

# Long-Term Care COVID-19 Commission Meeting

An Overview of the Long-Term Care Homes Act  
on Thursday, September 3, 2020



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MEETING OF THE LONG-TERM CARE COVID-19 COMMISSION

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--- Held via Microsoft Teams Meeting, with all  
participants attending remotely, on the 3rd day of  
September, 2020, 3:00 p.m. to 5:00 p.m.

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1 BEFORE:

2

3 The Honourable Frank N. Marrocco, Lead Commissioner

4 Angela Coke, Commissioner

5 Dr. Jack Kitts, Commissioner

6

7 PRESENTERS:

8

9 Kristin Smith, Counsel, Legal Services Branch,

10 Ministry of Health and Ministry of Long-Term Care

11 Michael J. Orr, Senior Counsel, Legal Services

12 Branch, Ministry of Health and Ministry of

13 Long-Term Care

14

15 PARTICIPANTS:

16

17 Alison Drummond, Assistant Deputy Minister,

18 Long-Term Care Commission Secretariat

19 Ida Bianchi, Counsel, Long-Term Care Commission

20 Secretariat

21 Kate McGrann, Counsel, Long-Term Care Commission

22 Secretariat

23 John Callaghan, Counsel, Long-Term Care Commission

24 Secretariat

25 Derek Lett, Policy Director, Long-Term Care

1 Commission Secretariat

2 Dawn Palin Rokosh, Director, Operations, Long-Term  
3 Care Commission Secretariat

4 Judith Parker, Ministry of the Attorney General

5

6

7 ALSO PRESENT:

8

9 Deana Santedicola, Stenographer/Transcriptionist

10 Lisa Di Felice, Administrative Assistant, Long-Term  
11 Care Commission Secretariat

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1 -- Upon commencing at 3:00 p.m.

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3 KRISTIN SMITH: So I am happy to do  
4 brief introductions, while Judith is - there she  
5 goes - putting the presentation up on the screen.

6 So presenting today is myself and my  
7 colleague Michael Orr. We are both Ministry of the  
8 Attorney General counsel and we are seconded to the  
9 Legal Services Branch of the two Ministries, Health  
10 and Long-Term Care.

11 In my practice, I provide legal advice  
12 and support to both Ministries and have worked  
13 quite closely with the Long-Term Care Ministry and  
14 before when it was a Long-Term Care Division when  
15 the Ministries were together.

16 And I know Michael has given support to  
17 the long-term care area for many, many more years  
18 than I have, and out of respect to Michael, I will  
19 just leave it at that.

20 So we will kick off and if we can jump  
21 into the next slide.

22 Before we jump into content, I would  
23 like to say that we are happy to take questions  
24 from you as we go, from anybody who is on the call,  
25 if you need anything clarified, so you can either

1 just interrupt us or feel free to use the hand  
2 function in the Teams.

3 COMMISSIONER FRANK MARROCCO (CHAIR):

4 Well, I think what will happen then,  
5 Kristin, is that the Commissioners will ask  
6 questions as we go along, and then I will ask at  
7 the end if there are any further questions.

8 KRISTIN SMITH: Okay, that sounds fine.

9 So as a bit of a background and context  
10 for the Long-Term Care Homes Act and Ontario  
11 Regulation 79/10 which is the Regulation under that  
12 Act, the Act itself received Royal Assent in 2007  
13 but did not come into force until July 1st, 2010.  
14 That was to give time for the Regulation to be  
15 drafted. And so they both came into force at the  
16 same time.

17 That single statute and Regulation  
18 replaced three statutes before. The Nursing Homes  
19 Act was mostly for for-profit homes; the Charitable  
20 Institutions Act covered all not-for-profit  
21 corporations that had charitable objects; and the  
22 Homes for the Aged and Rest Homes Act covered  
23 municipal homes previously.

24 You may have seen already or you are  
25 likely aware that in 2004 the Ontario Government,

1 through the Parliamentary Assistant at the time  
2 Monique Smith, did a study of long-term care, a  
3 report called Commitment to Care, A Plan For  
4 Long-Term Care in Ontario. She made many  
5 recommendations. One was to do the single statute,  
6 which that recommendation was followed and  
7 implemented.

8 [Court Reporter's Note: Temporary  
9 technical difficulties.]

10 Sorry, it seems as though I am a little  
11 frozen?

12 COMMISSIONER FRANK MARROCCO (CHAIR):

13 We can hear you now, I think. I think  
14 you are unfrozen now.

15 KRISTIN SMITH: Okay, I am going to  
16 turn off my camera for a little bit and see if that  
17 helps.

18 Okay, so I will continue. I was just  
19 mentioning about the 2004 report by Monique Smith.  
20 She recommended a single statute which led to the  
21 Long-Term Care Homes Act and the Regulation.

22 She also recommended... [inaudible -  
23 audio cuts out] ...and resident-focussed standards.

24 She also made another two clear  
25 recommendations that ended up getting incorporated

1 into the Act which we'll talk about today. She  
2 recommended the need for clear outcome-based  
3 expectations and best practices for all homes and  
4 that reasonable efforts by operators to comply,  
5 which was the previous standard, which was the  
6 standard at that time in 2004, was not enough and  
7 needed to be replaced with language in the statute  
8 requiring them to comply.

9 COMMISSIONER FRANK MARROCCO (CHAIR):

10 Kristin, before you go any further,  
11 Deana, did you miss something? Did you want to  
12 ask? Go ahead.

13 [Court Reporter intervenes for  
14 clarification.]

15 KRISTIN SMITH: Okay, yes, I can go  
16 back to that.

17 So she also recommended  
18 resident-centred standards, improved quality of  
19 life for residents, treating them with respect and  
20 dignity and resident-focussed standards.

21 There were two other key things that  
22 she recommended that made its way into the statute  
23 that we'll talk about today.

24 The first, as I was just saying, and I  
25 don't know if you caught this, the need for there



1 to be clear expectations and best practices for the  
2 homes, and the previous standard they were held to  
3 which was the standard of reasonable efforts to  
4 comply was not enough. They needed language in the  
5 statute, in the law that said that they were  
6 required and will comply with the standards.

7 She also said this new requirement to  
8 comply had to be enforced by the Ministry by  
9 creating an inspector function and changing the  
10 culture that was previously existing of compliance  
11 advisors who advised homes from the Ministry being  
12 replaced with an enforcement regime of inspection.

13 So we see there on that slide some of  
14 the resident-centred language that made its way  
15 into the preamble as well as into the fundamental  
16 principle in the Act.

17 If we can go to the next slide, Judith.

18 This is how the Act and the Regulation  
19 is broken up. There is the ten parts. They mirror  
20 each other in the Act and the Regulation to make it  
21 easier to read and easy to follow.

22 Today I am going to cover Parts I to V.  
23 Michael will cover VI, VII and VIII, and then I  
24 will come back and cover IX and X, so we are going  
25 to go in the same order of the statute.

1 All right, the next slide.

2 The Regulation covers a lot of very,  
3 very specific requirements, so on this slide and  
4 the next slide 5 we just set out a bit of an  
5 overview of the type of very detailed requirements  
6 that you would find in the regulation, things from  
7 plan of care, various programs the home is required  
8 to have, responsive behaviours, accommodation  
9 services, et cetera.

10 So we'll jump to the next slide,  
11 Judith.

12 Some of the other very specific  
13 requirements that you see in the regulation are set  
14 out here.

15 All right, so let's go to slide 6.

16 This slide I am just going to show you  
17 at the moment but come back to it at the very end  
18 of the presentation. This is a slide that sets out  
19 for you changes to the Regulation and Emergency  
20 Orders that came into effect since the middle of  
21 March to address the pandemic in the long-term care  
22 sector, so these are legal changes. We have got  
23 the links there for you to the Regs and the  
24 Emergency Orders on e-laws.

25 I am going to come back to this at the

1 end because it won't make sense knowing, for  
2 example, what requirements were streamlined until I  
3 set out for you what some of the specific  
4 requirements are, but I'll come back to this and go  
5 through it in some detail.

6 The only thing I'll flag right now is,  
7 as you probably know, the Emergency Orders  
8 throughout the Declaration of Emergency since March  
9 17th were made under the Emergency Management Civil  
10 Protection Act. Those Emergency Orders are now  
11 Regulations under the new statute Re-Opening  
12 Ontario, a Flexible Response to COVID-19 Act 2020,  
13 and they are currently in place still until  
14 September 22nd.

15 Okay, so we'll come back to this at the  
16 end.

17 The preamble to the Long-Term Care  
18 Homes Act sets out the key themes that we see in  
19 the Act: as I was talking earlier, the belief in  
20 resident-centred care; a commitment to and a  
21 responsibility on the Ministry to take action, and  
22 this is the inspection and enforcement regime;  
23 access, it talks about access to long-term care  
24 homes based on need, assessed need; and the last  
25 one I'll just point out is a commitment by the

1 government of the day to the promotion of the  
2 delivery of long-term care home services by  
3 not-for-profit organizations.

4           Okay, the next slide, Judith.

5           What we see at the very beginning in  
6 section 3 of the Act is the Residents' Bill of  
7 Rights. It has got a number of very specific  
8 rights that the residents have. It also says that  
9 the residents can enforce the Bill of Rights  
10 against the licensee as if it was a contract  
11 between the resident and the licensee of the home.

12           Section 6 of the Act outlines a lot of  
13 requirements that are supplemented by the  
14 Regulations 24-29 about the plan of care for the  
15 residents. Every resident has to have a plan of  
16 care, and it needs to be very detailed, all the  
17 staff need to know what is in it and they must  
18 follow it and that plan of care has to be updated  
19 on a regular basis.

20           One very important section of the Act  
21 to the work that you are undertaking to know of us  
22 is section 5. It is a requirement on every  
23 licensee of a long-term care home to ensure the  
24 home is a safe and secure environment for its  
25 residents. This is not just safety in a physical

1 sense, but also health and wellness safety, so we  
2 would be safe from a pandemic. That is how the  
3 Ministry interprets that Regulation -- or sorry,  
4 that provision in the statute.

5 One thing I will point out before we  
6 move on, if we can just jump back, Judith, section  
7 5, as you see there, it starts with:

8 "Every licensee of a long-term  
9 care home shall [...]"

