



Long-Term Care Homes Act, 2007

Overview

Kristin Smith, Counsel

Michael Orr, Senior Counsel

Legal Services Branch

Ministry of Health and Ministry of Long-Term Care



Resident-Centred Legislation

- The *Long-Term Care Homes Act, 2007* and O. Reg. 79/10 under the Act came into force on July 1, 2010 – replaced the *Nursing Homes Act, Charitable Institutions Act* and the *Homes for the Aged and Rest Homes Act*, the regulations under those Acts and the “Program Manual”.
- Includes a Preamble which states that the people of Ontario and their Government believe in resident-centred care.
- Reflects the Government’s expectations for the creation of a resident-centred system in which people receive the care and support they require.
- Fundamental principle in the Act:

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



10 Parts to Act and Regulation

- Part I: Fundamental Principle and Interpretation
- Part II: Residents' Rights, Care and Services
- Part III: Admission of Residents
- Part IV: (Resident and Family) Councils
- Part V: Operation of Homes
- Part VI: Funding
- Part VII: Licensing
- Part VIII: Municipal Homes and First Nations Homes
- Part IX: Compliance and Enforcement
- Part X: Administration, Miscellaneous and Transition



Regulations

- Ontario Regulation 79/10 under the *Long-Term Care Homes Act, 2007* includes requirements relating to:
 - safe and secure home
 - plan of care
 - nursing and personal care
 - programs (e.g. falls prevention, skin and wound care, pain management, infection control)
 - responsive behaviours; altercations
 - restorative care
 - recreational activities
 - nutrition care and hydration
 - medical services
 - accommodation services
 - prevention of abuse and neglect
 - reporting and complaints



Regulations

- drugs, pharmacy service providers
- absences and discharges
- admissions
- staffing
- police record checks
- training and orientation
- information for residents
- emergency plans
- quality improvement
- records and reports
- trust accounts
- funding, including resident charges
- licensing and municipal homes
- compliance and enforcement
- closure of beds and homes
- fees
- exemptions



Requirements Amended in COVID-19 Emergency

- As a result of the pandemic, some requirements under the Act and Regulation were modified by the following:
 - **Regulation #1 under LTCHA** – flexibility around 24/7 RN requirement, police record checks and staff training requirements (O. Reg. 72/20) (<https://www.ontario.ca/laws/regulation/r20072>)
 - **Regulation #2 under LTCHA** – admissions and discharge in pandemic circumstances (O. Reg. 83/20) (<https://www.ontario.ca/laws/regulation/r20083>)
 - **Emergency Order#1** (O. Reg. 77/20) – Work Deployment Measures in Long-Term Care Homes (<https://www.ontario.ca/laws/regulation/200077>)
 - **Emergency Order #2** (O. Reg. 95/20) – Streamlining Requirements for Long-Term Care Homes (<https://www.ontario.ca/laws/regulation/200095>)
 - **Emergency Order#3** (O. Reg. 146/20) – Limiting Work to a Single Long-Term Care Home (<https://www.ontario.ca/laws/regulation/200146>)
 - **Emergency Order#4** (O. Reg. 210/20) – Management of Long-Term Care Homes in Outbreak (<https://www.ontario.ca/laws/regulation/200210>)

NOTE: Emergency Orders #1-4 were initially made under the *Emergency Management and Civil Protection Act*, RSO 1990, cE.9. They are now regulations under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, SO 2020, c17 and are currently in place until September 22, 2020. ⁶



Preamble

Highlights key themes including:

- Belief in resident-centred care;
- Commitment to the health and well-being of Ontarians living in long-term care homes now and in the future;
- Access to long-term care homes that is based on assessed need;
- Accountability and transparency;
- Service planning that focuses on resident needs and ensures the safety and security of all residents;
- Responsibility to take action where requirements under the Act are not met (on Director, and licensee); and
- Commitment to the promotion of the delivery of long-term care home services by not-for-profit organizations.



