The Health Protection and Promotion Act and Emergency Management and Civil Protection Act Overview

Long-Term Care Commission Overview Briefing

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Outline

1. *Health Protection and Promotion Act* (HPPA)

    - Local medical officers of health, associate medical officers of health and public health inspectors
    - Chief Medical Officer of Health
    - Minister of Health powers

2. *Emergency Management and Civil Protection A*ct (EMCPA)

The Health Protection and Promotion Act (HPPA)

HPPA Role, Authority and Powers of:

i) Local medical officers of health and public health inspectors

ii) Chief Medical of Health (CMOH)

iii) Associate CMOHs

iv) Minister of Health

Local medical officers of health / Public health inspectors

- First response to an infectious disease outbreak is local, not provincial or federal (but all have roles to play as demonstrated in COVID-19.)
- **34 health units**. Each with a board of health and a medical officer of health. Medical officer of health (MOH) is a physician with public health expertise as set out in Regulation 566 (Qualifications of Board of Health Staff) under the HPPA.
- **Three types of boards of health** – 1. Established under the HPPA (e.g. Middlesex-London). 2. Established under City-specific Acts (e.g. City of Ottawa), 3. Regional municipality acts as board of health (e.g. Durham, Peel, Halton).
- **Two key types of orders** that may be made under the HPPA by local medical officers of health and/or public health inspectors:
  - Health hazard orders (s. 13 of the HPPA)
  - Communicable disease orders (s. 22 of the HPPA)

Local medical officers of health / PHIs

HEALTH HAZARD ORDERS (s. 13)

- Where there may be a potential health hazard, a medical officer of health, associate medical officer of health or a public health inspector (PHI) may issue a s. 13 order, which may include (s. 13(4)):
    1. Require vacating premise
    2. Require removal, cleaning, or disinfecting
    3. Require destruction of the matter or thing specified in the order
    4. Requiring the placarding of premises to give notice of an order
- Unlike communicable disease orders, no ability to issue class orders (to more than one person).
- No other person, other than a medical officer of health, Associate medical officer of health or PHI, can issue a health hazard order.
- Orders may be made orally in urgent circumstances, but must be followed up in writing with reasons.

Local medical officers of health / PHIs

COMMUNICABLE DISEASE ORDERS (s. 22)

- **Communicable diseases are specified in a Minister regulation** under the HPPA (O. Reg. 135/18) https://www.ontario.ca/laws/regulation/180135
- A **local medical officer of health or associate medical officer of health** may make an Order in writing requiring the person who is the subject of the order to do or to stop doing, any action specified in the order in respect of a communicable disease.
- The legal test, set out in section 22(2) of the Act, includes that a medical officer of health**, on reasonable and probable grounds**, is of the opinion that a communicable disease **exists or may exist.**

Notes:

- Orders must contain reasons.
- Order may be appealed to the Health Services Appeal and Review Board (HSARB) within 15 days, but the order takes effect immediately. (Applicant can apply for a stay of the order pending a hearing.)
- Class orders may be issued under this section to more than one person. Example of a class order: https://www.wdgpublichealth.ca/your-health/covid-19-information-public/face-coverings-faqs/section-22-class-order
- Note a subclass of communicable diseases are virulent diseases. Orders for virulent diseases can include requiring a person to be treated without their consent (e.g. TB.)
- COVID-19 is a **communicable**, not **a virulent**, disease.

Ontario

Local medical officers of health / PHIs

Reportable Diseases (Diseases of Public Health Significance)

- **Diseases listed as reportable** (diseases of public health significance) must be reported to local medical officers of health by the following persons:
  - **Institutions** (e.g. child care centres, **long-term care homes**, psychiatric facilities, private hospitals, correctional facilities (provincial), police detention centres, youth detention centres, community health facilities, adult supported living residences and "and other place of a similar nature".)
  - **Physicians** ("has or may have" a communicable disease.")
  - **Practitioners** (chiropractors, nurses, pharmacists, optometrists, naturopaths.)
  - **Hospitals** (administrator) – for in-patients.
  - **School principals** (for school-based outbreaks of disease – e.g. measles.)
  - **Labs**.
- **Medical officer may report**. Where a disease has been acquired at a facility, and the facility did not report the disease to the local MOH, the local MOH can report that to the facility. (s. 29.1).
- **Reports Regulation** (Regulation 569). Sets out detailed reporting requirements for diseases. Requires local medical officers of health to forward disease reports to the Ministry using iPHIS "or any other method specified by the Ministry."
- **Orders to deal with Communicable Disease Outbreak (s. 29.2**). Order may be made against a hospital or institution (including a long-term care home) where the medical officer of health is of the opinion, on reasonable and probable grounds that a communicable disease exists or may exist at the hospital or institution.

