

# Single Site Employment and Pandemic Pay in Long-Term Care

January 18, 2021

## Public Health Context: Ontario Public Health Standards (OPHS)

- The OPHS identify the minimum expectations for public health programs and services to be delivered by Ontario's 34 boards of health.
- The Standards are published by the Minister of Health as per Section 7 of the *Health Protection and Promotion Act*.
- Local Boards of Health are accountable for implementing the Standards including the protocols and guidelines that are referenced therein.
- Reference documents, such as *Control of Respiratory Infection Outbreaks in Long-Term Care Homes, 2018*, provide information and best practices relevant to operationalizing and implementing the OPHS.
  - Purpose of the guidance document is to assist LTCH and public health units with prevention, detection and management of respiratory infection outbreaks which arise from the transmission of common viral pathogens

# Public Health Context: Control of Respiratory Infection Outbreaks in Long-Term Care Homes, 2018

Recommendations included:

- **Working at other facilities:** During an influenza outbreak, staff protected by either immunization or antiviral have no restrictions on their ability to work at other facilities. However, unimmunized staff not receiving prophylactic therapy must wait one incubation period prior to working in a non-outbreak facility. However, unimmunized staff on prophylactic therapy may work at other facilities with the following considerations:
  - They do not have a fever and/or other symptoms of acute respiratory infection;
  - This does not conflict with the policies of the receiving facility; and
  - This does not conflict with direction provided by the Medical Officer of Health or designate based on information available to them about the epidemiology of the outbreak or other local considerations.
- **Cohort staffing:** encourage co-horting of staff during outbreaks, limiting staff assignments between outbreak areas and non-outbreak areas.

# Context – Pandemic Response

- Early objectives for MLTC focused on **stabilizing the long-term care workforce** and providing supports to homes to help **manage infection prevention and spread**:
  - Initial emergency prevention and containment funding (March 17)
  - Staffing regulation changes (March 20)
  - OCMOH Directive #3 pursuant to s. 77. 7 of the *HPPA* (March 22)
  - Emergency Order on work deployment (March 23)
  - Economic statement signaling additional funding (March 25)
  - Emergency Order on streamlining requirements (March 27)

	Homes in Outbreak	Resident Deaths	Homes Reporting Critical Staff Shortage
Week of Mar 15-21	1	0	0
Week of Mar 22-28	12	0	33

# Initial Actions on Single-Site

- Initial OCMOH Directive #3 (March 22<sup>nd</sup> ) built upon the guidelines in the OPHS regarding multiple-site employees:
  - “Wherever possible, employers should work with employees to limit the number of work locations that employees are working at, to minimize risk to patients of exposure to COVID-19.”
- Discussion of additional measures for directive #3 underway in late March, including potential to strengthen the language regarding limiting employment
- Issues under discussion included:
  - Financial impacts on staff (loss of income) and potential mitigation
  - Scope of restriction (one employer or one site)
  - Impact of restriction on exacerbating existing staff shortages
  - Labour relations implications of a restriction on employment
  - Legal authority of OCMOH to direct LTC homes (no authority to direct employees)
- By March 30<sup>th</sup> it became clear that these issues could not be satisfactorily resolved in the short-term and that these issues should not hold up other important additions to Directive #3
  - Revised Directive #3, with the same language regarding multiple employment sites, was released

# Single Site – Early April

- Focus shifted to financial incentives:
  - Additional detail on incremental prevention and containment funding announced in the economic statement (April 1<sup>st</sup>)
  - Providing additional clarity to homes on the ability to use prevention and containment funding for any relevant costs, including conversion from part-time to full-time to support limiting employment sites (April 9<sup>th</sup>)
  - Initial consideration of pandemic pay (*further detail provided on subsequent slides*)

	Homes in Outbreak	Resident Deaths	Homes Reporting Critical Staff Shortage
Week of Mar 15-21	1	0	0
Week of Mar 22-28	12	0	33
Week of Mar 29-April 4	51	48	5
Week of April 5-11	101	140	12