Residents' Rights, Care and Services

- **Residents' Bill of Rights** – can be enforced by the resident against licensee (Act, s. 3)
 - Each home must have a mission statement consistent with the fundamental principle and Residents' Bill of Rights and that is put into practice in the day-to-day operation of the home (Act, s. 4)
- Written **plan of care** for each resident setting out all aspects of the resident's care. (Act, s. 6; Reg, s. 24-29)

Primacy of safety and security:

Every licensee of a long-term care home shall ensure that the home is a safe and secure environment for its residents. (Act, s. 5)



Residents' Rights, Care and Services

- **Key services and programs that must be provided:**
 - nursing and personal support (Act, s. 8; Reg, s. s. 31-47)
 - restorative care (Act, s. 9, Reg, s. 56-64)
 - recreational and social activities (Act, s. 10, Reg, 65-67)
 - dietary services and hydration (Act, s. 11, Reg, 68-78)
 - medical services (Act, s. 12; Reg, 79-84)
 - information and referral assistance (Act, s. 13)
 - religious and spiritual practices (Act, s. 14; Reg 85)
 - accommodation services (Act, s. 15, Reg 86-93)
 - staffing and care standards - RN, attending physicians, organized volunteer program (Act, s. 16-17; Reg 94-95)
 - Required programs (Reg, s. 30 and 48)
 - Falls prevention and management (Reg, s. 49)
 - Skin and wound care (Reg, s. 50)
 - Continence care and bowel management (Reg, s. 51)
 - Pain management (Reg, s. 52)
 - Responsive behaviours and altercations (Reg, s. 53-55)



Safeguards for Residents – Abuse and Neglect

- Protect residents from abuse and ensure that residents are not neglected (Act, s. 19)
- LTCH must have and implement a policy to promote zero tolerance of abuse and neglect of residents (Act, s. 20, Reg s. 96)
- Licensee must immediately investigate and take appropriate action on each suspected, alleged or witnessed incident of abuse or neglect of a resident (Act, s. 23)
- Licensee must report the results of the investigation and actions taken to the Director (Act, s. 23(2) and (3); Reg s. 104)
- Licensee who contravenes duty to protect residents is guilty of an offence (Act, s. 19(3))



Safeguards for Residents - Reporting

- A person (includes licensee and staff of the home) who has reasonable grounds to suspect that any of the following has occurred or may occur must report the suspicion and information upon which it is based to the Director:
 - Improper care or treatment of a resident that resulted in harm or a risk of harm to the resident
 - Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident
 - Unlawful conduct that resulted in harm or risk of harm to a resident
 - Misuse or misappropriation of a resident's money
 - Misuse or misappropriation of funding provided to the licensee (Act, s. 24)
- Licensee must deal with complaints promptly and forward any written complaints it receives to the Director (Act, s. 22; Reg, s. 100-103)
- Licensees must report critical incidents to the Director (Reg, s. 107)
 - Includes: "An outbreak of a disease of public health significance or communicable disease as defined in the *Health Protection and Promotion Act*." (COVID-19 is a communicable disease)



Safeguards – Inspection Required

- Director must have an inspector conduct an inspection or make inquiries if the Director receives information from *any source* indicating that any of the following may have occurred:
 - Of harm or risk of harm to resident that resulted from:
 - Improper or incompetent treatment or care
 - Abuse or neglect
 - Unlawful conduct
 - A failure to comply with a requirement under the Act or Regulation
 - A violation of whistleblower protections
 - Misuse or misappropriation of a resident's money, or public funding (Act, s. 25)
- Director must have an inspector **immediately** visit the home if there is information from any source:
 - Of **serious** harm or a **significant risk of serious** harm to a resident that resulted from:
 - Improper or incompetent treatment or care,
 - Abuse or neglect, or
 - Unlawful conduct. (Act, s. 25(2))



Safeguards for Staff – Whistleblowing

- Whistle-blowing protection for all persons including staff, residents and volunteers who disclose information to the Director or inspector or give evidence (or may give evidence) in a proceeding or inquest (Act, s. 26)
- Staff members who believe they have been **retaliated against** by an employer for disclosing information or providing evidence in a proceeding may have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board. (Act, s. 27)