Role and Authority of the Minister and CMOH

Chief Medical Officer of Health (s. 81)

Terms of Appointment

- Appointed by the Lieutenant Governor in Council (LGIC) on address of the Legislative Assembly.
- Holds office for a term of 5 years, and may be reappointed
- Must be a physician of at least 5 years and possess the qualifications prescribed by the regulation for a medical officer of health (Reg. 566, s. 1)
- May only be removed from office by the LGIC on address of the Legislative Assembly.

Responsibilities

- Must stay informed in respect of occupational and environmental health matters
- Must deliver an annual report on the state of public health in Ontario to the Legislative Assembly (required to submit to the Minister of Health 30 days in advance)
- May make any other reports respecting public health as they consider appropriate and may present this report to the public (e.g. H1N1 Report in September, 2011, Report on Wind Turbines - 2011)

Role and Authority of the Minister and CMOH

Associate Chief Medical Officer of Health (s. 81.1)

Terms of Appointment

- Position held by person or persons who, by virtue of their position, hold the title of "Associate Chief Medical Officer of Health" in the Ministry.
- Must be a physician and possess the qualifications prescribed by the regulations for a medical officer of health.
- Currently three Associate CMOHs – Drs. Barbara Yaffe, David McKeown, and Fiona Kouyoumdjian.

Responsibilities

- Shall act in the place of the CMOH when:
    - the CMOH is absent
    - the CMOH is unable to perform the functions of his or her office
    - the office of CMOH is vacant

CMOH Powers

CMOH may act where risk to health (s. 77.1)

- Where the CMOH is of the opinion that **there is a risk to health**, he or she may investigate the situation and take such action as is necessary to prevent, eliminate or decrease the risk. In doing so, the CMOH may:
  - **exercise any of the powers of a board of health or of a medical officer of health**, including the power to appoint a medical officer of health or an associate medical officer of health
  - **direct a person whose services are engaged by a board of health to do any act that the person has the power to do, or that the medical officer of health has the authority to direct the person to do.**
- Power has been exercised infrequently by CMOH – most recently due to: Rubella outbreak in Oxford County (2006), Dissolution of former Muskoka Parry Sound Health Unit (2005).
- Not exercised during COVID-19 to date (August 2020).

Application to judge where risk to health (s. 77.2)

- The CMOH may also apply to a judge of the Superior Court of Justice for an order requiring a board of health to take such action as the judge considers appropriate to prevent, eliminate or decrease the risk. (Normally, the CMOH would only this so if a s. 77.1 order was not being complied with by a local board of health.)

CMOH Powers

Request to Board of Health for Information (s. 77.3)

- The CMOH may require a board of health to provide such information as the CMOH specifies about the board of health and the health unit served by the board. Note: no clinical information.

Order to provide personal health information (s.77.6)

- The CMOH may direct any health information custodian to supply the CMOH with any information specified, including clinical information, where the CMOH is of the opinion that:
    - there is an immediate and serious risk to the health of persons, he/she may direct; AND
    - the information is necessary to investigate, eliminate or reduce the risk.

Notes:

- **The information supplied must be no more than is reasonably necessary.**
- **The information must only be used or disclosed** to investigate, eliminate or reduce the risk, despite anything in the *Personal Health Information Protection Act, 2004* or the *Freedom of Information and Protection of Privacy Act*.
- Cannot, for example, be used for research purposes.
- Not exercised to date in COVID-19.

CMOH Powers

Directives (s. 77.7)

- 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.
- Where the CMOH issuing a directive relates to worker health and safety in the use of PPE, the CMOH **must consider the precautionary principle**.
- The directive **may not be used to compel regulated health professionals** to provide services without their consent.
- **CMOH has exercised this power a number of times during COVID-19**, and has issued Directives (5 to date, which have been amended from time to time) which can be found at the following link: http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/dir_mem_res.aspx
- **Note:**
- Power for CMOH (s. 77.9) added to the HPPA in 2011 to allow the CMOH to issue directives to local boards of health and local medical officers of health under certain emergency-type conditions on *policies and measures* to ensure consistency in public health. (e.g. ensuring priority groups for immunization clinics.) Not exercised during COVID-19 to date.

CMOH Powers

Directives (s. 77.7) (cont.)