# Single Site – Emergency Order

- On April 8<sup>th</sup> clear direction was provided to the Ministry to further restrict LTC employees from working at multiple sites
- On April 9<sup>th</sup>, it was agreed the Ministry would bring an emergency order to Cabinet on April 14<sup>th</sup>
- During this period, the following issues required resolution:
  - Scope of employment-restriction (LTC only, broader health care, all employment) with implications for exacerbating staffing shortages and for individual income protection
  - Mitigating potential impact of restrictions on exacerbating staffing shortages (e.g., agency staff)
  - Managing labour relations and employee protections (e.g., if an employee had to give up a job)
  - Onus of responsibility: employer or employee
  - Implementation approach to ensure no undue labour disruption
  - Legal authority for restriction, constitutionality of restricting employment, labour and collective agreement impacts
- On April 14<sup>th</sup>, an emergency order pursuant to s. 7.0.2(2) of *EMPCA* was released:
  - Restricting LTC staff employment to prohibit LTC employees from working in any other LTC home, health service provider, or retirement home
  - Requiring employees who also work in another LTC home, health service provider or retirement home, to inform their employers that they are subject to the order no later than April 17, 2020
  - In effect for full compliance April 22, 2020.

# Pandemic Pay – Early Consideration

- From approximately April 2<sup>nd</sup> – 8<sup>th</sup>, the Ministry developed options and potential approaches for pandemic pay in the LTC sector – with a view to further stabilizing staffing by encouraging employees to work and attracting new employees
- There was no direction to proceed for government decision-making at that time
  - Concerns about cross-sector labour implications of a LTC initiative, the precedent that would be set and the costs associated with a broader (beyond LTC) initiative
- On April 14<sup>th</sup>, the Prime Minister made a public statement indicating a willingness to fund wage supplement:
  - “Apr 14, 2020 12:18:00 - Source: CP [The Canadian Press]  
Trudeau: Feds ready to send provinces cash to top up worker salaries (COVID-Economy)  
OTTAWA\_ Prime Minister \*\*>Justin Trudeau<\*\* says the federal government is willing to send money to provinces that want to provide salary top-ups to workers deemed essential.  
The extra cash would be designed as a financial incentive to keep those workers on the job.”
- The LTC Action Plan was released on April 15<sup>th</sup>
  - “Working with the federal government to determine how their recently announced initiative to top-up wages for essential health care workers can be used in Ontario to support our long-term care staff.”



# Pandemic Pay – Decisions

- The Ministry brought an LTC-focused proposal to TB and to Cabinet on April 16<sup>th</sup> – conclusion that the province should not proceed ahead of concluding federal-provincial negotiations
- Over the period April 16<sup>th</sup> – 24<sup>th</sup>, a variety of issues were being resolved:
  - Concluding federal negotiations – the federal government would pay 2/3 of costs of a program up to 16 weeks in length, to a maximum federal contribution
  - Which additional sectors and workers to include in the program (e.g., retirement homes, home and community care, etc.)
  - Final program design parameters (e.g., \$4 per hour worked, additional lump sum payment if 100 or more hours worked in a designated four-week period)
  - Details of an Emergency Order needed to override certain provisions of the Protecting a Sustainable Public Sector for Future Generations Act (which restricted wage increases for not-for-profit homes)
- Cabinet approval was received on April 24<sup>th</sup>

# Subsequent Wage Enhancement Program

- The pandemic pay program ran from April 24 to August 13, 2020, consistent with the terms of federal-provincial agreement
- On October 1<sup>st</sup>, the province announced a temporary wage enhancement for personal support workers and direct support workers (PSW/DSWs) in LTC, home and community care, public hospitals, and social services sectors to increase and stabilize the healthcare workforce as part of the COVID-19 Fall Preparedness Plan.
- The commitment included an investment of \$461 million to provide temporary targeted wage increases for PSWs/DSWs) across the above sectors. Eligible workers in LTC will receive an additional \$3 per hour.

# Appendix: Legal Authorities

## CMOH Powers – Health Protection and Promotion Act – s. 77.7 Directives

- Where the CMOH is of the opinion that **there is or may be an immediate risk to health**, he/she may issue a directive to **any health care provider or health care entity** respecting **precautions and procedures** to protect the health of persons.
- “a health provided or health care entity” is defined as including a Long-Term Care Home under the Long-Term Care Homes Act, 2007.

## *Emergency Management and Civil Protection Act*

- **Emergency declared in Ontario due to COVID-19 on March 17<sup>th</sup>, 2020.** Emergency declared under the *Emergency Management and Civil Protection Act* by Premier and Cabinet.
- **Order making powers of Cabinet** pursuant to s. 7.0.2(2) of the EMPCA during an emergency (if legal test is met – note - limits apply) are extensive, and include:
  - *Regulating or prohibiting travel or movement; closing any place - whether public or private; constructing works; procuring goods and services, distributing goods and services; fixing prices for goods (preventing price gouging; authorizing, but not requiring, any person or a class of persons to provide services that they are reasonably qualified to provide;*