Minimizing Restraints

- To ensure restraints are only used where absolutely necessary, and with appropriate safeguards, the Act limits the use of restraints as well as personal assistance services devices (PASDs) (such as trays) that limit or inhibit a resident's movement where used as a restraint or to assist a resident with a routine activity of living
- Resident cannot be restrained, in any way, for convenience of the licensee or staff, or as a disciplinary measure
- Use of barriers, locks or other devices or controls at entrances and exits to the home or the grounds of the home is not a restraint unless the resident is prevented from leaving
- Resident may be restrained by a physical restraint only if the restraint is set out in the resident's plan of care

(Act, s. 29-31; Reg, 109-113)



Personal Assistance Services Devices

- Use of a personal assistance services device (PASD) to assist a resident with a routine activity of daily living is not a restraining of the resident
- A PASD that limits or inhibits a resident's movement and from which a resident is unable to release himself or herself can only be used if the PASD is included in the resident's plan of care
- The PASD may be included in the plan of care only if specific requirements set out in the Act are met
- The Act codifies the requirement to have the consent of the resident or, if incapable, the resident's substitute decision-maker to use a PASD
- Use of a PASD to restrain a resident is considered a physical restraint to which the physical restraints provisions apply

(Act, s. 33; Reg, s. 111)



Admission of Residents

- A person may apply to a placement co-ordinator for a determination that the person is eligible for long-term care home admission. The eligibility criteria for long-term care home admission, detailed provisions about waiting list categories and ranking within the categories are provided for in the Regulation. (Act, s. 43)
- The Minister must designate one or more persons, classes of persons or other entities as placement co-ordinators for the long-term care homes in specified geographic areas. Currently, the Local Health Integration Networks (LHINs) have been designated as placement co-ordinators. (Act, s. 40)
- Placement co-ordinators are responsible for:
 - Determining eligibility for admission;
 - Providing applicants with information and assisting applicants with the placement related application process;
 - Prioritizing for admission;
 - Monitoring and managing waitlists; and
 - Authorizing admissions into LTC home. (Act, s. 41-48; Reg, s. 152-208.5)



Admission of Residents

- A pre-requisite for authorization of admission is the applicant's consent for admission. The LTCHA identifies the elements of consent for admission to a LTC home which are that:
 - The consent must relate to the admission.
 - The consent must be informed.
 - The consent must be given voluntarily.
 - The consent must not be obtained through misrepresentation or fraud. (Act, s. 46)
- In addition to long-stay beds and short-stay beds, the Director may designate the following beds which have separate admission provisions:
 - Specialized units in homes; (Reg, s. 198-206)
 - Reunification priority access beds and; (Reg, s. 206.1-206.3)
 - High acuity priority access beds. (Reg, s. 206.4-206.8)



Residents' and Family Councils

- Licensee must establish a Residents' Council in each home
- Family Council only needs to be established by licensee if requested
- Resident's Council and Family Council may report concerns and recommendations to the Director

(Act, s. 56-67; Reg, s. 211)



Operation of Homes – Staffing / Training

- Staff in the home must have the proper skills and qualifications to perform their duties and possess the qualifications provided for in the regulations (Act, s. 73)
- Regulation sets out specific qualifications, hours and responsibilities and duties for:
 - Certification of Nurses (Reg, s. 46)
 - Qualifications of personal support workers (Reg, s. 46)
 - Registered Dietitian (Reg, s. 74)
 - Nutrition Manager (Reg, s. 75)
 - Cooks (Reg, s. 76)
 - Food service workers (Reg, s. 77-78)
 - Administrator (Act, s. 70; Reg, s. 212)
 - Director of Nursing and Personal Care (DONPC or DOC) (Act, s. 71; Reg, s. 213)
 - Must be a registered nurse
 - Medical Director (Act, s. 72; Reg, s. 214)
 - Must be a physician
- Licensee must limit the use of agency, temporary or casual staff in accordance with the regulations in order to provide a stable and consistent workforce and improve continuity of care (currently, there are no regulations) (Act, s. 74)



