

## HR HealthCheck

# Ontario Proposes Legislative Changes to the Long-Term Care Sector

**Date:** November 2, 2021

On October 28, 2021, the [Ontario government announced](#) a substantial overhaul of the long-term care sector in Ontario, following on the report of the [Long-Term Care Commission](#). On the same date, the government tabled [Bill 37, Providing More Care, Protecting Seniors, and Building More Beds Act, 2021](#). If passed, Bill 37 would repeal the current *Long-Term Care Homes Act, 2007 (LTCHA)* and would enact the *Fixing Long-Term Care Act, 2021 (FLTCA)*. It would also make amendments to the *Retirement Homes Act, 2010 (RHA)*.

Notwithstanding the creation of a new act, the *FLTCA* would largely track the structure and content of the *LTCHA*, with some of the most significant additions being a heightened profile for palliative care, continuous quality improvement and infection prevention and control (IPAC) (including a required IPAC leader), the establishment of direct hours of care targets, and increased compliance and enforcement tools. The revisions to the *RHA* are more modest, including increased compliance tools.

In this *HR HealthCheck*, we focus on two aspects of the new *FLTCA* that would have fundamental workplace impacts.

## Direct Hours of Care Targets

Bill 37 would establish direct hours of care targets per resident per day on a phased basis, as follows:

1. By Registered Nurses, Registered Practical Nurses and Personal Support Workers (PSWs):

March 31, 2022	3 hours
March 31, 2023	3 hours and 15 minutes
March 31, 2024	3 hours and 42 minutes
March 31, 2025	4 hours

2. By Allied Health Professionals:

March 31, 2022	33 minutes
March 31, 2023	36 minutes

These targets obviously will have considerable staffing, employment and labour relations impacts. We are highlighting a few key items at this time.

First and fundamentally, as currently worded, Bill 37 would not establish direct hours of care targets with which each licensee has to comply on a per-home basis. Each target is an average of all long-term care (LTC) homes and apparently is a target for the Ministry, not each licensee/home.

Bill 37 identifies responses for the Ministry if the targets are not met. *In other words, although the Ministry may choose to use conditional/tied government funding to motivate an LTC home to hit the targets, if a home does not hit a direct hours of care target, it apparently will not be a violation of the proposed FLTCA.* Similarly, the specific regulation-making powers of the proposed *FLTCA* would align with this aggregated approach of Ministry compliance, rather than home-by-home licensee compliance. *And, as a corollary, it is questionable whether these direct hours of target provisions of the proposed FLTCA would constitute “employer-related legislation” that could be enforced by a union through grievance and arbitration against a*

*licensee/home.*

Second, it is important to note that the direct hours of care targets for “individuals who are hired by or otherwise work...as personal support workers, registered nurses, or registered practical nurses” *do not appear to cover resident assistant/personal support assistant/etc. type positions* (unless, perhaps, they are engaged to perform effectively full personal support worker duties as allowed under the current emergency orders). If so, hours worked by resident assistants, personal support assistants or resident support assistants would not count toward the direct hours of care targets.

## New Compliance and Enforcement Tools

The proposed *FLTCA* would establish compliance and enforcement tools, with increased fines for offences committed under the legislation. (It should be noted that since 2017, the *LTCHA* already contained a number of these tools, but they had not been proclaimed into force.)

The *FLTCA* sets out licence suspension and revocation and home supervision powers. Further, the penalties for offences have been doubled, with first-offence maximum penalties for individuals increasing from \$100,000 to \$200,000 (subsequent offences, \$400,000) and for corporations from \$200,000 to \$500,000 (subsequent offences, \$1,000,000).

*Perhaps most significant would be the new inspector (or Director) power to issue administrative penalties to a licensee of up to \$250,000.* Correspondingly, Bill 37 would also expressly remove the current discretion of inspectors to consider a home’s due diligence or honest and reasonable belief when determining whether to exercise their authority to issue orders or administrative penalties. (*Section 162 of the FLTCA would expressly stipulate that inspectors “shall not” consider due diligence or honest and reasonable belief when deciding whether to exercise their authority.*) It is difficult to predict how this would actually translate into practice on the ground, but obviously inspectors have been handed a hefty and direct power to issue fines, while at the same time having their ability to consider due diligence and other contextual factors curtailed.

## Regulations

As with the *LTCHA*, LTC homes’ legal obligations under the proposed *FLTCA* would largely be detailed in and derived from the regulations. New regulations are not yet available for review (and in fact the Bill calls for public consultation before initial regulations are implemented).

We will continue to monitor the legislative progress of Bill 37 and corresponding regulations and will provide updates as appropriate.

**Editor’s Note on December 13, 2021: Bill 37 passed on December 9, 2021, as amended at Committee. The changes to the *FLTCA* will come into force at a later date, upon proclamation.**

If you require further information regarding Bill 37 or have questions about how the new legislation could impact your organization, please contact [your regular Hicks Morley lawyer](#).

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