



# Response to Proposed Phase 1 Regulations of the *Fixing Long- Term Care Act, 2021*

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AMO's Submission to the Ministry of Long-Term Care

February 17, 2022

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### Preamble

The Association of Municipalities of Ontario (AMO) is a non-partisan, non-profit association representing municipal governments across the province. Municipal governments work through AMO to achieve shared goals and meet common challenges. As the frontline order of government closest to people, municipal governments are active players in Ontario's health system that understand the health needs of local communities.

Municipal governments operate 100 (16%) of the 626 LTC homes in Ontario that were mandated under the *Long-Term Care Act, 2007*. These homes pride themselves on providing high quality services and safe environments for their residents. In support of that work, AMO [continues to advocate](#) for improvements for seniors and the long-term care sector.

### Principles

The following principles form the basis of AMO's response to the proposed Phase 1 regulations. The Ministry of Long-Term Care should ensure these principles are considered and prioritized in each of the Phase 1 regulatory changes, to ensure the highest quality of care for long-term care residents and the sustainability of the sector.

#### 1. The implementation of any changes must be fully costed and funded by the province

The regulatory framework must be comprehensive, enabling, and accompanied by resources needed to implement the highest standard of care possible. Funding to fully implement any changes is also necessary to contribute to making long-term care an appealing environment to work for new and existing staff. Long-term care is health care, an area of provincial responsibility. Municipal property taxpayers should not be required to subsidize municipal homes.

#### 2. Protecting the health and safety of residents

Regulations must prioritize the health and safety of residents, including mental health and well-being.

#### 3. Capacity and Responsiveness

Regulations must be reflective of current capacity in the sector. To be responsive to changing conditions and facilitate innovation, some matters are best left to policy rather than regulation.

#### 4. Maintaining a home-like environment

Long-term care must be a home-like setting and not an institution. Regulations should commit to enhanced resident-centred care by enabling emotion-focused models of care within homes.

#### 5. Removing barriers to emotion-focused care

Regulations should be made with a commitment to emotion-focused models of care that pay attention to the mental health and well-being of residents. A comprehensive review of all existing regulations that apply to long-term care is required to ensure there are no barriers to achieving emotion-focused models of care in homes.

#### 6. Providing clear guidance with local flexibility

Regulations should provide guidance without being overly prescriptive. This will allow for local flexibility to meet the unique needs of residents.

#### 7. Support for compliance

Enforcement cannot just be punitive. For example, AMO recognizes that Administrative Monetary Penalties (AMPs) will be included in the regulations but must be reasonable. It is equally important to provide compliance support for home operators to continuously improve and ensure all operators are aware of their obligations. Compliance support should be built into the role of inspectors and include guidance through coaching. The Ministry should also provide tools and resources and collect and disseminate best practices throughout the sector. This will improve compliance, increase quality of care, and facilitate.

#### 8. Culturally appropriate and responsive service delivery

Regulations must support the implementation of culturally appropriate and responsive service delivery within the long-term care sector, informed by consultation with Indigenous peoples and ethno-cultural groups.

## Comments on Proposed Changes

With these principles in mind, the following comments represent the feedback of AMO's Board of Directors, Health Task Force, and Long-Term Care COVID-19 Commission Working Group on the proposed Phase 1 Regulations. Overall, these regulatory changes are significant and as such, the Ministry must commit to fully costing and funding their implementation as they will greatly increase the administrative burden and cost to homes. Timelines for implementation should also be extended in response to the challenges of the ongoing pandemic. AMO recommends extending timelines to six to twelve months for implementation, depending on the provision.

### Sections 4 & 268: Defining "caregiver" and Visitor Policy

The COVID-19 pandemic has emphasized the importance of caregivers to the health and well-being of long-term care residents. In developing the definition of "caregiver" and the requirements for a home's visitor policy, the Ministry of Health and the Ministry of Long-Term Care should continue to work with long-term care sector associations. Residents' Councils and Family Councils should also be consulted on the development of the policies to ensure they strike an appropriate balance between health and emotional well-being considerations.

### Section 33: Targets and Periodic Increases

AMO reiterates the importance of ensuring that the implementation of the commitment to four hours of care per resident per day must be 100% provincially funded. When regulating the calculation method for direct care targets, the Ministry of Long-Term Care should include ranges for the staffing mix, rather than hard ratios. In addition, we recommend accelerating milestone for implementing the Staffing Plan to help homes address human resources challenges, including staff shortages.

### Section 61: Palliative Care

The development of a palliative care philosophy should be co-designed with the long-term care associations and experts in the field to ensure alignment and reinforcement of emotion-focused care for residents. The Ministry of Long-Term Care should provide training, funding, education, and psychosocial supports for clinicians and staff to support the implementation and provision of a palliative approach to care within the home. In addition, palliative care responses should not rest with the home alone, but be part of the larger health care system, including hospitals.

### Section 77: Menu Planning

The changes regarding menu planning will require annual increases in raw food allowance funding. The Ministry of Long-Term Care should consider these changes being made through policy rather than regulations to account for greater flexibility and responsiveness. Cultural appropriateness and responsiveness should also be considered in any menu planning changes.

