HR HealthCheck

Ontario Seeking Input on Regulations Related to Personal Support Workers

Date: December 6, 2023

The Ontario government is inviting comments on a proposed regulatory framework to be made under the *Health and Supportive Care Providers Oversight Authority Act, 2021* (*HSCPOA Act*) and proposed amendments to a regulation made under the *Fixing Long-Term Care Act, 2021* (*FLTC Act*).

Comments on these proposals are due by January 15, 2024.

Proposed Regulatory Framework Under the *Health and Supportive Care Providers Oversight Authority Act, 2021*

The Ontario Ministry of Health is consulting on a proposed regulatory framework to be made under the *HSCPOA Act*. Note that the proposals are for a **voluntary approach** for the oversight of personal support workers (PSWs), which is distinct from the traditional self-regulatory model under the *Regulated Health Professions Act, 1991*.

Specifically, the Ministry of Health seeks to provide a regulatory framework to support provisions of the *HSCPOA Act* which established an authority (Authority) for the oversight and regulation of personal support workers (PSWs), among other prescribed classes of registrants. As set out in the *HSCPOA Act*, among other things, the objects of the Authority are:

- to establish and maintain educational and skills-based qualifications for each class of registrants
- to establish and maintain one or more visual marks or identifiers for use by registrants that can identify registrants to members of the public
- to promote the provision of safe, competent, ethical and high-quality health services and supportive care services by registrants to members of the public
- to establish and maintain codes of ethics applicable to each class of registrants in relation to the health services or supportive care services they provide to members of the public

Most provisions of the *HSCPOA Act* which deal with the Authority's governing and regulatory oversight have not yet been proclaimed into force. The proposed regulatory framework is intended to provide regulatory support for these provisions.

Among other things, the proposed regulatory framework would:

- set out the pathways to registration requirements for PSWs with Ontario-based training, as well as those with training outside Ontario
- provide a three-year transition for persons hired as PSWs but who do not meet the Ontario training requirements (legacy registrants)
- include a prescribed Code of Ethics that would apply to all registrants
- include a complaints resolution process
- provide for the membership of PSW registrants on the Authority's Advisory Committee
- specify the date on which the visual mark or identifier established by the Authority for a class of registrants comes into effect
- establish a program for providing therapy and counselling for persons who allege that sexual abuse has been committed by registrants, among other things

The Ministry of Health is accepting feedback on the proposed regulatory framework until January 15, 2024.

Amendments to Ontario Regulation 246/22 Under the *Fixing Long-Term Care Act, 2021*

In its regulatory proposal, the Ministry of Long-Term Care states that, at present, the long-term care sector is the only health sector in Ontario that sets out staffing qualifications for PSWs through legislation (section 52 of O. Reg. 246/22 (Regulation) made under the *FLTC Act*).

In light of the Ministry of Health's proposed regulatory framework under the *HSCPOA Act*, the Ministry of Long-Term Care is proposing amendments to section 52 of the Regulation to ensure consistency with the qualification requirements for PSWs in Ontario.

Specifically, the Ministry of Long-Term Care seeks to amend section 52 so it aligns with the pathways for registration under the proposed regulatory framework under the *HSCPOA Act*. The proposed changes to section 52 of the Regulation set out that PSWs will be able to work in the long-term care sector if they meet the following requirements:

- they are registered with the Authority under the *HSCPOA Act*
- they are not registered with the Authority, but otherwise meet the requirements to register with the Authority under one of the eligible registration pathways, or
- they qualify to work as a PSW under an exception set out under the Regulation or the *FLTC Act*

Many of the provisions found in section 52 of the Regulation would remain, including those which provide exceptions to the PSW qualification requirements in the long-term care sector. These exceptions apply to registered nurses (RNs) and registered practical nurses (RPNs), persons enrolled in educational programs for RNs and RPNs, and other individuals enrolled in certain programs where certain requirements are met.

The proposal states that "[u]nder this approach, long-term care home licensees could decide whether registration with the Authority is compulsory to work as a personal support worker in their home."

The Ministry of Long-Term Care is accepting feedback on the proposed changes to the Regulation until January 15, 2024.

Please contact your regular Hicks Morley lawyer should you require more information on these proposals.