Operation of Homes – Staffing / Training

- Licensee must conduct screening measures before hiring new staff or accepting new volunteers, including police record check with vulnerable sector check (except for persons under 18 years) (Act, s. 75; Reg, s. 215)
- Extensive requirements for orientation and training for staff at the home; staff who provide direct care to residents must receive training in a number of areas including palliative care, abuse recognition and prevention, mental health issues, including caring for people with dementia, behaviour management and other areas provided for in regulation (Act, s. 76-77; Reg, s. 216-223)



Operation of Homes – Quality Improvement

- Licensee must conduct an annual resident and family satisfaction survey and make every reasonable effort to act on the results to improve service
- Licensee must develop and implement a continuous quality improvement review system

(Act, s. 84-85; Reg, s. 228)



Operation of Homes – Infection Prevention and Control / Emergency Planning

- Licensee must have an infection prevention and control program and emergency plans
- IPAC program must include daily monitoring to detect infection in residents and measures to prevent transmission
- Some specific examples from regulation for IPAC program:
 - Must have an outbreak management system
 - A staff member must coordinate the IPAC program and all staff must participate
 - Symptoms must be monitored on every shift and recorded, and immediate action taken
 - Analyze symptoms daily to detect infection and trends for the purpose of reducing outbreaks
 - Must implement any surveillance protocols given by the Director for a particular communicable disease

(Act, s. 86-87; Reg, s. 229-230)



LTC Home Funding

- Broad funding powers for the Minister to fund LTC homes (operating and capital costs) and impose conditions on funding. (Act, s. 90)
- The majority of LTC funding is currently flowed through Local Health Integration Networks LHINs, under LTC Service Accountability Agreement (LSAAs) between the LHIN and each home. The government in turn provides these funds to each LHIN through a Ministry-LHIN Service Accountability Agreement (MLSAA).
- A smaller portion of funding to LTC homes is provided directly by the Ministry to each home under a “Direct Funding Agreement” (DFA) between the Ministry and each home.
- Capital funding for the development/redevelopment of LTC homes may be approved by the Minister and (where approved) is subject to a Development Agreement between the Ministry and the home.
- LSAA and DFA funding policies are available here:
http://www.health.gov.on.ca/en/public/programs/ltc/lcaa_policies.aspx



Resident Charges

- Residents shall not be charged more than the amount provided for in the regulations for all classes of accommodation, including basic accommodation
- For preferred accommodation, a written agreement with the resident is required otherwise only the basic accommodation rate can be charged
- For anything other than accommodation, the resident can only be charged if there is a written agreement with the licensee (e.g. television, telephone)
- Resident cannot be charged for anything prohibited in the regulations

(Act, s. 91; Reg, s. 245; see Reg, s. 246-260 for accommodation charges provisions)



Structural Classification

- All LTC beds (with a few exceptions) have a structural classification as New, A, B, C, D, or Upgraded D.
- These classifications (other than “New”) are comprehensively defined in various LTC Construction Funding Policy documents, (especially the 1999 LTC Construction Funding Policy, pp. 3-4, - linked at <https://collections.ola.org/mon/4000/10307915.pdf>).
- LTC bed structural classifications are referred to (but most are not comprehensively defined) in the LTCHA (Act, s. 187(3)-(18) and 193.1).
 - New beds are beds defined in s. 187(18) which was effectively expanded in s. 193.1(1)(e)(ii).
 - Upgraded D Beds are D Beds that were upgraded under the Upgrade Option Guidelines referred to in s. 187(18).
- The structural classification of each LTC home in 2010 was the basis for the length of the home’s fixed term licence effective July 1, 2010. Lower classifications got shorter licence terms, thus providing an incentive to the homes to redevelop, and a way for the ministry to require redevelopment as a condition of being issued a replacement licence.



Classification of Accommodation

- Accommodation is classified in the regulation as standard, private, semi-private, preferred.
 - Classification partly on the basis of structural classification, and partly on the basis of designation by the licensee.
 - Classification is relevant to waiting list categories, and how much residents are allowed to be charged for their accommodation by way of co-payment and/or preferred accommodation premium.
 - Maximum of 60% of the beds in the home can be designated as preferred accommodation, with the remainder being required to be offered at standard accommodation rates of co-payment (payable unless the resident is eligible for rate reduction).