## Section 102: Infection Prevention and Control (IPAC) Program

The Ministry of Long-Term Care and Ministry of Health must support and fund the implementation of these regulatory requirements. The requirement for IPAC Practitioners must be fully funded and there should be efforts made to accelerate the availability and capacity of IPAC Practitioners. The Ministry of Long-Term Care should require IPAC accountability at the highest level of management as well as a clear reporting structure on IPAC matters.

## Section 117: Whistle-Blowing

Regulations around whistleblowers should be responsible, not vexatious, and not breach resident confidentiality. The Ministry of Long-Term Care should take into consideration the whistleblower protections that are included in the legislation when considering any changes in regulations.

## Section 165-169: Quality

The proposed regulation does not include establishing a Quality Improvement Centre. This should be included to support homes in improving quality. Tools need to be digitized and data and best practices must be shared back with homes to ensure transparency and support continuous improvement.

## Section 252: Medical Director

The Ministry of Long-Term Care should consult with the long-term care associations to determine the appropriate roles and responsibilities of medical directors to improve oversight.

## Sections 253-257: Screening Measures and Ongoing Declarations

AMO has significant concerns about these screening requirements for municipal elected officials serving on municipal long-term care home governance boards. To be eligible for office under the *Municipal Elections Act, 1996*, an individual cannot be convicted of an offense under the *Criminal Code* (Canada). These screening measures and declarations requirements place a higher standard on elected officials than those in the *Municipal Elections Act, 1996*.

Additionally, the timelines for these screening requirements are in conflict with election timelines, which could result in board positions being unfilled while awaiting screening of newly elected municipal officials. Beyond just the implications on municipal elected officials, these requirements exacerbate differences between long-term care and other parts of the sector, such as hospitals. It also would potentially set a higher standard for municipal councillors as compared to MPPs and MPs. All are elected officials and should have the same standards for elected office.

AMO asks that these screening and declaration requirements do not apply for municipal elected officials as they already have met the requirements under the *Municipal Elections Act, 1996* and have been elected by their constituents, thereby qualifying them for their roles on the governance boards of municipal long-term care homes.

## Sections 269-274: Emergency Plans

The roles of each Ministry in addressing health emergencies and emergency planning for long-term care must be clearly defined. Pandemic planning should be a matter of policy rather than regulation to ensure these plans remain responsive. If these plans are included in the final regulations, the regulation should only specify a baseline recommendation for the homes to develop plans. The specific requirements for these plans should be outlined in a policy directive that can change over time. These planning requirements will place an additional burden on homes and as such, the Ministry must provide additional resources to develop and implement the new plans.

## Section 350: Administrative Monetary Penalties (AMPs)

AMO understands that AMPs have been included in these regulations. While municipal and non-profit homes have argued to not be charged AMPs as this takes funding away from patient care, if AMPs are charged to municipal homes, the Ministry must ensure that the issuance of AMPs is reasonable. The amounts for AMPs should not exceed \$5000 and should be issued in a progressive manner with discretion by the Director to reduce and waive. Issuance of AMPs should primarily be applied where there is ongoing non-compliance with orders and intent to not comply can be demonstrated by inspectors.

Non-compliance due to staffing shortages must also be considered. Efforts to expediently implement the Staffing Plan are necessary to ensure homes have adequate staffing to meet all regulations and requirements. Homes should not be penalized for non-compliance resulting from staffing shortages while they are actively attempting to reduce such staff shortages.

Inspections and compliance orders must be objective, and decisions must be transparent. In order to achieve this, the parameters around inspections should also be made transparent and the ministry matrix for calculating non-compliance and AMP changes should be made public. Without this provincial action, it will reduce public trust, transparency, and accountability in the inspections process.

There remains concern regarding the high cost of reinspection fees. The current \$500 fee is too high and should be eliminated or reduced for municipal homes, as again, these fees are deducted from funding allocated to patient care. An appropriate, transparent, and neutral appeals process should also be set up to ensure accountability regarding inspections.

Lastly, we reiterate the equal importance of providing compliance support. The Ministry must ensure that all homes have the tools, supports, and funding they need to succeed in providing the highest quality patient care. The role of inspectors should include coaching for compliance rather than strictly punitive measures. We reiterate the importance of ensuring high quality of care through the Quality Improvement Centre mentioned previously and other quality and compliance supports.

## Conclusion

Municipal governments and the province share a strong commitment to improving the long-term care sector in Ontario. The proposed regulatory changes are substantial and ongoing concerns about the administrative burden and cost of implementing these changes are a significant cause for concern for municipal governments. These changes must be fully costed and funded by the province as healthcare is a provincial responsibility and should not cause an additional burden on the property taxpayer.

In addition, given the ongoing COVID-19 pandemic, the current proposed implementation timelines should be extended to account for the additional challenges homes are facing. A six-to-twelve-month timeline for implementation, depending on the provision, is more reasonable and appropriate given the current conditions in the sector. AMO looks forward to continuing to work with the Ministry of Long-Term Care on improving the long-term care sector.