

Ministry of Health
Proposed new regulation under the *Connecting Care Act, 2019*
(Pending passage of the *Connecting People to Home and Community Care Act, 2020*)

Introduction

This appendix provides an overview of the key elements of the home and community care program currently outlined in the *Home Care and Community Services Act, 1994* or in Ontario Regulation 386/99, as well as some additional elements, that the ministry proposes to outline in regulation to support the coming into effect of the *Connecting People to Home and Community Care Act, 2020*, should it be passed by the Ontario legislature. Additional regulations will be considered at a later date.

Regulations under the *Connecting Care Act, 2019*

Scope of Services

Proposed amendments to the *Connecting Care Act, 2019* would use the term “home and community care services” and would provide the Lieutenant Governor in Council with the authority to further define these services in regulation.

The ministry is proposing to maintain the “community services” outlined in the *Home Care and Community Services, 1994* and Ontario Regulation 386/99 as home and community care services as they are deemed to be appropriate and in line with other jurisdictions.

The ministry is also seeking feedback on the following changes under consideration:

- Adjusting how groups of services are referred to in regulation to avoid confusion and better align with sector nomenclature. For example, the current distinction between “community services” and “community support services” causes confusion. The ministry is proposing to use the umbrella term of “home and community care services” and distinguish between two categories of services: “home care services” and “community care services”.
 - o Home care services would comprise: professional services, personal support services, homemaking services where personal support services are also provided, security checks and reassurance services where other home care services are also provided.
 - o Community care services would comprise the remaining services listed in the *Home Care and Community Services, 1994* and Ontario Regulation 386/99, including personal support services, homemaking and security checks and reassurance services.
 - o The proposed inclusion of personal support services, homemaking and security checks and reassurance services as both home care services and community care services is deliberate.

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- o Education, training and the provision of supplies and equipment related to the provision of home care and community care services would also be included in the list of services.
- The ministry is proposing to add four new community care services that are currently being provided by Local Health Integration Networks (LHINs) but are not captured under the current framework:
 - o Aphasia services
 - o Pain and symptom management
 - o Diabetes education
 - o Psychological services for persons with Acquired Brain Injuries
- The ministry is proposing to include residential accommodation services as a home and community care service, which would enable funding for lodging, meals, unscheduled care needs, housekeeping, linen/laundry, resident safety and security checks, and social and recreation services within a residential congregate care setting. This service could be combined with other home and community care services to support residential congregate care models (see “location of services”).

Location of Services

The ministry is proposing to maintain the existing settings outlined in the *Home Care and Community Services, 1994* and Ontario Regulation 386/99. This includes a person’s home, other community settings (e.g. adult day programs), congregate care settings (i.e. community clinics), schools, and long-term care homes in the circumstances outlined in that regulation.

Restrictions based on setting would also be maintained, such as the prohibition against providing personal support services through home care in long-term care homes since these services are part of long-term care home services.

The ministry is proposing to add “public hospitals” as an eligible care setting for complex clients where the home and community care services pre-dated the hospitalization and are not expected to be needed post-hospitalization. These services would not be related to the reason for the person being hospitalized and where the hospital and the home and community care service provider have formally addressed issues of oversight and accountability.

The ministry is also proposing to add “residential congregate care settings” as a location in which home and community care services can be delivered. Proposed changes to the *Connecting Care Act, 2019* would provide a legal framework for the funding and oversight of non-licensed residential congregate care models. These models would introduce new settings of care in the community for patients who do not require the intensity of resources provided in a hospital or long-term care home, but whose needs

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are too high to be cared for at home. These models may provide care to patients on a transitional or rehabilitative basis, or over longer periods of time.

Details of each residential congregate care model would be defined in regulation under the Act. The ministry would engage with the public, clients and caregivers and health system partners to develop each model and outline them in regulation.

Method of Delivery

The ministry is proposing to continue the current methods of delivering care outlined in Ontario Regulation 386/99. This is consistent with a regulatory amendment that came into force on January 1, 2020 to clarify that services may be delivered virtually using electronic means. The ministry is proposing to continue to allow home and community care services to be delivered in-person or virtually using electronic means, if appropriate based on the assessed needs and preferences of the patient.

Maintaining this requirement will enable patients and providers to use technology to access health services in the most efficient way possible. Virtual visits and technology can be used to supplement in-person care but does not fully replace it.

Eligibility for Services

The ministry is proposing to maintain the eligibility criteria for services as outlined in Ontario Regulation 386/99, including School Health Professional Services. This would include any update to eligibility made as the result of the public posting in 2019 related to providing access to home care services for people from another province or territory who were insured under a public health insurance plan and who require end-of-life care.

