

# COVID-19 LEGISLATIVE LANDSCAPE

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## **Legislation**

Since March 2020 it has been very difficult to keep track of all the information necessary to understand what is going on in long-term care, what changes may have occurred, and how these changes may have affected decisions that individuals may have to make.

Long-term care homes are governed by the *Long-Term Care Homes Act, 2007*<sup>1</sup> and its regulation.<sup>2</sup> In addition to that, other pieces of legislation (and their regulations) that you must be aware of are:

- *Health Care Consent Act, 1996 (HCCA)*<sup>3</sup>
- *Substitute Decisions Act, 1992 (SDA)*<sup>4</sup>
- *Personal Health Information Protection Act, 2004 (PHIPA)*<sup>5</sup>
- *Health Protection and Promotion Act (HPPA)*<sup>6</sup>

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<sup>1</sup> S.O. 2007, c. 8.

<sup>2</sup> O. Reg. 79/10.

<sup>3</sup> S.O. 1996, c. 2, Sched. A.

<sup>4</sup> S.O. 1992, c. 30.

<sup>5</sup> S.O. 2004, c. 3, Sched. A.

<sup>6</sup> R.S.O. 1990, c. H.7.

- *Emergency Management and Civil Protection Act (EMCP)*<sup>7</sup>

Retirement homes, while not health facilities, have been made subject to many of the same rules as long care homes with respect to COVID-19 through regulation<sup>8</sup>, so the legislation governing these tenancies is also important to be aware of:

- *Retirement Homes Act, 2010 (RHA)*.<sup>9</sup>

### **Regulations**

There have been numerous amendments to regulations because of COVID-19. These may be regulatory changes under legislation such as the *LTCHA* or the *RHA*. As well, numerous orders were made by way of regulation under the authority of the *EMCPA*.

Regulatory changes related to the long-term care homes regulations related to a variety of topics. These included amendments related to admission, discharge, readmission, staffing, waiting lists, direct access beds, and fees.

Regulations under the auspices of the *EMCPA* relating to long-term care included work redeployment, reporting to the Ministry, staffing and training, limiting employee's work to a single home,

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<sup>7</sup> R.S.O. 1990, c. E.9.

<sup>8</sup> O. Reg. 68/20.

<sup>9</sup> S.O. 2010, c. 11.

Regulations under the auspices of the *EMPCPA* relating to retirement homes included work redeployment, agreements between health services providers and retirement homes, and limiting employee's work to a single home.

## **Orders**

### **Federal**

There are various orders relating to COVID-19 and individuals under various legislation, including the *Quarantine Act*<sup>10</sup> and the *Aeronautics Act*,<sup>11</sup> relating to travel into and within Canada.<sup>12</sup>

### **Provincial**

The Minister of Health has issued two orders with respect to the supply of Personal Protective Equipment (PPE) in Ontario. The first was issued on March 27, 2020, and was replaced on June 8, 2020.

A medical officer of health, which would include the Chief Medical Officer of Health (CMOH) as well as local medical officers of health, may also issue orders under s. 22 of the *HPPA*. These orders may be made to individuals or as class orders. An example of a class order is that made by Dr. Eileen de Villa, Medical Officer of Health for the City of Toronto on April 1, 2020. This order requires persons who have been diagnosed with COVID-19, who have symptoms of COVID-19 and are awaiting test results, who otherwise believe they may have COVID-19, or who had been in close contact with one of these persons, to

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<sup>10</sup> S.C. 2006, c. 20.

<sup>11</sup> R.S.C. 1985, c. A-2.

<sup>12</sup> For more information about federal orders go to <https://www.justice.gc.ca/eng/csj-sjc/covid.html>

isolate themselves for 14 days.<sup>13</sup> Under *HPPA*. 22, a medical officer of health can order a person or class of persons to isolate themselves. Orders under this section are appealable to the Health Services Appeal and Review Board.