"health care provider or health care entity" means:

- A regulated health professional or a person who operates a group practice of regulated health professionals.
- A service provider within the meaning of the Home Care and Community Services Act, 1994 who provides a community service to which that Act applies.
- A community care access corporation within the meaning of the *Community Care Access Corporations Act,* 2001.
- A hospital within the meaning of the *Public Hospitals Act*, a private hospital within the meaning of the *Private Hospitals Act*, a psychiatric facility within the meaning of the *Mental Health Act*, an institution within the meaning of the *Mental Hospitals Act* or an independent health facility within the meaning of the *Independent Health Facilities Act*.
- A pharmacy within the meaning of Part VI of the *Drug and Pharmacies Regulation Act*.
- A laboratory or a specimen collection centre as defined in s. 5 of the *Laboratory and Specimen Collection Centre Licensing Act*.
- An ambulance service within the meaning of the *Ambulance Act*.
- A paramedic under the *Ambulance Act*.
- A home for special care within the meaning of the *Homes for Special Care Act*.
- A local health integration network within the meaning of the *Local Health System Integration Act, 2006*.
- **A long-term care home under the Long-Term Care homes Act, 2007**
- A centre, program or service for community health or mental health whose primary purpose is the provision of health care.
- A prescribed person or entity.

CMOH Powers

Collection of specimens and test results (s. 77.8)

- Where the CMOH is of the opinion that **there is an immediate and serious risk to health,** the CMOH may:
  - collect, retain and use any previously collected lab specimens
- The CMOH may not compel an individual to provide a bodily sample or submit to tests without the individual's consent.
- Not exercised during COVID-19 to date.

Minister of Health Powers

Publishing Ontario Public Health Standards for the Provision of Mandatory Health Programs and Services (s. 7)

- The Minister of Health publishes the Ontario Public Health Standards (OPHS) (**s. 7** of HPPA).
- Boards of health must comply with the OPHS.
- OPHS must be provided to Boards of Health and be available for public inspection in the Ministry of Health (they are published on the Ministry of Health's website) **(s. 7(2))**
- OPHS are not regulations (i.e. no Cabinet approval needed for changes – not published in the Ontario Gazette) but amendments to them need to be approved by the Minister. **(s. 7(3))**
- In practice, the CMOH reviews and approves all changes to the OPHS or Protocols.

Minister of Health Powers

Making Certain Regulations (s. 97)

- Minister of Health may make regulations:
  - Specifying diseases as
    - **diseases of public health significance** (i.e. reportable),
    - **communicable** (i.e. s. 22 orders can be made – but not for treatment) and
    - **virulent** (treatment orders may be made)
  - COVID-19 was listed in January 2020 as a disease of public health significance (i.e. reportable disease), and as a communicable disease. It is not a virulent disease.
- All other regulations (listed in section 96 of the HPPA) may be made by Cabinet.

Grants to Boards of Health (s. 76)

- The Minister of Health may make grants for the purposes of the HPPA ***on such terms and conditions as the Minister considers appropriate***. (Funding is discretionary.)
- Public health funding and accountability agreement signed with all public health units. Ontario provides (as of 2019) (approximately) 75% of funding for local board of health expenses. Obligated municipalities (single and upper tier) pay the remainder.
- Review announced on public health modernization led by Mr. Jim Pine. On hold due to COVID-19.

Minister of Health Powers

Appointment of Assessors (s. 82)

- Power of the Minister of Health and CMOH to appoint assessors. Assessors may carry out an assessment of a board of health for purposes of:
  - Determining whether a board of health is providing health programs and services specified in the HPPA
  - Determining whether a board of health is complying in all respects with the HPPA and the regulations
  - Ascertaining the quality of the management or administration of the affairs of the board of health.

Minister of Health Powers

Temporary Isolation Facility (s. 77.4)

- Minister of Health may require the occupier of a premises to **deliver the premises *or a part of the premises* to the Minister** to be used as a temporary isolation facility **(ss. 1) Note:** New power added in 2011 to also allow publicly owned premises to be used for public health purposes.
- **Order cannot be for more than 12 months**. **(ss. 2)**
- The Minister may make an order **where CMOH certifies that**:
  - there exists or there is an immediate risk of an outbreak of a communicable disease anywhere in Ontario (or an immediate risk to the health of persons); and
  - The premises are needed for use as a temporary isolation facility. (ss. 3)
- No hearing required to be held **(ss. 5)**
- **If non-compliance**, a Judge of the Superior Court of Justice may issue an order directing the sheriff to put the Minister (or Minister's designate) in control of the premises "by force if necessary". **(ss. 6)**
- **Occupier of the premises is entitled to compensation** from the Crown for the use and occupation, and if there is no agreement, the OMB shall determine the compensation in accordance with the Expropriations Act. **(ss. 9)**
- **Not exercised during COVID-19 to date.**

