

**Extract of Ontario Regulation 246/22, made under the Fixing Long-Term Care Act, 2021**

**Screening Measures and Ongoing Declarations**

**Hiring staff, accepting volunteers**

**252.** (1) This section applies where a police record check is required before a licensee hires a staff member or accepts a volunteer as set out in subsection 81 (2) of the Act.

(2) The police record check must be,

- (a) conducted by a police record check provider within the meaning of the *Police Record Checks Reform Act, 2015*; and
- (b) conducted within six months before the staff member is hired or the volunteer is accepted by the licensee.

(3) The police record check must be a vulnerable sector check referred to in paragraph 3 of subsection 8 (1) of the *Police Record Checks Reform Act, 2015*, and be conducted to determine the person's suitability to be a staff member or volunteer in a long-term care home and to protect residents from abuse and neglect.

(4) The licensee shall require that the person provide the licensee, before the person is hired as a staff member or accepted as a volunteer, with a signed declaration disclosing the following:

1. All the following that occurred with respect to the person:
  - i. every charge for an offence prescribed under subsection 255 (1) with which the person has been charged,
  - ii. every order of a judge or justice of the peace made against the person in respect of an offence prescribed under subsection 255 (1), including a peace bond, probation order, prohibition order or warrant to arrest, and
  - iii. every conviction for an offence prescribed under subsection 255 (1) or any other outcome of a charge for such an offence.
2. All the following that occurred with respect to the person:
  - i. every commencement of a proceeding that could lead to a finding of guilt of an act of misconduct prescribed under subsection 255 (2), and

- ii. every finding of guilt of an act of misconduct prescribed under subsection 255 (2).

(5) Paragraph 1 of subsection (4) applies with respect to any charge, order or conviction or other outcome that occurred since the date the person's police record check under subsection (2) was conducted.

(6) Subparagraph 2 i of subsection (4) does not apply with respect to a proceeding that ended more than five years before the staff member is hired or the volunteer accepted.

(7) Subparagraph 2 ii of subsection (4) does not apply with respect to,

- (a) a finding of guilt that resulted in a suspension if the suspension ended more than five years before the staff member is hired or the volunteer accepted; or
- (b) a finding of guilt that did not result in a suspension, if the finding of guilt occurred more than five years before the staff member is hired or the volunteer accepted.

### **Declarations for staff and volunteers**

**253.** (1) The licensee of a long-term care home shall require every person who is a staff member or volunteer at the home to provide the licensee with signed declarations disclosing the following:

1. All the following that occurred with respect to the person:

- i. every charge for an offence prescribed under subsection 255 (1) with which the person has been charged,
- ii. every order of a judge or justice of the peace made against the person in respect of an offence prescribed under subsection 255 (1), including a peace bond, probation order, prohibition order or warrant to arrest, and
- iii. every conviction for an offence prescribed under subsection 255 (1) or any other outcome of a charge for such an offence.

2. All the following that occurred with respect to the person:

- i. every commencement of a proceeding that could lead to a finding of guilt of an act of misconduct prescribed under subsection 255 (2), and
- ii. every finding of guilt of an act of misconduct prescribed under subsection 255 (2).

(2) Declarations under subsection (1) apply with respect to any charge, order, conviction or other outcome, commencement of a proceeding or finding of guilt that the person

became aware of since this section came into force and shall be provided promptly after the person became aware.

(3) The licensee of a long-term care home shall require every person who is a staff member or volunteer at the home on the day this section comes into force to provide the licensee with signed declarations disclosing all the following that occurred with respect to the person:

1. Every commencement of a proceeding that could lead to a finding of guilt of an act of misconduct prescribed under subsection 255 (2).
2. Every finding of guilt of an act of misconduct prescribed under subsection 255 (2).

(4) Paragraph 1 of subsection (3) does not apply with respect to a proceeding that ended more than five years before this section came into force.

(5) Paragraph 2 of subsection (3) does not apply with respect to,

- (a) a finding of guilt that resulted in a suspension if the suspension ended more than five years before this section came into force; or
- (b) a finding of guilt that did not result in a suspension, if the finding of guilt occurred more than five years before this section came into force.

(6) The licensee of a long-term care home shall require the declaration of a staff member or volunteer under subsection (3) to be provided within one month after the staff member first works, or volunteer first volunteers, at the home after this section comes into force.

## **Exceptions**

**254.** (1) The requirements under subsection 81 (2) of the Act and sections 252 and 253 of this Regulation do not apply if the person who is, or who is being hired to be, a staff member who will perform work at the home,

- (a) falls under clause (b) or (c) of the definition of “staff” in subsection 2 (1) of the Act;
- (b) will only provide occasional maintenance or repair services to the home;
- (c) will not provide direct care to residents; and
- (d) will be monitored and supervised, in accordance with the licensee’s policies and procedures referred to in subsection 92 (3), while they provide services to the home.