10 As you read through the Act, you'll see  
11 that over and over and over again. That was one of  
12 the recommendations from Monique Smith saying that  
13 licensees needed to be required to comply, so that  
14 is how that recommendation was carried forward in  
15 the statute, by making these requirements on the  
16 licensee requiring them to comply.

17 Next slide.

18 Under the residents' rights, care and  
19 services, there are a number of key services that  
20 the licensee must provide. I have given you all  
21 the statute references and Reg. references  
22 throughout the presentation so you can look those  
23 up when you need to, but the types of services and  
24 programs that they must have are nursing and  
25 personal support, so that is obviously fundamental

1 to the work of what a long-term care home does.

2 But very other important things,  
3 because we have to remember that this is the home  
4 of these residents, so things like recreational and  
5 social activities, religious and spiritual  
6 activities, their own accommodation services, and  
7 then required programs for things that they may  
8 need for care, falls prevention, skin and wound  
9 care, pain management, et cetera, et cetera. So  
10 the Regs and the legislation set out a lot of  
11 standards there.

12 Okay, if we can jump to the next one,  
13 Judith, thanks.

14 So abuse and neglect is a big part of  
15 the statute and the Regulation. That was one of  
16 the areas that Monique Smith recommended is making  
17 sure there was a zero tolerance standard for abuse  
18 and neglect, and that we see in section 19 of the  
19 Act. It is a key section. It puts a duty on the  
20 licensee and staff to protect residents from abuse  
21 and ensure that they are not neglected.

22 The regulation specifically defines  
23 "abuse" and "neglect", as well as specifically  
24 defines "sexual abuse", "verbal abuse", "physical  
25 abuse" and "emotional abuse", so it is a very

1 prescriptive area for the homes. Not just the duty  
2 to protect, but they also have to have and  
3 implement a policy to promote zero tolerance of  
4 abuse and neglect and staff have to be trained on  
5 that policy.

6 If they get a suspected, alleged or  
7 witnessed incident of abuse or neglect, the  
8 licensee has to immediately investigate and take  
9 appropriate action. They have to then report the  
10 results of that investigation and actions to the  
11 Director in the Ministry. And in addition, a  
12 recent amendment to the Act was that the licensee,  
13 there is now an offence if they contravene the duty  
14 to protect and section 19, they can be guilty of an  
15 offence. So that is a provincial offence provision  
16 in the Act now.

17 COMMISSIONER FRANK MARROCCO (CHAIR):  
18 Kristin, does the individual employee  
19 have the obligation to report?

20 KRISTIN SMITH: Yes, we are going to  
21 get there on the next slide.

22 COMMISSIONER FRANK MARROCCO (CHAIR):  
23 Okay.

24 KRISTIN SMITH: So what I have there on  
25 the first bullet is section 24 which is the duty to

1 report, and that is, as you can see, a duty on  
2 every person, so it includes licensee and staff,  
3 but there is an exception to that. It is not a  
4 duty on residents, right. So residents, they can  
5 but they are not legally required to report if they  
6 see abuse of another resident, for example.

7           The standard for reporting, they must  
8 have reasonable grounds to suspect, so it is a  
9 fairly low standard, that any of the following  
10 occurred or may occur, they have to report their  
11 suspicion and information upon which it is based to  
12 the Director and the Ministry.

13           So the different things that they have  
14 to report that are listed there in the sub-bullets  
15 are improper care or treatment of a resident that  
16 resulted in harm or a risk of harm; abuse of a  
17 resident by anyone or neglect of a resident by the  
18 licensee or staff that resulted in harm or risk of  
19 harm to the resident; unlawful conduct; and then  
20 related to the resident's money or funding.

21           The licensee must deal with any  
22 complaints that they get and forward any written  
23 complaints that they receive to the Director, so  
24 that could be about any sort of complaints.

25           And then there is also a very broad



1 section in section 107 of the Regulation of a  
2 number of different things called critical  
3 incidents that the licensee is required to report  
4 to the Ministry.

5 One of those that I have highlighted  
6 here is they have to report an outbreak of a  
7 disease or of public health significance or  
8 communicable disease as defined in the Health  
9 Protection and Promotion Act. And COVID-19, as you  
10 know, is a communicable disease, so that once they  
11 had an outbreak, they were required to report that  
12 to the Ministry.

13 So that was very significant in the  
14 earlier days, I would say, of the pandemic, to make  
15 sure that the Ministry was aware what was going on,  
16 as opposed to later into the pandemic when there  
17 was more outbreaks and more knowledge across the  
18 health care sector of what was going on in the  
19 homes.

20 If we can go to the next slide, thanks.

21 In tandem with the section 24 duty to  
22 report, there is a requirement on the Ministry to  
23 make sure that it inspects or makes inquiries into  
24 certain things when it gets information from any  
25 source, so this could be from a report, from a

1 complaint to the Ministry's action line, any source  
2 that they get the information from.

3           So I have set out there in the first  
4 bullet and sub-bullets the types of things that the  
5 Director must have either an inspection done or  
6 inquiries made, but there is a second standard in  
7 25(2) of the Act that says that the Director must  
8 have an inspector immediately visit the home if  
9 there is information from any source of serious  
10 harm or significant risk of serious harm to a  
11 resident that resulted from improper or incompetent  
12 treatment or care, abuse or neglect or unlawful  
13 conduct.

14           So as I said, there are certain things  
15 where the Director has to make sure there is either  
16 an inspection or inquiries done, but if it rises to  
17 the level of serious harm or significant serious  
18 harm to a resident, then the Ministry must ensure  
19 that an inspector immediately visits the home.

20           Okay, so the next slide is a bit on  
21 whistle-blowing. I think this is also a very key  
22 tenet of this statute. There is whistle-blowing  
23 protection for all persons, including staff,  
24 residents and volunteers who disclose information  
25 to the Director or to an inspector during an

1 inspection or who may give evidence in a proceeding  
2 or inquest.

3 Staff members who believe they have  
4 been retaliated against by an employer for  
5 disclosing information or providing evidence have  
6 two options. They can obviously report that to the  
7 Ministry and an inspection can be done, but they  
8 also have the option of filing a complaint with the  
9 Ontario Labour Relations Board. So that protection  
10 is there as well.

11 Okay, the next couple of slides are  
12 about some of the care standards related to  
13 restraining residents. These are very important in  
14 terms of protecting the rights and security and  
15 liberty of residents because, as we know, a lot of  
16 residents have various health needs and needs and  
17 assistance with their activities of daily living,  
18 so there are certain specific requirements that the  
19 licensee must follow when it feels that restraints  
20 may need to be used. And one of those very  
21 important requirements is ensuring they have  
22 consent from the resident or substitute  
23 decision-maker where the resident is not capable to  
24 provide that consent and ensure that, where the  
25 resident may be restrained by a physical restraint,

1 that that is set out clearly in the resident's plan  
2 of care.

3 The next slide.

4 So this slide, the personal assistance  
5 services devices, PASDs, this goes along with the  
6 restraint requirements and provides more specific  
7 requirements for a PASD. One example of a PASD I  
8 would think of is a chair in a home that also has a  
9 meal tray, and if that meal tray is in locked  
10 position, the resident can't get out.

11 So that is a personal assistance  
12 service device that could be used as a restraint,  
13 and so when that happens, the requirements I was  
14 showing on the previous slide about physical  
15 restraints, they apply and need to be followed.  
16 Again, consent and setting out the use of the PASD  
17 in the plan of care are key elements here, or key  
18 requirements I should say.

19 Okay, I am going to deal a bit more in  
20 detail with some of the admissions processes,  
21 because some of the admissions requirements were  
22 some of the requirements that were revised, amended  
23 during the pandemic in March and still are amended  
24 slightly.

25 So the first thing about the admission

1 process is that it is not the Ministry who makes  
2 admission decisions or handles the admission  
3 process. There are designated placement  
4 coordinators and they are the Local Health  
5 Integration Networks, or otherwise known as the  
6 LHINs, and only the placement coordinator can  
7 authorize admission to the home.

8           The LHINs have the responsibility of  
9 determining eligibility for admission, providing  
10 applicants with information, prioritizing admission  
11 and managing the wait lists, and then authorizing  
12 admissions to the homes.

13           And they also, in making the  
14 eligibility determinations about whether somebody  
15 is eligible for a placement into a long-term care  
16 home, there are certain requirements that they have  
17 to follow with that.

18           If we can go to the next slide, Judith.

19           So there are a number of prerequisites  
20 before admission can be authorized there, and they  
21 primarily center around consent, which won't  
22 surprise you.

23           I also wanted to set out that there are  
24 a few different types of beds, and this is kind of  
25 a precursor to some more detail Michael is going to

1 provide, but the Act sets out that there are  
2 long-stay beds. There are also short-stay beds,  
3 beds that are, for example, respite care limited to  
4 60 days, convalescent care generally limited to 90  
5 days, as well as there is other priority access  
6 beds, things like high acuity, so residents that  
7 are at high, high need of care assistance, and  
8 re-unification priority access beds to re-unify  
9 spouses or partners, and then there also can be  
10 specialized units in homes.

11 And if we can just go back to that  
12 slide, Judith, before we go on, I just wanted to  
13 add a little bit more on - even though I don't have  
14 it on the slide - on the waiting lists.

15 There are a number of different  
16 prioritization criteria that you will see in the  
17 Regulation starting at section 177. There is the  
18 re-admission category, so this is somebody who has  
19 possibly been on an absence in a hospital, for  
20 example, and exceeded their absence allowance for  
21 medical leave, which is 30 days. They would go  
22 into the re-admission category.

23 There is other categories. Category 1  
24 is a crisis; category 2, spouse and partner  
25 re-unification, et cetera.

1                   So there is a very complicated  
2 procedure in the Regulation for how the waiting  
3 list process works. If that is something that you  
4 are interested in getting more details on how it  
5 works on the ground, as opposed to what the  
6 Regulation says, that would be something we would  
7 want to talk with our colleagues at the LHIN about  
8 in terms of getting you some of that information if  
9 you think it is necessary for you to have a better  
10 understanding of how that is working.

11                   Okay, so if we can move on from  
12 admission, Judith, thanks.

13                   You have probably heard of the  
14 Residents' and Family Councils. They are set out  
15 in the statute. The licensee of a home must  
16 establish a Residents' Council in each home, but  
17 they only need to establish a Family Council if  
18 that has been requested.

