

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

FIXING LONG-TERM CARE ACT, 2021

Amending O. Reg. 246/22

(GENERAL)

1. Section 52 of Ontario Regulation 246/22 is revoked and the following substituted:

Qualifications of personal support workers

52. (1) Every licensee of a long-term care home shall ensure that every person hired by the licensee as a personal support worker or to provide personal support services, regardless of title, meets one of the following requirements:

1. The person is registered with the Health and Supportive Care Providers Oversight Authority in the personal support worker class.
2. The licensee determines that the person would meet the requirements to be registered in the personal support worker class that are set out in subsections 5 (2) to (7) and section 6 of Ontario Regulation 217/24 (Registration) made under the *Health and Supportive Care Providers Oversight Authority Act, 2021*, which shall be read subject to the following modifications:
 - i. Every reference to the “applicant” in those provisions shall be read as a reference to the person who would be hired by the licensee as a personal support worker or to provide personal support services.
 - ii. Every reference to the “Chief Executive Officer” shall be read as a reference to the licensee.
 - iii. If the person is relying on their completion of a program that was designed to prepare them to provide personal support services to show that they meet

these requirements, the person must provide the licensee with proof of graduation issued by the education provider that they successfully completed the program.

- iv. The competency assessment required by subsection 5 (4) or 6 (4) of that Regulation, as applicable, is not required and instead the licensee must be of the reasonable opinion that the person,
 - A. has successfully completed a program referred to in subsection 5 (2) of that Regulation, or
 - B. has a set of skills and knowledge that is equivalent to those of a person who has completed a program referred to in subsection 5 (2) of that Regulation.

(2) Despite subsection (1), a licensee may hire as a personal support worker or to provide personal support services, regardless of title,

- (a) a registered nurse or registered practical nurse,
 - (i) who, in the opinion of the Director of Nursing and Personal Care, has adequate skills and knowledge to perform the duties of a personal support worker, and
 - (ii) who has the appropriate current certificate of registration with the College of Nurses of Ontario or, in the case of an out of province nurse, a current certificate of registration with the governing body of their health profession;
- (b) a person who is enrolled in an educational program for registered nurses or registered practical nurses and who, in the opinion of the Director of Nursing and Personal Care, has adequate skills and knowledge to perform the duties of a personal support worker; or
- (c) a person who is enrolled in a program described in subsection 5 (2) of Ontario Regulation 217/24 (Registration), made under the *Health and Supportive Care Providers Oversight Authority Act, 2021*, but such a person must work under the supervision of a member of the registered nursing staff and an instructor from the program.

(3) The licensee shall cease to employ a person who was required to be enrolled in a program described in clause (2) (b) or (c) as a personal support worker, or as someone who provides personal support services, regardless of title, if the person ceases to be enrolled in the program or fails to successfully complete the program within five years of being hired.

(4) Despite subsection (1), a licensee may hire a person to provide personal support services who,

- (a) in the reasonable opinion of the licensee, has adequate skills and knowledge to provide personal support services;
- (b) only performs personal support services in accordance with the policy established under subsection (5); and
- (c) only performs personal support services in accordance with a determination by a staff member of the home who,
 - (i) is a member of a regulated health profession acting within the scope of their practice,
 - (ii) has determined the personal support services that are appropriate for the person's skills and knowledge, based on an individual assessment of the person's skills and knowledge, and
 - (iii) has determined which residents may receive these personal support services from the person, based on an assessment of the resident's care needs and their plan of care.

(5) A licensee who intends to hire persons to provide personal support services in accordance with the exemption described in subsection (4) shall develop a written policy, approved by the Director of Nursing and Personal Care, respecting the personal support services to be provided by these persons.

(6) The policy referred to in subsection (5) must, at a minimum, set out the process used to determine the applicable services to be provided in accordance with subclauses (4) (c) (ii) and (iii) and the considerations that guide this determination.

(7) A licensee shall keep records of all persons who provide personal support services in accordance with the exemption described in subsection (4) and provide statistical information respecting the use of the exemption to the Director monthly or upon request.

(8) The records required by subsection (7) must include, at a minimum, the number of persons working in the home who provide personal support services in accordance with the exemption described in subsection (4) and their position.

2. Section 80 of the Regulation is amended by adding the following subsections:

(4) Every licensee of a long-term care home shall ensure that a written back-up plan is in place that addresses situations when a registered dietitian who is a member of the staff of the

home is not able to be on-site in accordance with subsection (2), which must, at a minimum, identify actions and strategies the licensee will take to comply with the requirements of that subsection.

(5) The requirement for the registered dietitian to be on site at the home under subsection (2) does not apply if,

- (a) the licensee has made reasonable efforts to comply with subsection (2) and the back-up plan described in subsection (4) fails to ensure compliance with subsection (2);
- (b) a registered dietitian who is a member of the staff of the home provides the clinical and nutritional care required by subsection (2) by telephone or by means of video conferencing; and
- (c) if the licensee determines that it is necessary, a member of a regulated health profession working within their scope of practice is on site to collaborate with the registered dietitian when the registered dietitian is providing the clinical and nutritional care by telephone or by means of video conferencing.

(6) A licensee who relies on the exception in subsection (5) must keep a written record of,

- (a) the actions and strategies they took in accordance with their plan to comply with subsection (2); and
- (b) the reasons for the licensee's decision to have, or not to have, a member of regulated health profession on site to collaborate with the registered dietitian.

3. Sub-subclause 140 (3) (b) (ii) (A) of the Regulation is amended by striking out “subsection 52 (3)” and substituting “clause 52 (2) (a), (b) or (c)”.

Commencement

4. [Commencement]