

## CHANGES IN ELIGIBILITY CRITERIA IN THE *LONG-TERM CARE HOMES ACT, 2007*

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With the enactment of the *Long-Term Care Homes Act (LTCHA)* on July 1, 2010, there have been changes in the eligibility criteria for admission to long-term care. It is important to be aware of these changes as some people who were eligible for placement prior to July 1, 2010 may no longer be eligible. If a person was deemed eligible before July 1, 2010 but was not authorized for placement (i.e. no bed offer was made), the placement co-ordinator at the Community Care Access Centre (CCAC) is required to reassess eligibility, using the new rules.<sup>1</sup> If the placement co-ordinator determines that the person is no longer eligible, he or she will be removed from all waiting lists.<sup>2</sup>

There will be some persons for whom this change will cause hardship. Affected individuals may pursue two general options to achieve a remedy:

1. Provide further evidence to the placement co-ordinator that the person is, in fact, eligible for long-term care, in accordance with the new eligibility criteria, and/or
2. Appeal the decision of the placement co-ordinator to the Health Services Appeal and Review Board (HSARB).<sup>3</sup>

If the affected person has been found incapable of making the placement decision, his or her substitute decision-maker will act on his or her behalf.

Eligibility criteria for admission as a long-stay resident in a long-term care home are now as follows:

- (a) the person is at least 18 years old;
- (b) the person is an insured person under the *Health Insurance Act*;
- (c) the person,
  - (i) requires that nursing care be available on site 24 hours a day,

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<sup>1</sup> O. Reg. 79/10, s. 209(4).

<sup>2</sup> This is not the same as being **turned down** for admission by a specific long-term care home. That is different than being found to be ineligible and is subject to do different rules which are not discussed in this document.

<sup>3</sup> *LTCHA*, s. 43(9).

- (ii) requires, at frequent intervals throughout the day, assistance with activities of daily living, or
  - (iii) requires, at frequent intervals throughout the day, on-site supervision or on-site monitoring to ensure his or her safety or well-being;
  - (d) the publicly-funded community-based services available to the person and the other caregiving, support or companionship arrangements available to the person are not sufficient, in any combination, to meet the person's requirements; and
  - (e) the person's care requirements can be met in a long-term care home.
- (2) In this section,  
"nursing care" means nursing and other personal care given by or under the supervision of a registered nurse or a registered practical nurse.<sup>4</sup>

The following conditions have been removed from the eligibility criteria:

1. The applicant is at risk of being financially, emotionally or physically harmed if the applicant lives in his or her residence.
2. The applicant is at risk of suffering harm due to environmental conditions that cannot be resolved if the applicant lives in his or her residence.
3. The applicant may harm someone if the applicant lives in his or her residence.<sup>5</sup>

If a person was eligible prior to the new legislation being enacted but is now deemed to be ineligible and is unable to convince the placement co-ordinator that he or she is indeed eligible, the person's only option may be to appeal the placement co-ordinator's decision to HSARB. While the CCAC may have an internal complaints process, the person is not required to use it.<sup>6</sup>

The right to appeal is set out in sections 43(8) and (9) of the *LTCHA*. If a person is found to be ineligible, the placement co-ordinator is required to advise the applicant, make suggestions about possible alternative services and provide referrals, where appropriate. The placement co-ordinator must notify the applicant **in writing** of:

- (i) the determination of ineligibility,
- (ii) the reasons for the determination, and

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<sup>4</sup> O. Reg. 79/10, s. 155.

<sup>5</sup> O. Reg. 832 (repealed), s. 130(2)4.-6.

<sup>6</sup> Section 39 of the *Home Care and Community Services Act* contains a complaint process which must be followed when a person is denied home care services. However, one does not have to follow this procedure when appealing a decision regarding eligibility for long-term care home placement.

- (iii) the applicant's right to apply to the HSARB for a review of the determination.

Once an application is made to HSARB, it must promptly set a time and place for a hearing which must begin within 21 days of receipt of the application (unless all parties agree to a postponement).<sup>7</sup> After hearing the evidence, the HSARB may:

- (a) affirm the determination of ineligibility made by the placement co-ordinator,
- (b) rescind the determination of ineligibility made by the placement co-ordinator and refer the matter back to the placement co-ordinator for redetermination in accordance with such directions as the HSARB considers proper, or
- (c) rescind the determination of ineligibility made by the placement co-ordinator, substitute its opinion for the opinion of the placement co-ordinator and direct the placement co-ordinator to determine that the applicant is eligible for admission to a long-term care home.<sup>8</sup>

HSARB must render its decision within one day after the hearing ends and provide written reasons within seven days after rendering its decision.<sup>9</sup>

It is recommended that legal advice be obtained before making an application to HSARB.

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<sup>7</sup> *LTCHA*, s. 53(1) & (2).

<sup>8</sup> *LTCHA*, s. 53(12).

<sup>9</sup> *LTCHA*, s. 53(13).