Minister of Health Powers

Seizure of Medications and Supplies by the Minister (s. 77.5)

- Authorizes the Minister of Health, (**on certification by the CMOH**) where an immediate risk to human health exists or may exist, to **procure, acquire or seize medications and supplies** (subject to reasonable compensation) that are essential for safeguarding human health when regular supply and procurement processes are insufficient to address the risk **(s. 77.5)**;
    - **Key limitation**: If there is an immediate risk that the health of patients in another province or territory of Canada would be jeopardized, the person subject to the order is not required to provide the medication or supplies. (s. 77.5(2))
    - No hearing required by the Minister before the seizure. (s. 77.5(5))
    - Minister may issue a direction requiring a person to provide information about persons who may have medications and supplies. (s. 77.5(6))
    - Medications and supplies very broadly defined: “antitoxins, antivirals, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents, medical supplies and medical equipment” (s. 77.5(10))
- **During COVID-19** - power was exercised under s. 77.5(6) by the Minister to direct specified persons to provide information on medications and supplies and where they are located. (See next slide.)

Minister of Health power to get information regarding a new or emerging disease (s. 77.7.1)

- Minister of Health may make an order where she is of the opinion that **there exists or may exist an immediate risk to health from a new or emerging disease**, to
  - direct any health care provider or health care entity to provide the Minister with information specified in the order.
  - The information cannot include personal information or personal health information.
- Was issued in June 2020 (updated an earlier order issued in March 2020) with regards to information regarding personal protective equipment: http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/orders/minister's_order_critical_supplies_equipment.pdf
- Required reporting to an Ontario Health website of stockpile of personal protective equipment held by all health care providers and health care entities**, including retirement homes and LTC homes**.

Minister of Health Powers

Minister Approvals

- **Minister of Health must approve:**
  - All MOHs and Associate MOHs appointments **(s. 64(c))**
  - Any dismissal of an MOH or an Associate MOH by the board of health **(s. 66).** (**Note** – dismissal also requires a 2/3rds of a vote of a board of health, and for the MOH or Associate MOH to get notice of the meeting, attend and make representations.)
- **Minister may approve:**
  - Qualification for an MOH or Associate MOH for post-graduate public health requirement, if qualifications obtained from a university outside Canada. **(s. 1(1)(c) of Reg. 566)**

2. Emergency Management and Civil Protection Act

- **Emergency declared in Ontario due to COVID-19 on March 17th, 2020**. Emergency declared under the *Emergency Management and Civil Protection A*ct by Premier and Cabinet.
- **Test for emergency declaration** (s. 7.0.1(2).
  - There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious bodily harm to persons or substantial damage to property, AND
  - One of the following exists:
    - The resources normally available to Government, including legislation, cannot be relied upon without the risk of serious delay.
    - The resources are insufficient to address the emergency.
    - It is not possible, without the risk of serious delay, to ascertain whether the resources can be relied upon.
- **Order making powers of Cabinet** during an emergency (if legal test is met – note - limits apply) are extensive:
  - 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;* requiring the collection, use and disclosure of information or "consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as Cabinet considers necessary in order to prevent respond to or alleviate the effects of the emergency."

2. Emergency Management and Civil Protection Act

- **Many Emergency Orders issued due to COVID-19.** Current list of ongoing COVID-19 orders can be found at the following link: https://www.ontario.ca/laws/statute/20r17
- **Emergency Orders are regulations under the EMCPA.**
- **Extension of Emergency declaration**. When emergency is declared – it lasts for 14 days. Can be renewed once for 14 days. Future extensions require Assembly to extend for an additional 28 days.
- **Extension of Emergency Orders**. Last for 14 days, and can be extended by Cabinet for a period or periods of up to 14 days. When the emergency has ended, emergency orders "necessary to deal with the effects of the emergency" can be extended for a period or periods of a further 14 days.
- **Emergency expired on July 24th.**
- New legislation replaces it: ***Reopening Ontario (A Flexible Response to COVID-19) Act, 2020.***

2. Reopening Ontario (A Flexible Response to COVID-19) Act, 2020.

- Continues most orders made under the EMCPA.
- Orders continue for 30 days and may be extended by Cabinet for additional 30 days.
- Some orders may be amended by Cabinet (restricting gatherings, workplace measures, closing any place.)
- Other orders (listed in the Act) dealing with other subject matters can only be extended, but not amended.
- Power to amend or extend orders expires after one year. Assembly can extend it beyond one year.
- Reporting is required once every 30 days to a standing committee of the Legislature.
- Premier must table a report in the Assembly after 120 days.