(2) When a licensee hires a Medical Director, or a physician or registered nurse in the extended class is retained or appointed under subsection 88 (2) or (3), the following

modifications to the requirements of section 81 of the Act and section 252 of this Regulation apply:

1. Subsection 81 (2) of the Act does not apply.
2. Section 252 applies, despite paragraph 1 and subsection 252 (1), with the following modifications:
  - i. Subsections 252 (2) and (3) do not apply.
  - ii. Subsection 252 (5) applies to any charge, order or conviction or other outcome that occurred since the date the person was admitted to their College, unless subsection 255 (4) applies to the person.

(3) When a licensee hires a staff member or accepts a volunteer during a pandemic, the following modifications to the requirements of section 81 of the Act and section 252 of this Regulation apply:

1. Subsection 81 (2) of the Act does not apply.
2. Section 252 applies, despite paragraph 1 and subsection 252 (1), with the following modifications:
  - i. subsections 252 (2) and (3) do not apply,
  - ii. if a police record check that complied with subsections 252 (2) and (3) was provided to the licensee, subsection 252 (5) applies,
  - iii. if a police record check that complied with subsections 252 (2) and (3) was not provided to the licensee, subsection 252 (5) does not apply and paragraph 1 of subsection 252 (4) applies with respect to any charge, order or conviction or other outcome, regardless of when they occurred.

(4) If a staff member is hired or a volunteer is accepted during a pandemic and no police record check that complies with subsections 252 (2) and (3) was provided to the licensee, the licensee shall ensure that a such police record check is provided to the licensee within three months after the staff member was hired or the volunteer was accepted, and the licensee shall keep the results of the record check in accordance with the requirements in section 278 or 279 as applicable.

(5) If a staff member was hired or a volunteer was accepted during a pandemic before this section came into force and no police record check that complied with subsections 215 (2) and (3) of Ontario Regulation 79/10 (General) made under the former Act was provided to the licensee, the licensee shall ensure that a police record check that complies with subsections 252 (2) and (3) of this Regulation is provided to the licensee within three months after this section comes into force and the licensee shall keep the

results of the record check in accordance with the requirements in section 278 or 279 as applicable.

(6) Subsections (4) and (5) do not apply with respect to a person who is no longer a staff member or volunteer at the time the police record check would have been required under those subsections.

### **Prescribed offences and misconduct**

**255.** (1) The following offences are prescribed for the purposes of clause 81 (4) (a) of the Act:

1. Any offence under the Act, the *Long-Term Care Homes Act, 2007*, the *Nursing Homes Act*, the *Charitable Institutions Act* or the *Homes for the Aged and Rest Homes Act*.
2. Any offence referenced at section 742.1 of the *Criminal Code (Canada)*.
3. Any offence under the *Cannabis Act (Canada)*, the *Controlled Drugs and Substances Act (Canada)* or the *Food and Drugs Act (Canada)*.
4. Any other provincial or federal offence if the offence involved,
  - i. improper or incompetent treatment or care of a vulnerable person that resulted in harm or a risk of harm of any kind to the vulnerable person, including but not limited to physical, emotional, psychological or financial harm,
  - ii. abuse or neglect of a vulnerable person that resulted in harm or risk of harm of any kind to the vulnerable person, including but not limited to physical, emotional, psychological or financial harm,
  - iii. unlawful conduct that intentionally resulted in harm or a risk of harm of any kind to a vulnerable person, including but not limited to physical, emotional, psychological or financial harm, or
  - iv. misuse or misappropriation of a vulnerable person's money.

(2) The following acts of professional misconduct are prescribed for the purposes of clause 81 (4) (b) of the Act:

1. An act of misconduct as a member of a health profession as defined in the *Regulated Health Professions Act, 1991*.
2. An act of misconduct as a member of a regulated profession as defined in the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*.
3. An act of misconduct under any other scheme governing a profession, occupation or commercial activity, including a scheme a person is not required to

participate in in order to practice or engage in the profession, occupation or activity.

(3) For the purposes of clause 81 (4) (b) of the Act, a person is found guilty of an act of professional misconduct if a finding of professional misconduct is made against the person by a regulatory authority, a professional association or a body that regulates a profession, occupation or activity.

(4) Subsection 81 (4) of the Act does not apply with respect to,

- (a) a conviction for an offence that resulted in a sentence of imprisonment if the sentence was completed more than five years before the staff member first works, or the volunteer first volunteers, at the home or more than five years before the person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure;
- (b) a conviction for an offence that did not result in a sentence of imprisonment if the conviction occurred more than five years before the staff member first works, or the volunteer first volunteers, at the home or more than five years before the person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure;
- (c) a finding of guilt for an act of misconduct that resulted in a suspension if the suspension ended more than five years before the staff member first works, or the volunteer first volunteers, at the home or more than five years before the person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure;
- (d) a finding of guilt for an act of misconduct that did not result in a suspension, if the finding of guilt occurred more than five years before the staff member first works, or the volunteer first volunteers, at the home or more than five years before the person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(5) In this section,

“professional misconduct” includes incompetence; (“faute professionnelle”)

“vulnerable person” means a vulnerable person as defined in the *Police Record Checks Reform Act, 2015*. (“personne vulnérable”)

### **Screening measures and declarations for directors and management**

**256.** (1) Every licensee of a long-term care home shall ensure that screening measures are conducted before permitting any person to be a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(2) The screening measures shall include police record checks.

