



ARCH Bulletin on COVID-19: Ontario Renews Emergency Orders for Long-Term Care Homes until May 6, 2020

Ontario's Emergency Orders and Directive for Long-Term Care Homes

ARCH acknowledges the disproportionate vulnerability of residents in long-term care (LTC) homes who are seniors and persons with disabilities. LTC home residents are at higher risk of infection from COVID-19 for reasons such as advanced age, chronic conditions, and the institutional environment.

We are deeply saddened by the tragic deaths linked to the spread of COVID-19 in LTC facilities.

As a specialty legal clinic that practices exclusively in disability rights law, ARCH is monitoring a variety of issues from a disability perspective. This bulletin will review two of the numerous emergency Orders issued under the *Emergency Management and Civil Protection Act* that directly impact persons with disabilities residing in LTC homes. This bulletin will also review a Directive ordered under the *Health Protection and Promotion Act* aimed at protecting staff and residents in LTC homes.

1) Provincial Orders Impacting Long-Term Care Homes

On March 17, 2020, Ontario declared a state of emergency as a result of COVID-19. During a declared emergency, the Lieutenant Governor in Council can make orders believed to be necessary to prevent or reduce serious harm. These orders may be renewed and can stay in place for as long as is necessary.

There are several temporary emergency orders issued under the *Emergency Management and Civil Protection Act* which affect LTC homes. Some of these orders state if they have the power to temporarily override certain existing laws. However, nothing in these orders reduces the responsibility of a facility to ensure a safe and secure environment for residents.

Although there are several orders which impact LTC homes, the two Orders with the most direct impact on residents will be discussed below.

On March 27, 2020, an Order was issued to **streamline requirements for long-term care homes**. This order was to be revoked on April 23, 2020 but has been extended to May 6, 2020.

- The Order allows LTC homes to take any reasonably necessary measures to prevent or respond to a COVID-19 outbreak in a LTC home. LTC homes have the option to waive a number of administrative requirements. For example, LTC homes are:
 - Not required to **report** complaints of residents, unless it is a critical incident report or other mandatory report;
 - not required to **document** information unless it involves an incident of a significant nature;
 - Allowed flexibility in **staffing**. LTC home staff can fill any staff position for which that staff has adequate training and skills to perform. For example, a registered practical nurse may be able to fill the position previously held by a registered nurse. Staff also do not have to undergo the usual screening measures such as a police record vulnerable sector check;
 - Allowed to be flexible in **care requirements** such as when to hold care conferences. Further, physical examinations of residents do not have to be annual, but should occur within a reasonable time;
 - Allowed to be flexible in processes for **admissions, transfers, and discharges** of residents. LTC homes must still get the consent of a resident before an admission, transfer, or discharge; and
 - Allowed to be flexible in the **administration of drugs** to residents as long as administering the drug is within the scope of the individual's practice. The Order does not affect a resident self-administering drugs where they are already allowed to do so.

On April 14, 2020, an Order was issued to **limit work to a single long-term care home**. This Order is set to be revoked on April 28, 2020, but has also been extended to May 6, 2020.

- Starting on April 22, 2020, this Order requires employees of a LTC home to only work at one LTC home or retirement home.
- The Order does not apply to temporary or contract workers, or to workers in privately owned retirement homes where residents do not require 24-hour care. These workers will still be required to undergo active screening before they can enter a LTC home.
- The Order does not explicitly address problems of LTC home staff working part-time and being underpaid. However, the Ontario government has said it will cover the funding to bring additional staffing into homes where outbreaks are occurring and will cover costs of increasing hours for part-time staff. Further, the Federal government is working with the province to impose a wage boost for workers in LTC homes that make less than a certain amount per month.

There is also a similar order limiting work to a single retirement home which has been extended to May 6, 2020 as well.

2) Five Directives Issued to Health Care Providers and Organizations

Under the *Health Protection and Promotion Act*, the Chief Medical Officer of Health has the power to issue **directives** to health care providers and organizations in certain circumstances. These circumstances include if there is an immediate risk to the health of persons anywhere in Ontario.

COVID-19 has been determined to be an immediate risk to the health of Ontarians, so the Chief Medical Officer of Health has issued five (5) directives. These directives provide guidance to health care providers and organizations about the precautions and procedures they must follow to protect the health of persons in Ontario.

The directives can be found on the website for the Ministry of Health and the Ministry of Long-term Care. Please use the following link:

http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/dir_mem_res.aspx

Directive # 3 for LTC Homes under *the Long-Term Care Homes Act*

To protect staff and residents in LTC homes, Directive # 3 lists practices that LTC homes must immediately implement. Retirement homes are also to take all reasonable steps to follow these practices.

On April 8, 2020, Directive # 3 was updated to list eighteen (18) practices and procedures that LTC homes must follow. These practices and procedures include:

- **Active screening** of all residents, staff, and essential visitors. Screening should be done at least twice a day - at the start and end of the day. There are some exceptions such as first responders entering LTC homes in an emergency;
- Only allowing **essential visitors** to visit the LTC home. Essential visitors include persons performing essential support services like food delivery or healthcare and those visiting a very ill or palliative resident;
- Dropping off **food and product deliveries** in an identified area. Delivery persons are to be actively screened before they can enter the LTC home;
- LTC staff limiting the number of **locations** which they work, wherever possible;
- Requiring all staff and essential visitors to wear **surgical/procedure masks** for

visits or during full shifts at a LTC home. However, staff may remove their masks during breaks, but must stay at least 2 meters away from other staff;

- Screening any **new admissions or re-admissions** of residents in LTC homes for symptoms and possible exposure. All new residents must be placed in self-isolation for fourteen (14) days on arrival to the LTC home. New residents must also be tested within fourteen (14) days of admission. LTC homes are to follow Ontario's guidance for COVID-19 testing, which was updated on April 8, 2020;
- Not allowing residents to leave the LTC home for **short-stay absences** to visit family or friends. Residents that want to go outside of the LTC home must be told to remain on the home's property and to maintain safe physical distancing;
- Ensuring LTC homes are **prepared for COVID-19** by taking specified measures. These include steps that must be taken when there is a **case of infection** in one resident, in one staff, or an **outbreak** in the LTC home;
- Using **staff and resident cohorting** to prevent spread of COVID-19. For example, residents may be grouped into well and unwell residents, and alternative accommodations or rooms may be used to help maintain a physical distance of 2 meters, where possible. Staff may be grouped into those that work with well residents and unwell residents. There are some circumstances where LTC homes may send residents to their homes outside of the LTC home; and
- Maintaining **communication** that keeps staffs and residents informed about COVID-19. This communication includes clear signage about COVID-19, its symptoms, and steps to take if an individual in the LTC home may be infected.

These are just some of the measures being taken to prevent, detect, and manage COVID-19 in LTC homes. The directives and appropriate measures continue to change as more information about COVID-19 becomes available.

For more information

Persons with disabilities who live in Ontario can call ARCH for free, confidential legal information and summary advice. To find out about the kind of legal advice ARCH provides and how to book an appointment, please use the following link:

www.archdisabilitylaw.ca/services

Older adults who live in Ontario can call the Advocacy Centre for the Elderly (ACE) for free, confidential information, summary advice, or direct services in a variety of areas. To find out about the kind of services ACE provides, please use the following link:

www.acelaw.ca