19                   The Residents' Council and Family  
20 Council may report concerns and recommendations to  
21 the Ministry. If they make complaints to the  
22 licensee, the licensee is required to respond to  
23 their complaints, and there is set time frames by  
24 which they need to provide that response.

25                   So they are a key elements of the

1 homes, and there is also a Residents' Council  
2 Association and they are a quite strong and  
3 effective and very important, I would say, advocacy  
4 group in the sector.

5 All right, the next slide.

6 So I am going to do a bit here on the  
7 requirements under staffing and training, a couple  
8 of slides here on that, and this will give you a  
9 bit of a sense of the kind of workers and staff  
10 that you will see in a long-term care home.

11 There is a general requirement in the  
12 Act that staff in the home have to have the proper  
13 skills and qualifications to perform their duties  
14 and possess the qualifications provided for in the  
15 regulations.

16 So for some specific staff, as I have  
17 listed out there on the slide in the indented  
18 bullets, there are some specific qualifications and  
19 responsibilities put on those staff, and for some  
20 of them also some specific hours that they have to  
21 work.

22 For example, Nurses, they have to have  
23 a certification from the College of Nurses. The  
24 licensee has to make sure they have that valid  
25 certification for a Nurse.



1                   There is specific qualifications for  
2 personal support workers which, as you know, are an  
3 unregulated profession.

4                   Registered Dietitians are a required  
5 staff and there are certain qualifications for them  
6 in the Regulation.

7                   Nutrition Manager is dealt with in the  
8 Reg., and cooks and food service workers as well.

9                   Two other very important members of the  
10 long-term care home staff, this would be management  
11 level, are the Administrator. Every home has to  
12 have an Administrator who works full-time, and  
13 there are certain qualifications around the  
14 Administrator; and the Director of Nursing and  
15 Personal Care, also sometimes known as the Director  
16 of Care, so you will see "DOC" possibly a lot as an  
17 acronym and that is the Director of Care of the  
18 home, part of the home's management of the nursing  
19 program, and the Director of Nursing and Personal  
20 Care must be a Registered Nurse and must also be  
21 full-time.

22                   There also needs to be a Medical  
23 Director who must be a physician.

24                   And there is also a provision that  
25 identifies for the licensee and requires them to

1 limit the use of agency, temporary or casual staff  
2 in order to provide a stable and consistent  
3 workforce and improve continuity of care for the  
4 residents. That is in the statute. There are no  
5 regulations that correspond with that section.

6 The next slide, Judith.

7 There is also screening requirements  
8 that the licensee must go through before hiring  
9 staff. That includes a police record check and a  
10 vulnerable sector screen.

11 And there is also extensive training  
12 and orientation requirements for the staff. There  
13 is specific training staff must receive if they are  
14 providing direct care to the residents, and that  
15 training needs to be provided before they start  
16 providing direct care to the residents and that  
17 type of --

18 COMMISSIONER FRANK MARROCCO (CHAIR):

19 Kristin, if I could ask a question, who  
20 provides the training?

21 KRISTIN SMITH: It is the licensee's  
22 responsibility to provide the training, so if they  
23 have somebody in-house on their staff who can  
24 provide the training, as long as it is provided and  
25 covers all the areas that the Reg. says it needs to

1 cover, then they will have met that requirement.

2 It is also fully open to them to bring  
3 in an external company to provide the training, for  
4 example. And for example, a large corporation like  
5 Sienna or Extendicare, may decide to do that and  
6 have somebody external do the training for them,  
7 but as long as it meets the requirements the  
8 Regulation says it has to cover, then it is  
9 sufficient.

10 COMMISSIONER FRANK MARROCCO (CHAIR):

11 Thank you.

12 KRISTIN SMITH: You are welcome.

13 So the training is quite broad. It  
14 covers things from the abuse policy, palliative  
15 care, mental health issues, behaviour management,  
16 caring for people with dementia, so some really  
17 important types of training, and this is a key  
18 tenet of the statute to make sure that the care  
19 being provided is consistent for the residents.

20 COMMISSIONER ANGELA COKE: Sorry, if I  
21 could just ask, so that would include IPAC training  
22 and training --

23 KRISTIN SMITH: Yes, I don't have it  
24 listed there, but IPAC is included, that's correct.

25 COMMISSIONER ANGELA COKE: Okay.

1 KRISTIN SMITH: Yes.

2 Okay, the next slide, Judith, please.

3 And just quickly, there is also the Act  
4 just gives you -- this slide I like to say gives  
5 you a sense of how broad the Act and the Regulation  
6 are in the sense that they cover everything that  
7 happens in a long-term care home, including quality  
8 improvement. So the licensee has to conduct an  
9 annual resident and family satisfaction survey and  
10 make every reasonable effort to act on the results  
11 of that survey and improve their services, and they  
12 also have to develop and implement a continuous  
13 quality improvement review for the home.

14 And I think at this point, the next  
15 slide, I am going to turn it over to Michael. Oh,  
16 no, I am not. I am going to do IPAC first.

17 So the infection prevention and  
18 control, these are sections that you will probably  
19 want to start committing to memory, I'm expecting,  
20 and emergency planning provisions.

21 The section references are there for  
22 you in the Act, section 86 to 87, and in the  
23 Regulations section 229 to 230.

24 The licensee has to have an infection  
25 prevention and control program, as well as

1 emergency plans. The IPAC program has to include  
2 daily monitoring to detect infection in residents  
3 and include measures to prevent transmission of the  
4 disease.

5 I am just pausing to pull it up on my  
6 screen, section 229.

7 And then I have put in here some  
8 specific examples from section 229 of what the  
9 infection prevention and control program has to  
10 include.

11 It has to have an interdisciplinary  
12 team approach in coordinating and implementing the  
13 program. That team has to meet at least quarterly  
14 and invite the local Medical Officer of Health to  
15 their meetings.

16 They have to evaluate their program  
17 annually and keep a written record of each of those  
18 evaluations.

19 They also have to designate a staff  
20 member to coordinate the program, the IPAC program,  
21 who has education and expertise in IPAC practices,  
22 including infectious diseases, cleaning and  
23 disinfection, data collection and trend analysis,  
24 reporting protocols and outbreak management.

25 Also, the licensee is required to

1 ensure that all staff participate in the  
2 implementation of the IPAC program.

3 And the program also gets very granular  
4 into the point where the licensee has to ensure  
5 that on every shift, so not just every day, but  
6 every shift that symptoms indicating the presence  
7 of infection in residents are monitored in  
8 accordance with evidence-based practices and the  
9 symptoms are recorded and immediate action is taken  
10 as required. So that is on every shift, and that  
11 is the licensee is required to do that.

12 They have to then ensure that the  
13 information they gather on each shift is analyzed  
14 daily to detect the presence of infection and  
15 reviewed at least once a month to detect trends for  
16 the purpose of reducing the incidence of infection  
17 and outbreaks.

18 COMMISSIONER ANGELA COKE: Could I just  
19 ask a question?

20 In terms of that plan, would that be  
21 something that would include the coordination with  
22 their community partners in the health care system?

23 KRISTIN SMITH: That is certainly an  
24 option to them. The Reg. doesn't require that.

25 Apologies, I think I froze there.

1 Deana, did I freeze there?

2 COMMISSIONER FRANK MARROCCO (CHAIR):

3 We were able to hear you, Kristin.

4 KRISTIN SMITH: Okay, great.

5 Yes, so Commissioner Coke, the Reg.  
6 doesn't require that they in a sense consult or  
7 collaborate with other partners in the health care  
8 sector, minus that one requirement that I just  
9 said, that when they have their quarterly meetings,  
10 they have to invite the local Medical Officer of  
11 Health from the Public Health Unit.

12 But we have to remember too that all of  
13 these requirements that I am talking about today  
14 that are in the Act and the Regulation are minimum  
15 standards. There is nothing stopping the home from  
16 doing more. So in this sense, nothing is stopping  
17 them from collaborating more, but it is not  
18 something that is a requirement in this section.

19 COMMISSIONER FRANK MARROCCO (CHAIR):

20 How do you know that they are doing  
21 these things?

22 KRISTIN SMITH: So that is what I am  
23 going to get to in Part X of the Act, which is  
24 compliance and enforcement.

25 COMMISSIONER FRANK MARROCCO (CHAIR):

1                   Okay.

2                   KRISTIN SMITH:   Okay, so I'll get to  
3 that then.

4                   And there are a number of other  
5 sections.   Section 229 is quite lengthy, and I am  
6 not going to go through the whole thing, but I  
7 would definitely suggest that you take a look at  
8 it.   If we have some time at the end, we can come  
9 back to it, but it gets so detailed as to require  
10 the licensee to ensure there is a hand hygiene  
11 program in place and that they have immunization  
12 and training measures, surveillance protocols, et  
13 cetera, et cetera.

14                   The next slide, Judith, please.

15                   And now I will turn over to Michael.

16                   MICHAEL ORR:   Okay, thank you.   Thank  
17 you, Kristin.

18                   I will follow pretty much the same  
19 format, hopefully, and I am happy to take questions  
20 as I go.

21                   My areas of focus since I started  
22 working in the long-term care homes area in 2002 is  
23 licensing and funding, and with the funding, a  
24 particular focus on funding for capital  
25 re-development or development of new long-term care



1 home beds or old long-term care home beds that are  
2 being re-developed.

3 So I am going to be focussing largely  
4 on the structural aspects as opposed to the  
5 operational aspects.

6 One of those, one of the key structural  
7 pillars of long-term care homes in Ontario is  
8 licensing and the other one is funding.

9 We'll start with funding. Section 90  
10 of the Act contains a very broad and succinct power  
11 of the Minister. It says:

12 "The Minister may provide  
13 funding for a long-term care home."

14 And there are two things that are  
15 notable about that, in my opinion.

16 One is it is very general. The  
17 previous legislation, and Kristin referred to three  
18 different Acts and so there were different  
19 approaches, was a bit more restrictive for funding,  
20 especially with respect to the for-profits and  
21 capital funding. This is completely without  
22 restrictions. All it has to be is funding for a  
23 long-term care home. It doesn't even necessarily  
24 have to be to a long-term care home.

