan of care <p>2. Prevention of abuse and neglect [3]</p> <ul style="list-style-type: none"> • Policy to promote zero tolerance • Police notification <p>3. Restraining [3]</p> <ul style="list-style-type: none"> • Written policy to minimize • Prohibited devices • Conditions to include in plan of care • In-restraint requirements • Record keeping • (Transfer to secure unit) <p>4. Programs and services [3]</p> <ul style="list-style-type: none"> • 8 resident care/services programs • 4 interdisciplinary programs • 3 misc programs • Infection control • Quality improvement • Satisfaction surveys <p>5. Admissions [5]</p> <ul style="list-style-type: none"> • Specialized units • (Secure units) <p>6. Absences and discharge [5]</p> <ul style="list-style-type: none"> • Restrictions on discharge 	<p>7. Resident bill of rights [5]</p> <ul style="list-style-type: none"> • Enforcement of bill of rights • Mission statement <p>8. Resident and family councils [6]</p> <ul style="list-style-type: none"> • Assistance • Non-interference <p>9. Information for residents [6]</p> <ul style="list-style-type: none"> • Package of information • Posting of information <p>10. Resident charges [7]</p> <ul style="list-style-type: none"> • Accommodation • Non-accommodation services • Monthly statement <p>11. Regulated documents [7]</p> <ul style="list-style-type: none"> • Resident agreements • Written consent forms • Voidable agreements • Coercion prohibited <p>12. Trust accounts [8]</p> <ul style="list-style-type: none"> • Accounts • Written policy • Authorizations 	<p>13. Senior staff [8]</p> <ul style="list-style-type: none"> • Positions • Qualifications • On-site requirements <p>14. Training and screening [9]</p> <ul style="list-style-type: none"> • Criminal reference checks • Orientation <p>15. Complaints and Reports [10]</p> <ul style="list-style-type: none"> • Written complaints procedure • Investigation and reports • Whistle-blower protection • Critical incidents <p>16. Drugs and pharmacy [10]</p> <p>17. Compliance & enforcement [10]</p> <p>18. Licensing [11]</p> <ul style="list-style-type: none"> • Beds available for occupancy • Restriction on transfers <p>19. Records and reports [11]</p> <ul style="list-style-type: none"> • On-site retention <p>20. Facility related requirements [12]</p> <ul style="list-style-type: none"> • Design • Approval for construction • Emergency plans <p>21. Director and officer duties [12]</p>