## **Directives**

Under s. 77.7 of the *HPPA*, the CMOH has specific authority to issue directives to certain health professionals with respect to precautionary measures to be taken where there exists or may exist an immediate risk to the health of persons in Ontario. The health provider or health entity must comply with said directive. The health provider and health entities are listed in s. 77.7(6) of the *HPPA*. Included in that would be all regulated health professionals, service providers under the *Homes Care and Community Services Act, 1994 (HCCSA)*,<sup>14</sup> ambulances and paramedics, hospitals, long-term care homes, and homes for special care within the meaning of the *Homes for Special Care Act (HSCA)*.<sup>15</sup>

One type of facility which is not included in s. 77.7 are retirement homes. Retirement homes are NOT health care facilities, they are tenancies under the *Residential Tenancies Act, 2006 (RTA)*<sup>16</sup> in which the tenants purchase care packages. These facilities are licensed by the Retirement Home Regulatory Authority (RHRA) and must adhere to specific rules as a retirement home pursuant to the *RHA*. Unfortunately, despite these facilities being tenancies NOT health care facilities, there has been an increased use of them as “alternatives” or “equivalent” to long-term care homes (despite the fact that long-term care

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<sup>13</sup> See <https://www.toronto.ca/home/covid-19/covid-19-what-you-should-do/covid-19-orders-directives-by-laws/?accordion=mandatory-mask-or-face-covering-by-law>

<sup>14</sup> S.O. 1994, c. 26.

<sup>15</sup> S.O. 1990, c. H.12.

<sup>16</sup> S.O. 2006, c. 17.

homes are government funded and regulated as part of our healthcare system, while retirement homes are not). Because of this conflation of retirement homes to be quasi-long-term care homes, on March 19, 2020 at the beginning of the pandemic, a regulation was passed amending s. 27(5) of the *RHA* regulation<sup>17</sup> by adding the following:

- (0.a) any guidance, advice or recommendations given to retirement homes by the Chief Medical Officer of Health are followed in the retirement home;
- (0.b) all reasonable steps are taken in the retirement home to follow,
  - (i) any directive respecting coronavirus (COVID-19) issued to long-term care homes by the Chief Medical Officer of Health under section 77.7 of the *Health Protection and Promotion Act*, and
  - (ii) any guidance, advice or recommendations respecting coronavirus (COVID-19) that are given to long-term care homes by the Chief Medical Officer of Health and made available on the Government of Ontario's website respecting coronavirus (COVID-19).<sup>18</sup>

This means that any directives or policies set by the CMOH that applies to long-term care homes, also applies to retirement homes.

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<sup>17</sup> O.Reg. 166/11.

<sup>18</sup> O.Reg. 68/20.

Five directives, all with multiple versions, have been issued as follows:

Directive	For Whom	Version Dates
1	Health Care Providers and Health Care Entities	March 12, 2020 March 30, 2020
2	Health Care Providers (Regulated Health Professionals or Persons who operate a Group Practice of Regulated Health Professionals)	March 19, 2020 May 26, 2020
3	Long-Term Care Homes under the <i>Long-Term Care Homes Act, 2007</i> * *including Retirement Homes under the <i>Retirement Homes Act, 2010</i> , see below	March 22, 2020 March 30, 2020 April 8, 2020 April 15, 2020 May 21, 2020 May 23, 2020 June 10, 2020 August 28, 2020 September 9, 2020 September 14, 2020
4	Ambulance Services and Paramedics under the <i>Ambulance Act</i>	March 24, 2020 March 30, 2020
5	Hospitals within the meaning of the <i>Public Hospitals Act</i> and Long-Term Care Homes* within the meaning of the <i>Long-Term Care Homes Act, 2007</i> *only included long term care homes since April 10; prior to that was only public hospitals	March 30, 2020 March 31, 2020 April 10, 2020 October 5, 2020 October 8, 2020

The latest directives can be accessed on the Ministry of Health and Ministry of Long-Term Care shared website at

[http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/dir\\_mem\\_res.aspx](http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/dir_mem_res.aspx).

### **Guidance Documents**

The CMOH, Ministry of Health, Ministry of Long-Term Care and Ministry of Seniors and Accessibility have all released a variety of guidance documents for

various parts of the health sector. These include guidance documents, memorandums, policies, frequently asked questions, and other documents related to COVID-19 and long-term care homes, retirement homes, hospitals, and other health care or congregate living settings. There is also a range of subjects covered in them, such issues as PPE, signage, congregate living, absences, testing, etc. By no means is this an exhaustive list of the types of documents or the issues.

It is often difficult to keep track of the rules which are ever-changing. One of the problems is that there is no central repository for all of these documents. The Ministry of Health and Ministry of Long-Term Care post some of these documents on their shared website; however, they are not easy to find, nor is it a comprehensive list. Other organizations may also have lists and post documents on their websites, such as the Ontario Hospitals Association, which has gathered a wide variety of documents, and the RHRA, which posts the documents related to retirement homes.

Due to the constant addition and withdrawal and amendments to regulations and documents, even when one is aware of these complexities, it is extremely difficult to ensure that one is fully up-to-date on the rules of the day, especially relating to long-term care homes. For residents and their families, it is impossible to do so.