(3) The police record check must be,

(a) conducted by a police record check provider within the meaning of the *Police Record Checks Reform Act, 2015*; and

(b) subject to subsection (4), conducted within six months before the person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(4) Where a person will become a member of the licensee's board of directors, its board of management or committee of management or other governing structure as a result of their election under the *Municipal Elections Act, 1996*, the person must provide a police record check in accordance with this section that was conducted no earlier than six months prior to the date their term of office begins and no later than one month after their term of office begins.

(5) The police record check must be a criminal record check referred to in paragraph 1 of subsection 8 (1) of the *Police Record Checks Reform Act, 2015*, and be conducted to determine the person's suitability to be a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(6) Subsections 252 (4) to (7) apply, with necessary modifications, with respect to a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(7) Subsections 253 (1) and (2) apply, with necessary modifications, with respect to a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(8) When a person becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure during a pandemic, the following apply:

1. Subsections (2) to (5) do not apply.

2. If a police record check that complied with subsections (3), (4) and (5), as applicable, was provided to the licensee, subsection 252 (5), as applicable under subsection (6), applies.

3. If a police record check that complied with subsections subsections (3), (4) and (5), as applicable, was not provided to the licensee,

i. subsection 252 (5), as applicable under subsection (6), does not apply and paragraph 1 of subsection 252 (4), as applicable under subsection (6), applies with respect to any charge, order or conviction or other outcome, regardless of when they occurred, and

- ii. the licensee shall ensure that a police record check that complies with (3), (4) and (5), as applicable, is provided to the licensee within three months after the person became a member of the licensee's board of directors, its board of management or committee of management or other governing structure, and that the results of the check are kept in accordance with the requirements in section 280,
- iii. subparagraph ii does not apply with respect to a person who is no longer a member of the licensee's board of directors, its board of management or committee of management or other governing structure at the time the police record check would have been required under subparagraph ii.

(9) The licensee of a long-term care home shall require every person who was a member of the licensee's board of directors, its board of management or committee of management or other governing structure on the day this section came into force to provide the licensee, within one month after this section came into force, with a signed declaration disclosing the following, and shall keep the declarations in accordance with the requirements in section 280:

1. All the following that occurred with respect to the person:
  - i. every charge for an offence prescribed under subsection 255 (1) with which the person has been charged,
  - ii. every order of a judge or justice of the peace made against the person in respect of an offence prescribed under subsection 255 (1), including a peace bond, probation order, prohibition order or warrant to arrest, and that
  - iii. every conviction for an offence prescribed under subsection 255 (1) or any other outcome of a charge for such an offence.
2. All the following that occurred with respect to the person:
  - i. every commencement of a proceeding that could lead to a finding of guilt of an act of misconduct prescribed under subsection 255 (2), and
  - ii. every finding of guilt of an act of misconduct prescribed under subsection 255 (2).

(10) Subparagraph 2 i of subsection (9) does not apply with respect to a proceeding that ended more than five years before this section came into force.

(11) Subparagraph 2 ii of subsection (9) does not apply with respect to,



- (a) a finding of guilt that resulted in a suspension if the suspension ended more than five years before this section came into force; or
- (b) a finding of guilt that did not result in a suspension, if the finding of guilt occurred more than five years before this section came into force.

(12) The licensee of a long-term care home shall require every person who was a member of the licensee's board of directors, its board of management or committee of management or other governing structure on the day this section came into force to provide the licensee, within six months after this section came into force, with a police record check that complies with subsections (3), (4) and (5), as applicable, and shall keep the result of the check accordance with the requirements in section 281.

(13) Subsection (9) does not apply with respect to a person,

- (a) who, one month after this section came into force, is no longer a member of the licensee's board of directors, its board of management or committee of management or other governing structure; or
- (b) who is a member of the licensee's board of directors, its board of management or committee of manager or other governing structure as a result of their election under the *Municipal Elections Act, 1996* and if their term of office ends on November 14, 2022.

(14) Subsection (11) does not apply with respect to a person who, six months after this section came into force, is no longer a member of the licensee's board of directors, its board of management or committee of management or other governing structure.

(15) With respect to a person who becomes a member of the licensee's board of directors, its board of management or committee of management or other governing structure within six months after this section came into force,

- (a) subsections (2) to (5) and subsection (8) do not apply; and
- (b) subsections (12) and (14) apply, with necessary modifications.