25 So that is one thing is the generality

1 of it, and the other thing is that it is  
2 discretionary. Long-term care homes, the Long-Term  
3 Care Homes Act sets out a licensing scheme for  
4 long-term care homes, but it does not require the  
5 Ministry to fund long-term care homes. The  
6 Ministry is not legislatively required to fund  
7 long-term care homes. There is a possibility - and  
8 it has never, as far as I know, been taken up - but  
9 there is a possibility for the Ministry to actually  
10 licence long-term care homes that are not publicly  
11 funded, but the Ministry has not done that.

12 So that is the foundation of funding.

13 Now, in terms of how it works, most of  
14 the funding for long-term care is currently flowed  
15 through Local Health Integration Networks, what we  
16 call LHINs, and that is under the LHSIA, the  
17 applicable legislation for LHINs, and there is a  
18 Service Accountability Agreement, a funding  
19 agreement between the LHIN and each home in its  
20 area.

21 Now, what is interesting there, what is  
22 notable is that under the Act there is a definition  
23 of "requirements" under the Act, and those are  
24 things that the licensee is required to comply with  
25 legislatively and there is a definition and it

1 includes a condition of funding under section 90  
2 and it also includes a condition of funding under  
3 a -- or a requirement of funding under an LSAA, one  
4 of the agreements between the LHIN and the home.

5 And the LSAAs, as it turns out, provide  
6 for an obligation of the homes to follow what is  
7 defined as "applicable policy", and that is really  
8 all the Ministry financial policies.

9 So all of that becomes a condition of  
10 the licence and it becomes something that the  
11 Ministry can enforce from a compliance point of  
12 view.

13 So the majority of the funding flows  
14 through the LHINs. A smaller portion of the  
15 funding for long-term care homes is provided  
16 directly by the Ministry to each home, and it is  
17 done under what we are calling a Direct Funding  
18 Agreement or DFA between the Ministry and each  
19 home.

20 There is also the possibility of  
21 capital funding for the home. Homes that have  
22 developed or re-developed will have a Development  
23 Agreement with the Ministry under which they have  
24 developed or re-developed the home. The typical  
25 model for funding for the developed or re-developed

1 beds was that they would build them to our  
2 specifications and we would provide them with a  
3 per-bed per diem over the course of 20 or 25 years.  
4 Currently it is 25 years.

5 Okay, so we'll go to the next slide,  
6 "Resident Charges".

7 Now, so residents can be charged. It  
8 is not just the government paying for long-term  
9 care. There is also a significant element of  
10 long-term care, definitely a minority, but a  
11 significant element which is paid by the residents  
12 themselves.

13 There is what is referred to as a  
14 resident co-payment and that is paid by all  
15 residents, and then there is a preferred  
16 accommodation premium which is paid by those in  
17 preferred accommodation, which is accommodation  
18 that is classified as either private or  
19 semi-private accommodation, and we are going to get  
20 to that, we are going to get to the definitions of  
21 those kind of accommodations a little bit more.

22 If the resident can't afford it, there  
23 is something called rate reduction, so there is the  
24 possibility of the amount being reduced but that  
25 would just be the co-payment for basic

1 accommodation being reduced. That would not apply  
2 to preferred accommodation.

3 There are restrictions in the Act,  
4 requirements that limit the amount that a resident  
5 can be charged for accommodation, for preferred  
6 accommodation. And for anything else other than  
7 accommodation it requires a written agreement  
8 between the licensee and the resident.

9 Over in the next slide we are dealing  
10 with structural classification. All long-term care  
11 home beds, with a few exceptions, have structural  
12 classifications and they are New or A, B, C, D or  
13 Upgraded D, and I'll get into a little bit more  
14 detail about what those mean.

15 By the way, the exceptions, the main  
16 exceptions that I know of are homes with beds with  
17 a temporary licence and beds that are called ELDCAP  
18 beds. ELDCAP beds are long-term care home units in  
19 hospitals in the north. There are a few of those.  
20 They are specifically listed in section 187 of the  
21 Act. There aren't so many of them, but I know that  
22 people are curious when we say that there are a few  
23 exceptions.

24 So where the classification is  
25 mentioned, they are most comprehensively defined in

1 the 1999 Long-Term Care Construction Funding  
2 Policy. They are also referred to in the  
3 legislation, but not necessarily re-defined there.  
4 "New Beds" are defined in section 187. We also  
5 have Upgraded D Beds which were upgraded under the  
6 Upgrade Option Guidelines referred to in section  
7 187.

8 Now, I'll just give you a bit more of  
9 an idea, try to give you a bit more of an idea of  
10 what this really means.

11 So the New beds are beds that have been  
12 developed or re-developed under a Design Manual,  
13 and we'll come to what that means, but they are the  
14 beds that are up to today's standard. They have  
15 been developed or re-developed in accordance with a  
16 Design Manual. The A beds are very close to that.

17 So if you are thinking about long-term  
18 care beds, you have got sort of two halves: you  
19 have got the New Beds and you have got the old  
20 beds. The New Beds are the Design Manual or close  
21 to it; the old beds are the B, C, D or Upgraded D  
22 Beds. The B and C, the difference between B and C  
23 and D is that the B and C comply with the 1972  
24 Nursing Homes Act regulation structural  
25 requirements. The D Beds do not.

1                   I don't believe that there are any  
2 plain D Beds anymore. If there are any D Beds in  
3 the system, they would have been Upgraded D Beds.  
4 The Ministry had a program starting in 2002 to  
5 re-develop D Beds, and people would either  
6 re-develop their D Beds and turn them into New beds  
7 or they could upgrade their D Beds and that did not  
8 necessarily mean -- that might mean bringing them  
9 up to C standards, which means they comply with the  
10 1972 Nursing Home Regulation, but it also might  
11 have meant that they spent \$3,500 per bed on  
12 improvements that the Ministry approved.

13                   There are still a number of those  
14 Upgraded D Beds around, and the Ministry is  
15 currently looking to re-develop those beds together  
16 with all the B and C Beds.

17                   So those are the two. You have the New  
18 Beds, complying with the Design Manuals, and you  
19 have the old beds which don't comply with the  
20 design manuals, and we'll come in a minute to some  
21 of the practical differences between those two  
22 worlds.

23                   COMMISSIONER JACK KITTS: Michael, will  
24 you also talk about the numbers of new beds versus  
25 A, B, C, D?

1                   MICHAEL ORR: I am not so familiar with  
2 the numbers, to be honest.

3                   COMMISSIONER JACK KITTS: Okay.

4                   MICHAEL ORR: That is something that I  
5 think is going to have to be a question for the  
6 Ministry, and it is an important question. I am  
7 not so conversant with it.

8                   KRISTIN SMITH: Commissioner Kitts, it  
9 is Kristin here. I was just going to let you know  
10 that we are working on scheduling a presentation  
11 from the Director in the Capital Development area  
12 who will give you more of that on-the-ground,  
13 in-the-field information.

14                   COMMISSIONER JACK KITTS: Okay, and  
15 just a quick question. I don't know if anyone  
16 knows. Why wouldn't an Upgraded D either be New or  
17 A, become either New or A?

18                   MICHAEL ORR: Well, it hasn't been  
19 re-developed up to the Design Manual standards.

20                   What we were paying for a development  
21 or a re-development was the equivalent \$120,000 per  
22 bed. That was what we considered the per diem  
23 payment to be. The original per diem was \$10.35  
24 per bed per day, and that was considered the  
25 equivalent of the current value of \$120,000 per



1 bed.

2           As I mentioned, the D Bed upgrade  
3 program was not very demanding. You know, they  
4 only needed to put \$3,500 into each bed, and what  
5 they would get in return for that was a \$1.00 per  
6 day per diem per bed. That was all. So it just  
7 brought -- it upgraded them a little bit. It  
8 didn't really turn them into new beds.

9           Now, just, you know, the practical  
10 implication here is you will see it from how the  
11 rooms are classified.

12           In the New Beds and A Beds, we have  
13 private, semi-private and standard accommodation.

14           So across the board, the private rooms  
15 are one per room. But in the new homes, a  
16 semi-private room is a room with a shared bathroom.  
17 You have one person in one room, one person in  
18 another room, and you have a shared bathroom. That  
19 is called semi-private.

20           Semi-private in the old system, in the  
21 older beds, that is two people in a room. In the  
22 New Beds, two people in a room, that is standard  
23 accommodation. And in the older beds, standard  
24 accommodation is three or more people in a room.

25           So you know, if you see four people in

1 a room, you know that is one of the older homes.  
2 In the newer homes, you would have a maximum of two  
3 people in a room and that would be in a situation  
4 where people were not paying a premium for it.

5 So this flows into the discussion on  
6 the next slide of classification of accommodation.  
7 So we have referred to the different  
8 classifications. We have got standard rooms,  
9 private rooms and semi-private rooms. The term  
10 "preferred" refers to both private and  
11 semi-private.

12 Now, the classification is based, as  
13 you can tell from my description, the  
14 classification is partly based on structural  
15 classification; so for example, as I mentioned in  
16 the new homes, two per room is standard  
17 accommodation and in the older beds two per room is  
18 semi-private accommodation.

19 It also partly depends on the  
20 designation by the licensee because, as set out in  
21 the bottom point, a maximum of 60 percent of the  
22 beds in the home can be designated as preferred  
23 accommodation. So even if let's say all the rooms  
24 in the home were private rooms, they couldn't  
25 charge for private accommodation for more than 60

1 percent of those beds.

2           And the classification is also relevant  
3 to how much residents can be charged. We talked  
4 about resident charges before. For the older  
5 homes, there is a differential co-payment.

6           Residents can't be charged as much for  
7 their accommodation in the older homes. There are  
8 different rates set out in fairness to residents  
9 because, you know, the idea is that if you are in a  
10 semi-private room with two people in it and you are  
11 sharing a room with somebody, you shouldn't be  
12 charged the same semi-private rate as if you are in  
13 a semi-private room where you have got your own  
14 room and all you are doing is sharing a bathroom.

15           Okay, so we'll go to the next slide  
16 which deals with Long-Term Care Home Design  
17 Manuals, which we have already referred to.

18           Now, the Long-Term Care Home Design  
19 Manuals, they do not set out legislative  
20 requirements. They are applicable to a home  
21 contractually. If the home is developed or  
22 re-developed, then under the Development Agreement  
23 with the Ministry, the home is required to be built  
24 to the standard of the Design Manual and they have  
25 a continuing requirement in order to get the per

1 diem funding to maintain it in accordance with the  
2 Design Manual.