LTC Home Design Manuals

- The LTC Home Design Manuals apply only to homes that were developed or redeveloped with Ministry funding, and are binding contractually on the licensee
- The LTC Home Design Manuals are referred to in the Act (s. 187(18), s. 193.1), and Regulation (s. 1 identifies 1999, 2009 and 2015 DMs, and a “retrofit” DM) where “New Beds” are referred to or differentiated, explicitly or otherwise. New Beds are beds that comply with a DM.

Current DM: LTC Home Design Manual 2015:

http://health.gov.on.ca/en/public/programs/ltc/docs/home_design_manual.pdf



Licences and Approvals of LTC Homes

- It is prohibited to operate a residential premises for two or more unrelated persons to receive nursing care without a licence or approval under the LTCHA, subject to various exceptions including hospitals, retirements homes, and premises listed in the Regulation. (Act, s. 95; Reg, s. 267)

Requirements for issuing Licence:

- Public interest determinations are required by the **Minister** before the issuance of a licence, confirming the need for the beds in the area and the availability of funding, and whether restrictions are needed on who may be licensee having regard for for-profit/NFP balance and concentration of ownership in sector (Act, s. 96-97; Reg, s. 268-269)
- An eligibility determination is required by the **Director** relating to the issuance of a licence to an applicant, but issuance of licence by Director is discretionary – not automatic based on eligibility. (Act, s. 98-99; Reg, s. 270)
- Licences have fixed terms (up to 30 years) and may be subject to conditions. (Act, s. 101-102)



Licences and Approvals of LTC Homes

- Director may amend a licence subject to certain restrictions (Act, s. 114)
- Requirement for approval by the Director of management contracts (Act, s. 110; Reg, s. 276)
- Security interest may be exercised for receiver to take control of home (acting in the shoes of the licensee) if a management contract approved by the Director is entered into to allow a management company to manage the home. (Act, s. 107; Reg, s. 274)
- **Temporary licences** can be issued by the Director for a fixed term of no more than 5 years. (Act, s. 111; Reg, s. 277)
- Director can issue a **temporary emergency licence** for a period of not more than 1 year to accommodate persons affected by a temporary emergency. (Act, s. 112; Reg, s. 277)



Licences and Approvals of LTC Homes

- Licence transfers including transfers of beds under licence, and any new party gaining a controlling interest in a licensee, require prior Director approval and are subject to relevant public interest determination requirements, eligibility requirements and conditions. (Act, s. 105)
- Restriction on the transfer of non-profit homes to the for-profit sector (limited exception in s. 271 of Regulation) (Act, s. 105(9))
- Decisions of the Minister and Director relating to licensing are within the sole discretion of the Minister and Director and not subject to appeal. (Act, s. 116)
- Closure of LTC home by licensee requires 5 years notice to Director (or shorter if Director permits). This does not apply to closing a home at licence expiry. Home closures except where licence is revoked require approved closure plan and closure agreement (14 and 6 months before closure respectively). (Reg, s. 308-312)



Licences and Approvals of LTC Homes: Municipal* and First Nations Homes

- Municipal LTC homes operate under authority of Minister's approvals that do not expire (Act, s. 130)
- Southern municipalities are required to establish and maintain a long-term care home or joint home or help maintain a home or joint home with Minister approval (Act, s. 119-121)
- Northern municipalities with a population over 15,000 are allowed to establish and maintain a home or joint home or help maintain a home or joint home with Minister approval (Act, s. 122-124)
- Northern municipalities in territorial districts may together establish a territorial district home operated by corporation (Board of Management) established for this purpose * (Act, s. 125; Reg, s. 286-296)

*Applies only to upper tier or single tier municipalities.