The ministry is also seeking feedback on whether to introduce flexibility for the eligibility criteria for pharmacy and physiotherapy services. Currently, a patient must be unable to access services in a setting outside their home because of their condition. While this is appropriate in many cases, there are some circumstances in which this can be a barrier to effective care, such as if a client is ambulatory, but the closest setting to receive services is four hours away.

Eligible Providers

Proposed amendments to the *Connecting Care Act, 2019* would require organizations receiving direct funding from Ontario Health to provide home and community care services to be not-for-profit. This is a continuation of the current home and community care delivery model where approved agencies under the *Home Care and Community Services Act, 1994* are Health Service Providers funded by LHINs. These approved agencies must also be not-for-profit.

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Like the model currently, the ministry is proposing that these not-for-profit organizations will be able to deliver services directly or indirectly through contracts with for-profit and not-for-profit providers.

It is anticipated that Ontario Health would fund home care services through an integrated model of care delivered by a Health Service Provider or Ontario Health Team. Reflecting current practice, these organizations would then generally contract for the delivery of those services. A direct funding relationship between a home care service provider organization and Ontario Health is not anticipated.

The ministry is proposing to maintain the current practice of delivering community support services, as defined in the *Home Care and Community Services Act, 1994* and Ontario Regulation 386/99, through not-for-profit providers. The ministry would outline this requirement in regulation, which would also apply to contracted community support services. Any existing contracts with for-profit organizations would be grand-parented.

This approach is intended to promote continuity of care and service provision, to promote the delivery of services in a more integrated way, and to continue to support the contribution of community volunteers and charitable donations in the provision of community care services.

Charges for Services

Proposed changes to the *Connecting Care Act, 2019* would maintain the current prohibition on charging for home and community care services, unless permitted in regulation.

The ministry is proposing to maintain the current practice of allowing charges for the proposed list of community care services (community support services as defined in the *Home Care and Community Services Act, 1994* and Ontario Regulation 386/99). Professional, personal support and homemaking services (when provided alongside personal support services) and security checks and reassurance services (when provided alongside other home care services) would continue to be publicly funded for eligible patients and no charges would be permitted by regulation.

This would maintain Ontario's publicly funded home and community care program, while recognizing that community services are provided through a combination of government funding, volunteer services, charitable donations and client co-payments.

Care Coordination Functions

The ministry is proposing to require home and community care Health Service Providers (as defined under the *Connecting Care Act, 2019*, which would include LHINs) to ensure the performance of care coordination functions outlined below.

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These Health Services Providers would be responsible for care coordination – whether they are part of an Ontario Health Team or not – and would have the flexibility to assign care coordination functions to contracted providers or, through mutual agreement, to partner organizations with the goal of improving system navigation, reducing transitions for clients and eliminating duplication in assessment and care planning.

Care coordination functions would continue to include:

- Assess a patient's need for home and community care services.
- Determine if the patient is eligible for home and community care services, in accordance with the patient assessment and the criteria outlined in regulation.
- Develop one home and community care plan for the patient based on the assessment. The care plan would be developed in partnership with the patient and/or the patient's caregiver and would align with their preferences and care goals. Care plans must be documented and shared with patients and/or the patient's caregiver.
- The care plan should identify outcomes, rather than simply hour or visit-based planning.
- Manage the provision of services in a reasonable timeframe. If services are not available, the patient must be placed on a wait list.
- Coordinate services in care plan and work with parties in the circle of care.
- Support the patient to navigate needed health services within the care model.
- Manage issues with service delivery.
- Reassess and update care plans as required.

Detailed expectations regarding care coordination would be outlined in policy. This could include:

- Use of evidence-based assessment tools.
- Reassessment requirements.
- Guidance on care planning to ensure equity of access across the province.
- The organization of navigation, information and referral services among multiple organizations. The ministry would emphasize the need for integrated models of care coordination that reduce duplication in planning, such as the current requirement for a plan of service by an approved agency, and a plan of care by the service provider who delivers the care.
- Requirement for home care assessments to be performed by a regulated health professional.

Service Maximums

Although Ontario Regulation 386/99 under the *Home Care and Community Services Act, 1994* prescribes the maximum of services that can be provided, except in extraordinary circumstances, the ministry is proposing not to include service maximums in regulation under the *Connecting Care Act, 2019*. The ministry could provide guidance

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on care planning and service allocation in policy to promote equity of access across the province.