CMOH Powers

Directives issued during COVID-19 related to Long-Term Care

Directive 3: The intent of the directive is to provide direction on a number of areas (PPE, visitors, outbreaks, etc.) in long-term care homes and retirement homes. Nine versions issued to align with the impact of COVID-19 in those settings. As of September 11, 2020, there have been 9 versions of the Directive issued beginning on March 22, 2020.

Directive 5: Issued to ensure providers protected. Directive provides specifications for point of care risk assessment and PPE use for staff in hospitals and long-term care homes. 3 versions issued, March 30, 2020, March 31, 2020, and April 10, 2020.

CMOH Memo March 13, 2020 - Essential Visitors

Memo to Long-Term Care Homes, Retirement Homes, Supportive Housing, Hospices and other congregate care settings recommending them to only allow essential visitors to maintain the safety of vulnerable residents. The ministry is identifying essential visitors as those who have a resident who is dying or very ill or a parent/guardian of an ill child or youth in a live-in treatment setting.

Directive 3

Development, Review and Approval Process

1. Proposed revisions drafted by the Ministry Emergency Operations Centre (MEOC)
2. Review completed by Office of Chief Medical Officer of Health (CMOH) and Public Health Ontario (PHO)
3. Review completed by Ministry of Long-Term Care (MLTC), Ministry of Seniors and Accessibility (MSAA) and Ministry of Labour, Training and Skills Development (MLTSD)
4. Review completed by Ministry of Health Legal Services (additional legal counsel from other ministries engaged if required)
5. Draft document sent for final review and approval to the Chief Medical Officer of Health and Minister's office.

Note: Process could vary by version and the specific revisions (e.g. review steps combined or additional reviews completed, for example by the LTC IMS Table).

Directive 3

Versions and Chronology

Version 1 - March 22, 2020

Version 2 - March 30, 2020

Version 3 - April 8, 2020

Version 4 - April 15, 2020

Version 5 - May 21, 2020

Version 6 - May 23, 2020

Version 7 - June 10, 2020

Version 8 - August 28, 2020

Version 9 - September 10, 2020

Directive 3

Versions and Chronology

Version 1 - March 22, 2020

Based on Ministry of Health COVID-19 letters, memos and other established guidance for respiratory outbreaks (Control of Respiratory Infection Outbreaks in Long-Term Care Homes, Institutional/Facility Outbreak Management Protocol, the Infectious Disease Protocol, PIDAC respiratory guidance and Environmental Cleaning). Issued as a result of outbreaks in LTCH's with high mortality rates.

Version 2 - March 30, 2020

Required precautions and procedures expanded to include screening, repatriation, short stay absences, cohorting, management of a case, outbreak preparedness and response.

Version 3 - April 8, 2020

Updated to strengthen screening, testing and outbreak management in long-term care homes.

Version 4 - April 15, 2020

Updated to reflect the new limitation on working in only one location and to provide additional information on outbreak management and response.

Version 5 - May 21, 2020

Hospital transfers; testing within 24 hrs of new admissions and re-admissions; minimizing work locations of volunteers and contractors; and sharing of IPAC assessment results and reports.

Directive 3

Versions and Chronology

Version 6 - May 23, 2020

Section on new admissions, re-admissions, short stay absences and managing visitors were expanded to provide additional direction.

Version 7 - June 10, 2020

Admissions and re-admissions from hospitals or community; short-stay absences for retirement home residents and transfer to hospital; visitors in alignment with the MLTC and MSAA visitor policies; ending a suspect outbreak/outbreak assessment steps based on negative test results; and advanced care planning and expressed resident wishes about future treatment.

Version 8 - August 28, 2020

Absences updated to update short stay absences and include temporary absences.

Version 9 - September 10, 2020

Managing Visitors updated to include visitors from family visitors.

MOH Supporting Documents for Long-Term Care Homes

- COVID-19 guidance documents
  - COVID-19 Guidance: Long-Term Care Homes (Version 4 – April 15, 2020)
  - Outbreak Guidance for Long-Term Care Homes (LTCH) (Version 2 - April 15, 2020)

- Screening Tool for Long-Term Care Homes and Retirement Homes (Version 3 – May 6, 2020)

Note: Similar development, review and approval process used for the above supporting documents.

MOH Collaboration and Additional Supports for Long-Term Care Homes

- Stakeholder meetings
  - For information sharing and support for sector
- Joint MOH/MLTC/MSAA working group
  - Information sharing
- Training and tools developed by PHO:
  - Infection Prevention and Control focused webinars for both public health unit and LTCH staff;
  - IPAC checklist for LTCH and retirement homes;
  - IPAC training with LTCH and MSAA inspectors;
  - PHO online IPAC training.