3 There are really four Design Manuals  
4 that are all pretty similar.

5 The first one was in 1999 when the  
6 re-development funding model was developed. It was  
7 a new model back then and it has been continued  
8 really up to now.

9 The 2009, the 2015 Design Manual, and  
10 back in 2002 there was what we called the Retrofit  
11 Design Manual which that was an alternative to the  
12 1999 Design Manual that allowed a little bit more  
13 flexibility but it didn't give quite as much money.  
14 They could cut certain corners. They were allowed  
15 to cut certain corners. They were given certain  
16 flexibility, but in return for using that  
17 flexibility, they would have certain specific  
18 amounts taken off their per diem.

19 Now, that continues, that continued  
20 under the 2009 and 2015 Design Manuals, but that  
21 was then brought within the one Design Manual, so  
22 it was something that they would have an option of  
23 doing.

24 Now, they had the option of doing that  
25 only where they were re-developing old beds,

1 because the thought was if they are re-developing  
2 an existing home, they might need some flexibility.  
3 They don't have any flexibility for meeting the  
4 design standards new homes. If they are doing a  
5 new home and they are doing new construction, they  
6 are required to build to the full standards. They  
7 don't get any flexibility on that.

8 Okay, so we'll start on the next slide,  
9 which is we are starting to talk about licensing  
10 and approval.

11 So when I started speaking, I referred  
12 to structural pillars, one of them being funding,  
13 and the other structural pillar of long-term care  
14 homes in Ontario is the concept of licensing and  
15 the foundation of that is the prohibition to  
16 operate without a licence. So there is a  
17 prohibition in section 95 of the Act to operate a  
18 residential premises for two or more unrelated  
19 persons to receive nursing care without a licence  
20 or approval under the Long-Term Care Homes Act.

21 Now, it is subject to a number of  
22 exceptions. Hospitals are an exception, and  
23 retirement homes are an exception. There are also  
24 a number of types of premises listed in the  
25 regulation, including homes for special care and

1 government-funded hospices.

2 So what do you need in order to get a  
3 licence?

4 There are certain requirements from the  
5 Minister and there is certain requirements from the  
6 Director under Part VII of the Act, which is the  
7 licensing section.

8 So before you can get a licence for a  
9 long-term care home, the Minister has to make  
10 public interest determinations. One is that there  
11 is a need for that number of beds in that area, and  
12 there is also an availability of funding for the  
13 beds. So that is what is called the needs  
14 determination.

15 And the Minister also has to make a  
16 determination with respect to whether there are any  
17 restrictions needed on who can be the licensee for  
18 that home, and the Minister considers the  
19 for-profit/not-for-profit balance in the sector and  
20 also considers concentration of ownership. You  
21 know, if there is let's say a chain that the  
22 Minister feels has too much of a concentration of  
23 ownership, the Minister can impose restrictions. I  
24 don't believe that any restrictions have ever been  
25 placed by the Minister, but it is a requirement

1 that the Minister considers making those  
2 restrictions.

3 So that is on the Minister's part  
4 before issuing a licence. And the Director under  
5 Part VII then needs to make an eligibility  
6 determination whether the licensee -- and that is  
7 set out in section 98 of the Act, and there are a  
8 number of different elements to it having to do  
9 with whether the Director is satisfied that the  
10 proposed licensee has sufficient integrity and has  
11 sufficient demonstrated experience and will be  
12 capable of providing the required services.

13 But even if somebody meets the  
14 eligibility determination, getting a licence under  
15 the Long-Term Care Homes Act is not a right. It is  
16 not an entitlement. It is a privilege, and the  
17 Director ultimately has discretion whether or not  
18 to issue the licence.

19 A licence is issued with a term of up  
20 to 30 years, and it may be subject to conditions.

21 There was one thing that I should  
22 mention, now that I am thinking about licence  
23 terms, and I think I omitted to mention it before.  
24 I believe it is in one of the bullets that we  
25 mentioned previously. But when the new Act came

1 into force in 2010, there was obviously transition  
2 provisions that transitioned the older licences to  
3 newer licences.

4 Under the previous Act, well, the  
5 Nursing Homes Act, there were licences that  
6 basically got renewed every year. Under the  
7 Charitable Institutions Act, there were approvals  
8 which were in perpetuity. And all of those got  
9 turned into licences, and the licence term, one of  
10 the main things in the new Act was that the licence  
11 term was going to be for a fixed term based on the  
12 structural classification of the home. So the  
13 older homes got a shorter licence than the newer  
14 homes, and that was with the idea that that would  
15 give the Ministry a tool to require the older homes  
16 to re-develop.

17 The C and B homes, which are the bulk  
18 of the older homes currently, most of them have  
19 licences that expire 15 years from the coming into  
20 force of the Act, and so that is in 2025. So that  
21 is a date to watch. In 2025 there are going to be  
22 a lot of licence expiries.

23 Also in 2025 there are going to be  
24 requirements under the Fire Code coming into force  
25 that will require all care homes, including



1 long-term care homes, to be sprinklered, and since  
2 some of the older homes I believe are not currently  
3 sprinklered, that will affect a number of the older  
4 homes too.

5 And so there are a lot of reasons why  
6 the older homes are going to need to be  
7 re-developed, and that is something that the  
8 Ministry is working on.

9 But that was by way of a bit of a  
10 digression.

11 I'll come to slide 29 now, "Licences  
12 and Approvals of Long-Term Care Homes".

13 So we talked about the issuance of a  
14 licence. There are a number of other things that  
15 can happen with a licence that have processes that  
16 require Ministry approval. There are amendments to  
17 a licence, amendments to increase the number of  
18 beds or extend the term, and that is pretty much  
19 the equivalent of the issuance of a new licence  
20 and have process requirements accordingly.

21 If somebody other than the licensee is  
22 going to manage the home on behalf of the licensee,  
23 if they are going to have a management company  
24 coming in, that requires Director approval of the  
25 management contract. One of the situations in

1 which that happens is where a security interest in  
2 the licence is being exercised.

3           So obviously, it is a very  
4 capital-intensive industry. You know, there is a  
5 lot of land involved. There is a lot of assets  
6 that one requires to run a long-term care home, so  
7 there is a lot of lending and the lenders typically  
8 take a security interest in the assets of the home,  
9 which includes, you know, the physical assets and  
10 it includes the licence of the home.

11           And in case the home goes insolvent,  
12 the creditors can apply to exercise the security  
13 interest. If they want to take over the home by  
14 way of a receiver, they need to do so and they can  
15 only do so with the approval of a Director and it  
16 has to be by way of bringing in a management  
17 company which will operate the home on behalf of  
18 the licensee until it can be sold, typically until  
19 it can be sold to a purchaser and then the money  
20 can be used to pay off the creditors. Typically  
21 the process takes quite a long time to make it all  
22 happen. It doesn't happen very often, but it does  
23 happen occasionally.

24           We have been talking mostly so far  
25 about regular licences, which can be for a term of

1 up to 30 years. There is also temporary licences  
2 which can be issued by the Director for a fixed  
3 term of no more than five years. There are also  
4 temporary emergency licences which can be issued  
5 for a term of up to one year to accommodate persons  
6 who are affected by a temporary emergency.

7 And we'll go over to the next slide,  
8 which is really a continuation.

9 Director approval is required for  
10 licence transfers. Now, that might be the transfer  
11 of a home to a new licensee. It might be a turnkey  
12 kind of transaction where one operator is going out  
13 the door and another operator is coming in and  
14 taking over the home, or it might be where a whole  
15 home is moving to a different location, or it might  
16 be just beds under the licence that are moving. In  
17 all cases, it requires the Director's approval and  
18 it really requires all the same requirements that  
19 issuing a new licence would have.

20 There is a restriction on the transfer  
21 of licences from non-profit homes to for-profit  
22 homes. There is one exception set out in the  
23 Regulation, but it is very narrow. It is really  
24 where the home has gone through an insolvency and  
25 the sale is coming about as a result of the

1 exercise of a security interest.

2 Most of the decisions of the Ministry  
3 and the Director relating to licensing are within  
4 their sole discretion and not subject to appeal.  
5 There is an exception in the case of eligibility  
6 determinations under section 98, that is subject to  
7 appeal.

8 As well as transfers of licences, there  
9 are requirements for closures of a long-term care  
10 home. Licensees cannot just close a long-term care  
11 home as they wish. The Regulation requires five  
12 years' notice to the Director, although there is a  
13 provision that the Director can shorten that period  
14 if she sees fit.

15 Now, the five-year notice requirement  
16 does not apply if the home is closing at the  
17 licence expiry. So the homes closing in 2025, they  
18 have already passed the five-year mark and just  
19 because they haven't provided notice is not a  
20 guarantee that they will be continuing after 2025.

21 There are requirements, as one gets  
22 closer to the closure, there is a requirement for  
23 an approved closure plan, an Approved Closure  
24 Agreement within 14 months and 6 months  
25 respectively before the closure. The Director has

1 discretion to shorten those periods, but obviously  
2 closing a home is something that requires planning  
3 and it requires notice to the residents. There are  
4 a number of things that have to be done, so it is  
5 not just an arbitrary question of how long the  
6 notice period will be. There are a number of  
7 things that need to be done.

8           And so as 2025 comes closer, this issue  
9 of how it will be managed, you know, is something  
10 that the Director needs to be involved with and  
11 obviously is already planning for.

12           Typically, by the way, what happens  
13 under section 103 of the Act, and we don't have a  
14 note here to this effect, but three years before  
15 the licence expires, by three years before the  
16 licence expires the Ministry has to have conducted  
17 a public consultation and made a decision on  
18 whether or not it will be issuing a new licence to  
19 the home, an undertaking for a new licence, or  
20 whether it will be saying, okay, good-bye, we are  
21 not issuing a new licence after this licence  
22 expires.

23           And typically, what the Ministry does,  
24 there were a number of licences which were due for  
25 expiry in 2020. Those were some of the really

1 older homes. And typically, I believe that the  
2 Ministry issued an undertaking for a new licence,  
3 but the undertaking, one of the conditions of the  
4 undertaking was that the home would re-develop.  
5 And obviously once they re-developed, then the  
6 Ministry would be willing to issue them a new  
7 licence for a term of 30 years. That is the  
8 standard thing that the Ministry does when a home  
9 re-develops.