Bill of Rights

The ministry is proposing to include a Bill of Rights for home and community care patients in regulation, similar to that outlined in the *Home Care and Community Services Act, 1994*. As is the case currently, patients who believe their rights have been violated would be able to make a complaint to their provider (providers funded by Ontario Health as well as contracted providers).

The Bill of Rights contained in the *Home Care and Community Services Act, 1994* would serve as the model for the Bill of Rights proposed for regulation. As the Bill was developed in 1994, the ministry is seeking feedback on updates that may be required related to the equitable inclusion of all Ontarians in the delivery of home and community care services.

Complaints

Proposed changes to the *Connecting Care Act, 2019* would require home and community care Health Service Providers to establish a process for reviewing complaints made by patients with respect to home and community care services in accordance with requirements set out in regulation.

The ministry is proposing to maintain the list of complaint topics outlined in the *Home Care and Community Services Act, 1994* in regulation, with some additions:

- Decisions around eligibility.
- Exclusion of services.
- Decisions related to the amount of service.
- Decisions related to termination of service.
- Quality of service.
- Alleged violation of a person's rights (see "bill of rights" section).
- Violation of rights under other legislation related to their care, including consent, privacy and confidentiality.

The ministry also proposes to maintain requirements for the handling of complaints, including:

- The right of clients to be informed of the process to make a complaint, the right to make a complaint, and the right to be free from interference, coercion, discrimination or reprisal related to making the complaint.
- The current review period for responding to a complaint; and
- Who must be given notice of a decision made about a complaint.

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Maintaining these requirements in regulation would ensure patients continue to have the opportunity to voice their concerns around the provision of home and community care services and keep organizations accountable for providing quality home and community care services that meet the patients' needs.

Appeals

Proposed changes to the *Connecting Care Act, 2019* would maintain a person's right to appeal to the Health Services Appeals and Review Board (HSARB), and provides regulation making authority to outline the parameters of eligible appeals.

The ministry is proposing to maintain existing parameters in regulation. The regulations would prescribe the same types of decisions that can be appealed to the HSARB under the *Home Care and Community Services Act, 1994*:

- Decisions about ineligibility to receive service,
- Decisions to exclude a service,
- Decisions related to the amount of service, and
- Decisions to terminate service.

Requirements to provide notice of an appeal to the HSARB, the details of the hearing including the when a hearing should take place, providing notice of the hearing, and outlining the parties to an appeal would also be maintained.

Self-Directed Care

Proposed changes to the *Connecting Care Act, 2019* would enable Ontario Health to fund Health Service Providers and Ontario Health Teams to provide funding to patients to purchase and manage their own care. Currently, only LHINs are able to fund patients directly.

The ministry is proposing to maintain the current parameters for self-directed care captured under the *Home Care and Community Services Act, 1994*, Ontario Regulation 386/99 and the Family-Managed Home Care program specifications in regulation and policy.

The following would be included in regulation:

- Requirements outlined in Section 28.5 (4) of the *Home Care and Community Services Act, 1994*. This includes:
 - o The requirement for patients to have a care plan to be eligible for self-directed care.
 - o The discretion of the home and community care Health Service Provider (including LHINs) or Ontario Health Team to determine eligibility for self-directed care.

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- o The application of the complaints and appeals framework to decisions made regarding amount of service.
 - o The non-application of other sections of the proposed home and community care regulation, specifically, the right to appeal decisions regarding eligibility for self-directed care to HSARB.
 - o The ability of a Health Service Provider or Ontario Health Team to set terms and conditions of self-directed care funding.
- The continued grand-parenting of existing self-directed care programs.

Eligible client cohorts covered by the program would be done through policy. The ministry is not seeking feedback on home and community care policies at this time.

LHINs as Health Service Providers

Proposed amendments to the *Connecting Care Act, 2019* would enable LHINs to be deemed Health Service Providers under that Act on an interim basis. The ministry is proposing regulations to give this effect.

This would be required when the *Home Care and Community Services Act, 1994* is repealed and the LHINs are funded by the ministry. Regulations would ensure that certain provisions of the *Connecting Care Act, 2019* and proposed regulations under that Act pertaining to the delivery of home and community care services would apply to all Ontario Health-funded home and community care providers would apply to LHINs as well. This is critical to ensuring that home and community care patients receive equitable care, regardless of who provides it.

Ontario Regulation 179/95

The ministry is not proposing to maintain the provisions outlined in Ontario Regulation 179/95 under the *Home Care and Community Services Act, 1994* related to the conveyance of assets.