Licences and Approvals of LTC Homes: Municipal and First Nations Homes

- First Nations may establish long-term care homes, as was provided for in the *Homes for the Aged and Rest Homes Act*, subject to Minister approval (similar to municipal homes). First Nations (and related entities) may also apply for licences to operate a long-term care home
- **There are currently no approved First Nations homes**, though several non-profit entities related to First Nations operate licensed LTC homes
- The Minister is required to make the public interest determination for need and availability of funding before approving a municipal home or First Nations home (whether a new home or increasing beds in an existing home)
- The Director may take control of a municipal or First Nations home on consent or otherwise

(Act, s. 129)



Compliance and Enforcement

- Homes to be inspected at least annually (Act, s. 143)
 - Inspections must be unannounced (few exceptions) (Act, s. 144)
- Inspector must prepare an inspection report
 - If non-compliance found, it must be documented in the inspection report and action must be taken (Act, s. 149)
- Variety of actions/sanctions for non-compliance (Act, s. 152-157)
 - written notification of non-compliance
 - request for written voluntary plan of correction
 - Orders: compliance order, work/activity order, order that funding be returned or withheld, mandatory management order and revocation of licence
- Director may cease admissions to a home (Act, s. 50)
- Inspection reports and orders must be published (Act, s. 173) – see <http://publicreporting.ltchomes.net/en-ca/default.aspx>

Inspector Actions

Written
Notification
(Inspector)

Issue Written Notification
and refer matter to
Director
for further action
(Inspector)

Licensee to prepare
written plan of
correction to be
implemented
voluntarily (Inspector)