10 If the home doesn't re-develop, I  
11 believe that the homes that didn't re-develop were  
12 for the most part issued temporary licences to kind  
13 of bridge them through a period to where they would  
14 be able to re-develop or where alternative plans  
15 would be able to be made.

16 So we'll go over on to the next slide  
17 which we are starting to deal now with Part VIII of  
18 the Act. So we have licences under Part VII, and  
19 we have approvals, which is kind of the equivalent  
20 of a licence, under Part VIII.

21 Now, the approvals under Part VIII  
22 apply to two types of homes, municipal homes and  
23 First Nations homes.

24 There are lots of municipal homes. I  
25 think they are almost a third of the sector. There

1 are no First Nations homes under Part VIII. There  
2 are some First Nations homes with licences,  
3 however.

4 So let's deal with municipal homes  
5 first.

6 Municipal homes operate under the  
7 authority of a Minister's approval, and the  
8 difference from a licence is that the Minister's  
9 approvals do not expire.

10 Now, there is, by the way, a power of  
11 the Director to require that municipal homes  
12 re-develop, so just because they don't expire  
13 doesn't mean that we have to allow the old homes to  
14 operate forever.

15 Southern municipalities, every southern  
16 municipality, except for lower-tier municipalities,  
17 are required to establish or maintain a long-term  
18 care home or a joint home or participate in some  
19 way with another municipality in providing  
20 long-term care homes.

21 So all southern municipalities do that.  
22 I think, you know, Toronto probably has a dozen  
23 homes. There are a number of other municipalities  
24 that have multiple homes, but all southern  
25 municipalities are required to have a home or

1 participate in a home.

2 Northern municipalities with a  
3 population of over 15,000 are allowed to establish  
4 a home but they are not required to establish a  
5 home.

6 Northern municipalities in territorial  
7 districts, there is a process there. Territorial  
8 districts are defined under the Territorial  
9 Districts Act. Now, there are some tweaks to those  
10 definitions in our Regulation with respect to the  
11 districts, but what happens is where you have the  
12 majority of the municipalities in a district saying  
13 we want to operate a home, then a Board of  
14 Management is established. A Board of Management  
15 is a corporation, and it is established and it  
16 takes over the operation of the home and that is  
17 the function of the Board of Management. That is  
18 the sole function of the Board of Management is to  
19 operate that home, and they have the right to levy  
20 the municipalities, all the municipalities in the  
21 territorial district, even those who voted against  
22 it, they have the right to levy those  
23 municipalities to support the home.

24 Okay, so on the next slide, as I  
25 mentioned, First Nations are permitted to establish



1 long-term care homes under Part VIII with Ministry  
2 approval, Minister approval. They are not limited  
3 to Part VIII, however. They can also get a  
4 licence.

5 Now, there are currently no approved  
6 First Nations homes under Part VIII, though there  
7 are several non-profit entities related to First  
8 Nations that operate licensed long-term care homes.

9 And there are provisions in the  
10 Regulation and there is a specific exemption for  
11 four or five homes that I would describe as First  
12 Nations homes, licensed homes. The provision in  
13 the Regulation allows them to conduct their own  
14 placement. So they don't have to go by the  
15 placement provisions under the Regulation. They  
16 don't have to go by the placement coordinators  
17 established by the LHINs. They can do their own  
18 placements, and that is the accommodation that has  
19 been provided to allow those organizations to  
20 function in a somewhat more autonomous way than  
21 long-term care homes are able to generally.

22 By the way, the reason why I think that  
23 there are no First Nation homes under Part VIII is  
24 because an approval under Part VIII cannot be  
25 transferred. A licence, as we discussed under Part

1 VII, can be transferred with Ministry approval, so  
2 lenders are much more willing to give loans based  
3 on the security of a licence and are not so willing  
4 to give loans for a home that is approved, because  
5 that home cannot technically be transferred as a  
6 going concern. So that I think is probably the  
7 reason why there are no First Nations homes  
8 approved under Part VIII.

9 So that is the end of my part of the  
10 presentation. I hope that it has been relatively  
11 understandable. And I certainly welcome follow-up  
12 questions either now or later.

13 KRISTIN SMITH: Thank you, Michael.

14 COMMISSIONER JACK KITTS: I just have  
15 one question for clarification. I think you said  
16 that the Long-Term Care Home Design Manuals apply  
17 only to homes built or re-developed with Ministry  
18 funding.

19 Are the homes that are built without  
20 Ministry funding, do they not have to comply with  
21 the new Design Manuals?

22 MICHAEL ORR: That is correct, they do  
23 not. They do not have to comply -- sorry, the  
24 homes -- can you repeat the question? I just want  
25 to make sure I have got the first part right.

1                   COMMISSIONER JACK KITTS: Yes, I think  
2 you have said that the Long-Term Care Home Design  
3 Manuals apply only to homes built or re-developed  
4 with Ministry funding.

5                   MICHAEL ORR: Yes.

6                   COMMISSIONER JACK KITTS: So I am  
7 asking are the homes that are built I guess by  
8 private sector, do they not have to comply with the  
9 new Design Manuals?

10                  MICHAEL ORR: Okay, so let me unpack  
11 that, because I think this may be a -- I think I  
12 have to be clearer about that.

13                  The way that the re-development program  
14 works is that whether it is a public sector home or  
15 whether it is a private sector home, they apply for  
16 Ministry funding to either develop or re-develop  
17 beds, and if we approve them, we enter into a  
18 Development Agreement with them and they build the  
19 beds to our specifications, including their Design  
20 Manual. And so they are the ones who are required  
21 to comply with the Design Manual.

22                  And we don't approve people. We don't  
23 give funding for people to build beds that are not  
24 to the Design Manual standards, and we don't have a  
25 lineup of people also wanting to develop long-term

1 care homes without our funding, right. They are  
2 not saying, We don't really want to build it to the  
3 Design Manual standards, so therefore we are going  
4 to do it on our own dime. We are going to pay for  
5 the whole thing, but we don't have to comply with  
6 the Design Manual. There really aren't -- that  
7 category doesn't exist.

8 The two categories are the new homes  
9 which are developed or re-developed with Ministry  
10 funding and the older homes which were basically  
11 there before the Ministry started to offer the  
12 development or re-development funding.

13 COMMISSIONER JACK KITTS: Okay.

14 MICHAEL ORR: But to answer your  
15 question more directly, so the Design Manual does  
16 not apply to homes unless by way of a Development  
17 Agreement, and Development Agreement means we are  
18 paying for it.

19 So we paid for it, and so you have to  
20 build it to our standards and you have to operate  
21 it to our standards, our design standards.

22 The older homes, they don't have to  
23 comply with the Design Manuals. I mean, you know,  
24 whatever, it is what it is. In some cases, they  
25 will -- let's say with respect to the sprinkling

1 and they will have to comply with the Fire Code by  
2 2025, and they'll have to pay for that themselves,  
3 unless the Ministry is going to give them money to  
4 do it, which is obviously always a possibility but  
5 not required.

6 But the older homes, you know, they  
7 don't just magically get upgraded because of  
8 amendments to the legislation. They comply with  
9 whatever standards they complied with when they  
10 were built, and they are not required to comply  
11 with the new Design Manual.

12 Now, there are a few what you might  
13 call design standards set out in the Regulation,  
14 but they are very, very few. Like shower bars,  
15 there is something about having shower bars,  
16 something about windows. There are a few design  
17 standards in the regulation, but there are very  
18 few.

19 COMMISSIONER JACK KITTS: What I was  
20 more concerned about is when it says Long-Term Home  
21 Design Manuals apply only to homes who are being  
22 built or re-developed with Ministry funding, and so  
23 I am worried about how many homes are being built  
24 not to the new Design Manuals, and I think you told  
25 me virtually none.

1                   MICHAEL ORR: I think the --

2                   KRISTIN SMITH: Yes, I think what he  
3 was saying is it is a bit of a fallacy to think  
4 that there are homes out there that are being  
5 developed without Ministry funding. It is not  
6 really something that exists in this sector.

7                   COMMISSIONER JACK KITTS: Yeah, that  
8 was my concern. Thank you.

9                   KRISTIN SMITH: Yes, okay.

10                  MICHAEL ORR: Yes, and I should just  
11 mention that if somebody were to come and want to  
12 do that, they would also have to pass the  
13 licensing, they would have to pass the licensing  
14 threshold also.

15                  And you know, the licensing could  
16 easily say, and I think they would say, we are not  
17 going to licence -- you know, if you are talking  
18 about bringing new beds online, even if we didn't  
19 fund them, we are not going to licence them for a  
20 full 30-year term unless they meet, you know,  
21 higher standards than, you know, what the older  
22 beds have to meet. We are just not going to  
23 licence them.

24                  I mean, we might licence them  
25 temporarily to maintain some capacity in the

1 system, but you know, we are not going to give you  
2 a new 30-year licence unless you meet the new  
3 design standards.

4 COMMISSIONER JACK KITTS: I understand,  
5 thank you.

6 KRISTIN SMITH: Okay, great. So why we  
7 don't we move on to the next slide, because I want  
8 to make sure we don't run out of time here.

9 So I am going to jump into something  
10 completely different - thanks so much, Michael,  
11 that was great - and that is compliance and  
12 enforcement.

13 So this is the inspection regime that  
14 was brought into the statute. There are a number  
15 of requirements here on the Ministry, and so we are  
16 now jumping into requirements on the Ministry in  
17 carrying out the compliance and enforcement program  
18 that is established by the statute.

19 Some of those requirements are set out  
20 here, including that a home is to be inspected at  
21 least annually and inspections, when done, have to  
22 be unannounced. There are few exceptions to the  
23 unannounced inspections, very few, for example, if  
24 the licensee asks the Ministry to come in and do an  
25 inspection and that does not happen very often.

1           The inspector has to prepare an  
2 inspection report after they complete their  
3 inspection, and if they find non-compliance -- and  
4 so when we say non-compliance here, we mean they  
5 did not comply with a requirement under the Act.  
6 Michael talked about that definition. Requirement  
7 under the Act, it includes everything in the Act  
8 and the Reg, plus conditions on the licence,  
9 funding policies, et cetera.