**COMPARISON OF ELIGIBILITY CRITERIA:  
NURSING HOMES ACT  
AND LONG-TERM CARE HOMES ACT, 2007**

**APPENDIX “A”**

<b><i>Nursing Homes Act</i></b> O. Reg. 832 (repealed)	<b><i>Long-Term Care Homes Act, 2007</i></b> O. Reg. 79/10
<p><b>Eligibility for long-term care</b></p> <p><b>130.</b> (1) An applicant shall be determined to be eligible for admission to a nursing home if, and only if,</p> <ul style="list-style-type: none"> <li>(a) the applicant is at least 18 years old;</li> <li>(b) the applicant is an insured person under the <i>Health Insurance Act</i>;</li> <li>(c) the applicant meets at least one of the conditions set out in subsection (2);</li> <li>(d) the applicant meets at least one of the conditions set out in subsection (3); and</li> <li>(e) the applicant's care requirements can be met in a nursing home.</li> </ul> <p>(2) The following are the conditions referred to in clause (1) (c):</p> <ul style="list-style-type: none"> <li>1. The applicant requires that nursing care be available on-site 24 hours a day.</li> <li>2. The applicant requires assistance each day with activities of daily living.</li> <li>3. The applicant requires, at frequent intervals throughout the day, on-site supervision or on-site monitoring to ensure his or her safety or well-being.</li> <li>4. The applicant is at risk of being financially, emotionally or physically</li> </ul>	<p><b>Criteria for eligibility, long-stay</b></p> <p><b>155.</b> (1) A placement co-ordinator shall determine a person to be eligible for long-term care home admission as a long-stay resident only if,</p> <ul style="list-style-type: none"> <li>(a) the person is at least 18 years old;</li> <li>(b) the person is an insured person under the <i>Health Insurance Act</i>;</li> <li>(c) the person, <ul style="list-style-type: none"> <li>(i) requires that nursing care be available on site 24 hours a day,</li> <li>(ii) requires, at frequent intervals throughout the day, assistance with activities of daily living, or</li> <li>(iii) requires, at frequent intervals throughout the day, on-site supervision or on-site monitoring to ensure his or her safety or well-being;</li> </ul> </li> <li>(d) the publicly-funded community-based services available to the person and the other caregiving, support or companionship arrangements available to the person are not sufficient, in any combination, to meet the person's requirements; and</li> <li>(e) the person's care requirements can be met in a long-term care home.</li> </ul>

<p>harmed if the applicant lives in his or her residence.</p> <ol style="list-style-type: none"> <li>5. The applicant is at risk of suffering harm due to environmental conditions that cannot be resolved if the applicant lives in his or her residence.</li> <li>6. The applicant may harm someone if the applicant lives in his or her residence.</li> </ol> <p>(3) The following are the conditions referred to in clause (1) (d):</p> <ol style="list-style-type: none"> <li>1. None of the publicly-funded community-based services available to the applicant while the applicant lives in his or her residence and none of the other caregiving, support or companionship arrangements available to the applicant while the applicant lives in his or her residence are sufficient, in any combination, to meet the applicant's requirements.</li> <li>2. None of the publicly-funded community-based services available to the applicant in the area to which the applicant plans to move and none of the other caregiving, support or companionship arrangements available to the applicant in the area to which the applicant plans to move are sufficient, in any combination, to meet the applicant's requirements.</li> </ol> <p>(4) Revoked.</p> <p>(5) Revoked.</p> <p>(6) This section does not apply to an applicant who is applying for a determination respecting his or her eligibility for admission to a nursing home as a short-stay resident in the respite care or supportive care program.</p>	<p>(2) In this section,</p> <p>“nursing care” means nursing and other personal care given by or under the supervision of a registered nurse or a registered practical nurse.</p>
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### **Transitional, admissions**

**209.** (1) This section applies when a person had applied for a determination of eligibility for or authorization of admission to a nursing home under the *Nursing Homes Act*, an approved charitable home for the aged under the *Charitable Institutions Act* or a home under the *Homes for the Aged and Rest Homes Act* before the coming into force of this section and the person has not yet been admitted to the home.

(2) If the appropriate placement co-ordinator offered to authorize the person's admission to a home and the person accepted the offer before the coming into force of this section and moves into the home after the coming into force of this section, then the provisions of the appropriate regulation under an Act mentioned in subsection (1) continue to apply to the offer.

(3) If the appropriate placement co-ordinator offered to authorize the person's admission to a home and the person did not accept the offer prior to the coming into force of this Regulation, this Regulation applies to the offer as if the offer had been made under this Regulation.

(4) If, before the coming into force of this section, the appropriate placement co-ordinator did not offer to authorize the person's admission to a home, this Regulation applies to the application, and the placement co-ordinator shall reassess the person's application to ensure that it complies with the provisions of the Act and this Regulation, including ensuring that the person is placed in the appropriate waiting list category.