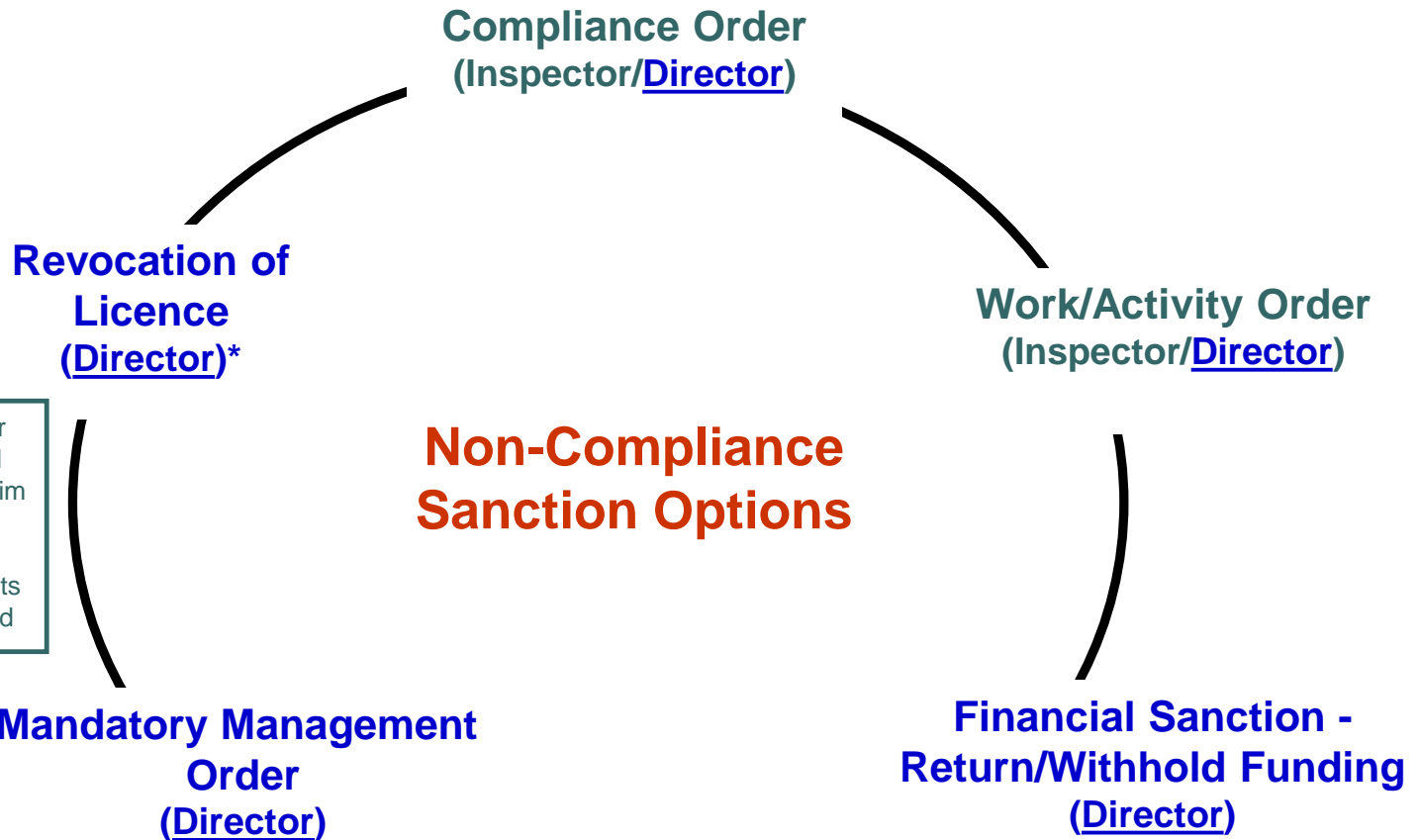
Inspector Action
Options

Make a Work or Activity
Order (WO/AO) or
(Inspector/Director)

Make a
Compliance Order (CO)
(Inspector/Director)

Inspector *must* do at
least one action if
non-compliance found

Enforcement: Sanction Options



* Director may also order the home to be occupied and operated by an interim manager until the revocation becomes effective and the residents of the home are relocated

Any sanction may be given at any time, in appropriate circumstances, if grounds are met.



Compliance and Enforcement

- Inspectors and the Director must take into account three factors in determining what compliance action(s) to take (**and only these three factors**): the severity of the non-compliance, the scope of the non-compliance and the licensee's history of compliance (Reg, s. 299)
- **Exclusion of Due Diligence and Mistake of Fact to Certain Enforcement Orders** (Act, s. 159)
 - Compliance orders, work/activity orders, orders to return or withhold funding, mandatory management orders and revocation orders can all be issued regardless of a licensee raising due diligence or mistake of fact in a particular circumstance; and
 - Exclusion applies to offence for failing to comply with an order (Act, s. 162.2)



Compliance Inspection and Enforcement

Reviews and Appeals of Orders and Decisions

- A licensee can request the Director to review an inspector's order (Director's review). (Act, s. 163)
- Appeal of Director's order or decision can be made to the Health Services Appeal and Review Board (HSARB). (Act, s. 164)
- An appeal of HSARB's decision can be made to Divisional Court. (Act, s. 170)
- Sufficiency of funding provided to a licensee from any source cannot be considered in any review or appeal. (Act, s. 171)
- No automatic stay of an order or decision by the commencement of a review or appeal unless the Director/Appeal Board/Divisional Court determines that a stay will not cause harm or risk of harm to a resident. (Act, s. 163(4), 166, 170(2))



Compliance and Enforcement

Violations of the following provisions are offences:

- Section 19 (duty to protect)
- Section 24 (failure of certain persons to report abuse/neglect, improper or incompetent treatment, etc. to the Director, providing false information, and suppressing reports);
- Section 26 (whistle-blowing protections);
- Section 28 (obstruction relating to information to be provided to the inspector or Director);
- Section 69 (duties of directors and officers to ensure that the corporation complies with all requirements under the Act);
- Section 95 (operating premises without a licence);
- Section 151 (obstruction of an inspector);
- Section 162.2 (failure to comply with certain orders (i.e. compliance orders, work and activity orders, etc.); and
- Section 178 (use of prohibited terms, such as “long-term care home”).



Operational or Policy Directives (Act, s. 174.1)

- The Minister may issue operational or policy directives respecting long-term care homes where the Minister considers it to be in the public interest to do so. The Minister must make every operational or policy directive available to the public.
- Every licensee of a long-term care home must carry out every operational or policy directive that applies to the long-term care home.
- An operational or policy directive of the Minister may be general or particular in its application, but may not be made with respect to one particular home or licensee.
- To date, two Minister's Directives have been issued:
 1. Glucagon, Severe Hypoglycemia and Unresponsive Hypoglycemia (http://www.health.gov.on.ca/en/public/programs/ltc/ministers_directive.aspx)
 2. COVID-19: Supporting Long-Term Care Homes (http://www.health.gov.on.ca/en/pro/programs/ltc/directive_supporting_ltch_20200424.aspx)