10           If the inspector finds non-compliance,  
11 they have to document it in an inspection report  
12 and they have to take action.

13           Sections 152 to 157 set out the various  
14 actions that the inspector and/or Director can  
15 take. They include a written notification of  
16 non-compliance. This is also colloquially known as  
17 a "WN" in the sector. It literally writes up what  
18 the non-compliance is that was found.

19           The second level of action or sanction  
20 is a request to the licensee for a written  
21 voluntary plan of correction. That is also  
22 colloquially known as the "VPC", voluntary plan of  
23 correction, all done voluntarily by the licensee.

24           And then we get into orders. So there  
25 are compliance orders in section 153 an inspector



1 or Director can make. There are two types of  
2 compliance orders.

3 The first type of compliance order is  
4 an order requiring the home to do or refrain from  
5 doing anything to achieve compliance with the  
6 requirement under the Act.

7 And the second type of compliance  
8 order, type B, is a requirement that the home  
9 develop a plan of how they are going to come into  
10 compliance and implement that plan. In some cases,  
11 where the home knows its operations better, it  
12 makes more sense to get them to develop the plan  
13 and implement it. That plan still needs to be  
14 submitted to the inspector for their review.

15 There are also work and activity orders  
16 that an inspector or Director can make, but they  
17 have not been used under the Act. This would be,  
18 for example, if some construction needed to be done  
19 or equipment needed to be put into the home to come  
20 into compliance.

21 The Director can make an order that  
22 funding be returned or withheld from the home.  
23 There are requirements that the Director has to --  
24 grounds, I should say, that a Director has to meet  
25 to make that order. That is in section 155.

1           In section 156 the Director can make a  
2 mandatory management order. We also refer to that  
3 as an "MMO". So I am just giving you the acronyms  
4 in case you start to see them in documents.

5           And the Director can also make or can  
6 also revoke the licence under section 157. There  
7 are specific grounds that the Director has to meet  
8 to be able to revoke a licence, and when the  
9 Director revokes a licence, she also has the power  
10 to put in place an interim manager to manage the  
11 home until all the residents have been moved out of  
12 the home and it has closed down. So a revocation  
13 of a licence, it is important to note, is  
14 essentially resulting in the gradual closure of  
15 that home through interim management.

16           The mandatory management --

17           COMMISSIONER ANGELA COKE: I have just  
18 have a question. I am just curious, how many  
19 regulations and requirements are they required to  
20 comply with?

21           KRISTIN SMITH: Oh, that is a really  
22 good question. I would say in terms of the Act and  
23 the Regulation plus funding policies, I would  
24 ballpark it probably around 400 to 500 or more. It  
25 is highly regulated.

1                   COMMISSIONER ANGELA COKE: And the  
2 annual inspection, was it always an annual  
3 inspection?

4                   KRISTIN SMITH: So there is different  
5 types of inspections. I will give them to you  
6 overall briefly because I know what they are, but  
7 we are planning a briefing for you from the  
8 Long-Term Care Inspections Branch and they can give  
9 you much more detail on the types of inspections  
10 that they conduct and how they conduct them.

11                  COMMISSIONER ANGELA COKE: Okay.

12                  KRISTIN SMITH: There are three  
13 different types of inspections that they conduct.

14                  The first is called a complaint  
15 inspection, and so that is literally what it is,  
16 that they have received a complaint through their  
17 action line or an email or something to that effect  
18 and they are looking into that complaint.

19                  The second is a critical incident  
20 inspection, and so this is what I was referring to  
21 before where a critical incident has been reported  
22 to the Director or, for example, an abuse or  
23 neglect report has been made to the Director and  
24 they are going in to look at that critical incident  
25 that was reported to the Ministry.

1           The third type of inspection is a more  
2 what Commissioner Gillese called a systemic  
3 inspection, and that is the resident quality  
4 inspection or the RQI and that is an inspection  
5 that is -- there is two different types of RQIs  
6 that are done depending on the risk level, the  
7 Ministry's risk level assigned to the home, but it  
8 does look at a bunch of different areas. It is a  
9 more broad-ranging inspection. It is not  
10 specifically focussed on the issue either raised in  
11 the complaint or the critical incident.

12           The mandatory management order, the  
13 grounds that the inspector -- or sorry, that the  
14 Director has to have under section 156 to issue a  
15 mandatory management order is that she first has to  
16 find a finding of non-compliance, and in addition  
17 to that, she has to have reasonable grounds to  
18 believe that the home cannot or will not be managed  
19 properly without a manager coming in or without  
20 assistance from a management company. So she has  
21 to be able to form those grounds before she can  
22 make that order.

23           She can also cease admissions to the  
24 home, and this is in section 50 because it falls  
25 under the admissions part of the Act, and this is

1 something that the Director has done many times.  
2 So it is a suspension of admissions essentially to  
3 give breathing room to the home to come into  
4 compliance where they have had a long string of  
5 non-compliance and on follow-up inspections an  
6 ability to show that they have been able to comply  
7 with orders, and it gives them that sort of space  
8 by not having more people come in through new  
9 admissions.

10 And also, as you probably know,  
11 inspection reports and orders have to be published,  
12 and I have given you the public reporting website.  
13 That is a requirement under the Act that they be  
14 published on the website.

15 Let's go to the next slide, Judith,  
16 please.

17 So this is the first of two diagrams  
18 that we have put in here just to show you these  
19 types of actions and sanctions that I was just  
20 talking about and to help you see that the  
21 inspector can do certain things and the Director  
22 can also do certain things.

23 But just to be clear, again, that the  
24 inspector must do at least one of these actions if  
25 they find non-compliance. There is no discretion

1 there for the inspector.

2           The different sanction options, this is  
3 essentially the slide or the circle of escalation,  
4 I would call it, where you have got a compliance  
5 order. And if you move around clockwise, you would  
6 see the different types of orders that the Director  
7 may look to make in escalation where you have got a  
8 home that is not complying repeatedly with  
9 requirements but also not complying with the orders  
10 that have been made by an inspector.

11           The next slide, Judith.

12           The Regulation has a few provisions in  
13 it related to compliance and enforcement. One very  
14 important one is it tells the inspectors and the  
15 Director that they have to take into account three  
16 factors in determining which one of those actions  
17 in those diagrams that they take, and it says  
18 specifically in the Regulation they can only take  
19 these three factors into account. So we have got  
20 the severity of the non-compliance, the scope of  
21 the non-compliance so how widespread it is in the  
22 home, and looking at the licensee's history of  
23 compliance. So those are the factors that the  
24 inspector must look at when they decide what action  
25 they need to take.

1           The Act also tells the inspector and  
2 the Director that there are certain things they  
3 cannot consider when they are deciding which action  
4 to take or finding non-compliance. They can't  
5 consider due diligence, so reasonable efforts by  
6 the home to comply, and they can't consider mistake  
7 of fact. This even applies in terms of there is no  
8 defence of due diligence or mistake of fact for an  
9 offence for failing to comply with an order.

10           The next slide, Judith.

11           Where an inspector makes a compliance  
12 order, the licensee has some review and appeal  
13 options. They can first request that the Director  
14 review the inspector's order. That is a written  
15 review, and no hearing held on that, written or  
16 oral hearing held on that.

17           The Director's decision or Director's  
18 order can be appealed to the Health Services Appeal  
19 and Review Board, and then there is a further  
20 appeal to the Divisional Court.

21           The Act specifically says that the  
22 licensee cannot use as a defence in any of these  
23 reviews or appeals to argue that they didn't have  
24 enough funding to be able to comply.

25           And then further to that, the Act sets

1 out that the order, that there is only certain  
2 situations where the compliance order or the  
3 decision of the Director can be stayed if there is  
4 a review or an appeal undertaken.

5 The next slide, Judith.

6 This slide sets out and kind of brings  
7 together in one slide for you the different  
8 offences that are in the Act, and these are all  
9 provincial offences. There are, as I mentioned  
10 before, failure to comply with the duty to protect,  
11 failure to report abuse, et cetera, et cetera,  
12 whistle-blowing and other offences.

13 So I just want to go back to, before I  
14 leave some of the compliance and enforcement  
15 slides, one of the questions that Commissioner  
16 Marrocco asked which is how does the Ministry know  
17 that homes are complying with the IPAC, Act  
18 provisions and regulations that we were talking  
19 about earlier.

20 And you know, the Ministry may look at  
21 that on an inspection. If it was a complaint  
22 inspection, they may look at it in an inspection on  
23 a complaint that the requirements aren't being met.  
24 They may also look at it as part of their resident  
25 quality inspection.



1                   So I'll leave that to the Ministry's  
2 inspection program to dive in more deeper, but that  
3 to say that when we look at the statute itself, any  
4 of those requirements related to IPAC are  
5 requirements under the Act. If an inspector finds  
6 that any of them are not being met, the inspector  
7 has to note the non-compliance in their inspection  
8 report and must take action to address that  
9 non-compliance if it is found.

10                   The next slide, Judith, please.

11                   So the last slide on this deck talks  
12 about operational and policy directives that the  
13 Minister can make. This is a relatively new  
14 provision. It came in a few years ago. It is in  
15 section 174.1. And the Minister has made two  
16 directives under this section so far. I have given  
17 you the links to those directives. They are  
18 online. The first one was in relation to the  
19 Gillese Report, and then the second was more  
20 recently during the pandemic and it was related to  
21 directing long-term care homes to accept assistance  
22 from hospitals when provided.

23                   So what I would like to do now, Judith,  
24 if we can jump back to slide 6, this is the one I  
25 said I was going to go back to, and this is the

1 slide that sets out the Regulations and Emergency  
2 Orders that were made since March to adjust or I  
3 would say give some more flexibility to some of the  
4 requirements under the statute.

5 So while Judith is getting us there,  
6 the first Regulation, the purpose of it was to  
7 provide flexibility for some of the requirements,  
8 and this was made very soon and right around the  
9 time of the declaration of emergency on March 17th  
10 by the province.

11 And one of the requirements in the Act  
12 is that they must have a 24/7 Registered Nurse who  
13 is a member of the regular nursing staff. That is  
14 very important for continuity of care, et cetera.

15 So there was some additional exceptions  
16 added to that if there was a situation where the RN  
17 could not get to the home because of the pandemic.  
18 Some of those exceptions that were added in were  
19 that the RN could be an agency RN or could be an  
20 RPN if they had an RN that they could consult. So  
21 there was some flexibility there around the 24/7 RN  
22 requirement.

23 In terms of the police record and  
24 vulnerable sector screen, the requirement was  
25 amended slightly so that the licensee didn't need

1 to get a new police record check or VSS before the  
2 person came on, but the staff member coming on  
3 could provide the licensee with a signed  
4 declaration disclosing specified offences since the  
5 last police record check they had received or a  
6 declaration setting out and disclosing all offences  
7 if they had never got a police record check. So  
8 there was some flexibility added there just to make  
9 sure that staff could get brought on quickly.

10 In terms of some of the training  
11 requirements, as I said earlier, there was a number  
12 of different training that has to be done before  
13 the staff start working and providing direct care.  
14 Instead, they were given a bit of leeway there to  
15 make sure that the training would be provided  
16 within one week of when that staff started working,  
17 and that was training in things like zero tolerance  
18 of abuse and neglect, the duty under section 24 to  
19 report, IPAC, et cetera.

20 All other training, they were to make  
21 sure they were provided within three months of when  
22 that person started.

23 The other change that was made under  
24 this Regulation number 1 was with respect to the  
25 hours for the Director of Nursing and Personal

1 Care. The number of hours that they were required  
2 or are required to work in that position was  
3 amended and reduced so that they could focus  
4 instead on frontline activities, because as you'll  
5 recall, the DON, the Director of Nursing and  
6 Personal Care is an RN, so that it would allow them  
7 to have some flexibility and fill the frontline  
8 duties if they needed to.

9 Regulation number 2 came literally on  
10 the heels of Regulation number 1 in March and  
11 related to admissions and discharges. The purpose  
12 of this Regulation was to help address the severe  
13 capacity pressures being faced by hospitals by  
14 expediting the discharge to long-term care homes of  
15 eligible patients through a truncated placement  
16 process.

17 Some of the changes that were brought  
18 in in this Regulation to make that happen were  
19 reducing the number of forms that the placement  
20 coordinator had to complete. Hospital patients who  
21 were waiting for a long-term care bed would be  
22 offered admission to the home that was selected by  
23 the placement coordinator as opposed to the  
24 applicants selecting the home themselves, but still  
25 placement would only be authorized with the consent

1 of the applicant. So the whole idea of the  
2 applicant consenting to where they are going and  
3 getting admitted to was maintained.

4 If the applicant did not consent to the  
5 home that they were offered by the placement  
6 coordinator, the placement coordinator would go  
7 back and identify other homes. If the patient did  
8 not accept any of the homes provided, they would be  
9 put into that category one crisis category on the  
10 waiting list until something else came up.

11 Also they could be, under this  
12 Regulation they could be put in preferred  
13 accommodation even if they requested basic, and the  
14 licensee must still give them the basic  
15 accommodation rate.

16 Wait lists, just so you know, wait  
17 lists for preferred accommodation are generally  
18 shorter than those for basic accommodation based on  
19 the difference in cost, and permitting placement of  
20 people waiting for basic into preferred would help  
21 move those patients out of the hospital beds  
22 faster, and so that was the idea there.

23 And there was also in this Regulation  
24 that it would enable the residents to leave the  
25 long-term care home if they wished to do so,

1 current residents, due to COVID-19 and expedite  
2 their return when they needed to go back, and also  
3 gave the licensee the ability to use the bed by  
4 another person if a resident is away from the home  
5 for an extended period of time, which is not  
6 usually not allowed during resident absences.

7           Following that Regulation, there were a  
8 number of different Emergency Orders. As you know,  
9 there were a lot of Emergency Orders that the  
10 province made, but I have got four listed here that  
11 specifically related to the long-term care home  
12 sector.

13           Emergency Order Number 1 related to  
14 work deployment measures in long-term care homes.  
15 The purpose here for this EO was to allow the  
16 long-term care homes to take any reasonably  
17 necessary measures with respect to work deployment  
18 and staffing.

19           It allowed the homes to identify  
20 staffing priorities and develop, modify and  
21 implement any re-deployment plans. It essentially  
22 put on hold some of the provisions in Collective  
23 Agreements that did restrict the re-assignment of  
24 staff in long-term care homes.

25           It allowed the homes to implement

1 re-deployment plans without complying with the  
2 Collective Agreement, including without complying  
3 with layoffs, seniority, service or bumping  
4 provisions.

5 It could allow homes to re-deploy staff  
6 where the home has a number of different locations,  
7 change the assignment of work, change scheduling of  
8 work or shift assignments, defer or cancel  
9 vacations or leaves of absences, employ extra  
10 part-time or temporary staff that would perform  
11 bargaining unit work, et cetera.

12 Emergency Order Number 2 was another  
13 streamlining requirement similar to Regulation  
14 number 1, and this was responding to concerns that  
15 had been raised by the long-term care home sector  
16 to the Ministry in the early days of the pandemic  
17 response, and they had indicated that they were  
18 facing significant challenges with respect to  
19 availability and flexibility of the long-term care  
20 workforce to respond to the pandemic.

21 So some of the streamlining  
22 requirements under Emergency Order Number 2 were  
23 that it limited the types of things that the home  
24 had to report. They no longer had to report  
25 complaints but definitely still had to make

1 mandatory reports of abuse and neglect and report  
2 critical incidents.

3 It took away some of the documentation  
4 information that licensees are required to do under  
5 the Act and the Regulation.

6 Also it allowed the licensees to fill  
7 any staff position with the person who in their  
8 reasonable opinion has the adequate skills,  
9 training and knowledge to perform the duties, and  
10 they were not required to ensure that the minimum  
11 number of staffing hours for staff were met.

12 And then in terms of care requirements,  
13 it reduced the frequency by which they had to  
14 update the care plan for the residents and allowed  
15 more flexibility to the homes to use their clinical  
16 judgment as to when an annual physical exam needed  
17 to take place and where a care plan should be held  
18 in developing that care plan.

19 Emergency Order Number 3, the purpose  
20 of it was to prohibit long-term care employees from  
21 working in any other long-term care home, health  
22 service provider or any retirement home. This one  
23 came in in mid-April. It did not apply to contract  
24 workers, for example, physician services, temporary  
25 agency staff or volunteers, but all of those



1 people, those agency staff, volunteers and  
2 physicians who come into the home temporarily would  
3 be subject to the essential visitor screening  
4 protocols before being permitted entry into the  
5 long-term care home.

6 And this EO Number 3 also made  
7 corresponding amendments to the Emergency Order  
8 Number 2 to clarify that an employee is not able to  
9 provide services at more than one long-term care  
10 home.

11 The last EO I am going to talk about is  
12 the mandatory management order, MMO EO. The  
13 purpose of this one, and it was done in roughly  
14 mid-May, and the purpose was to enhance the  
15 Ministry's ability to address management issues in  
16 long-term care homes that are experiencing a  
17 COVID-19 outbreak.

18 What it essentially said or did - and  
19 it is still in effect at this time, as I mentioned  
20 earlier - is it changed the grounds that the  
21 Director had to have to issue a mandatory  
22 management order. It allowed the Director to issue  
23 a mandatory management order to any home that is in  
24 outbreak. And "outbreak" is defined as a positive  
25 test for COVID-19 for either a resident or staff

1 member in a home.

2 It also allowed the Director to specify  
3 the period of time that the MMO was in effect, and  
4 it also allowed the Director to essentially name  
5 the person or corporation that would be managing  
6 the home.

7 Any questions about those legal  
8 instruments?

9 COMMISSIONER JACK KITTS: So from my  
10 perspective, that is a lot of information on a very  
11 important Act that obviously the Commissioners have  
12 to pay a lot of attention to.

13 I want to compliment you on the content  
14 of the slides, they were excellent, but also the  
15 delivery of the presentation. It is not easy to  
16 get up and deliver, I don't know, 30-some slides  
17 over the course of almost two hours, and I think  
18 you did an excellent job.

19 I don't have any questions, just the  
20 comment that well done and much appreciated.

21 As you know, Commissioner Marrocco had  
22 to leave early, but Commissioner Coke is here, so  
23 did you want to say something, Commissioner Coke?

24 COMMISSIONER ANGELA COKE: Just to  
25 thank everybody. It was very helpful and the right

1 level of detail, so I appreciate that very much.  
2 So thank you both.

3 KRISTIN SMITH: You are welcome. It is  
4 our pleasure to do it.

5 And I'll just reiterate what Michael  
6 said, which is if you have follow-up questions on  
7 the legal scheme or the legal instruments, we are  
8 here and we are happy to answer them for you.

9 And I know some of your counsel are on,  
10 and we are happy to take questions from them now or  
11 later as well, because we had pitched this as well  
12 as a bit of a briefing for Commission counsel. I  
13 know Ida knows everything about the Long-Term Care  
14 Homes Act already, but we are happy to help bring  
15 you up to speed as fast as we can. We know you  
16 have a monumental task ahead of you.

17 IDA BIANCHI: To be fair, I learned a  
18 lot from Michael about the infrastructure piece  
19 which didn't figure as prominently in the Gillese  
20 Inquiry, so thank you, Michael, very much, it was  
21 very informative. And thank you, Kristin, it was  
22 great.

23 COMMISSIONER JACK KITTS: Does anyone  
24 else, other counsel have any questions or comments  
25 for Kristin?

1                   Then I think we are at the end of this,  
2                   so I will reiterate again, thank you very much,  
3                   much appreciated, and enjoy the rest of your day.

4

5                   -- Adjourned at 4:50 p.m.

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1 REPORTER'S CERTIFICATE

2  
3 I, DEANA SANTEDICOLA, RPR, CRR,  
4 CSR, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were  
6 taken before me at the time and place therein set  
7 forth;

8 That all remarks made at the time  
9 were recorded stenographically by me and were  
10 thereafter transcribed;

11 That the foregoing is a true and  
12 correct transcript of my shorthand notes so taken.

13  
14  
15  
16 Dated this 3rd day of September, 2020.

17  
18 

19  
20 \_\_\_\_\_  
21 NEESONS, A VERITEXT COMPANY

22 PER: DEANA SANTEDICOLA, RPR, CRR, CSR  
23  
24  
25

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