



## Novel Coronavirus (COVID-19)

### Health Law

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# Ontario Mandates COVID-19 Vaccination Policies for Long-Term Care Homes

By Lisa Corrente

Starting next month, all Ontario long-term care homes will be required to implement COVID-19 vaccination policies for their staff, students and volunteers. This Directive, announced yesterday by the Ministry of Long-Term Care, was issued pursuant to section 174.1 of the *Long-Term Care Homes Act, 2007*, which authorizes the Minister to issue operational or policy directives respecting long-term care homes where it is in the public interest to do so.

The Directive aims to set out a provincially consistent approach to COVID-19 immunization policies in long-term care homes, optimize COVID-19 immunization rates in long-term care homes, and ensure that individuals have access to information required to make informed decisions about COVID-19 vaccination.

According to the Directive, COVID-19 vaccination policies must apply to all staff, student placements, and volunteers in long-term care homes, regardless of the frequency or duration of their attendance in a home. These individuals will have up to 30 days from the effective date of the Directive (i.e. until July 31, 2021), or from the first day they begin attending at the home, to meet the applicable policy requirements, subject to reasonable extension due to unforeseen or extenuating circumstances.

At a minimum, the policy requirements include that each long-term care home staff member, student and volunteer do **one** of the following:

1. Provide proof of vaccination of each dose;
2. Provide written proof from either a physician or nurse practitioner of a medical reason that prevents the person from being vaccinated against COVID-19 and the effective time period for the medical reason;  
or
3. Participate in an educational program approved by the licensee of the long-term care home that, at a minimum, addresses how COVID-19 vaccines work, vaccine safety related to the development of the

COVID-19 vaccines, the benefits of vaccination against COVID-19, risks of not being vaccinated against COVID-19 and possible side effects of COVID-19 vaccination.

Licensees of long-term care homes must have a process in place for following-up with individuals who have not yet received a second dose, or upon the expiry of the effective time period of a medical reason provided by the individual's health practitioner.

A home's COVID-19 vaccination policy must clearly set out the consequences for individuals who fail to comply with the policy, and such consequences must be in accordance with the licensee's human resources policies, collective agreements, and any applicable legislation, directives, and policies.

Further, a licensee of long-term care home must ensure that their COVID-19 vaccination policy is communicated to all staff, student placements and volunteers, and that a copy of the policy - either in hardcopy or electronic format - is made available to residents and their substitute-decision makers free of charge.

Long-term care home licensees will also be required to track and report (at least monthly) to the Ministry on the implementation of their policies, including overall staff immunization rates. However, the immunization status of individual staff members will not be shared with the province.

Public health measures including active screening, masking, physical distancing and hand hygiene will continue to be required of all staff, students, volunteers, residents and visitors, in addition to mandatory COVID-19 vaccination policies.

Long-term care homes must have their COVID-19 vaccination policies fully implemented **by July 1, 2021**. The Province has promised to help homes establish their COVID-19 vaccination policies by identifying resources which can be utilized to inform individuals about the benefits of vaccination. Currently, Ontario has made a free COVID-19 Vaccine Promotion Toolkit publicly available.

When creating and implementing COVID-19 vaccination policies, long-term care homes will need to give proper consideration to the following:

- their obligations to accommodate employees under the *Human Rights Code*. Under the *Code*, employers have a duty to accommodate employees who may be unable to receive a COVID-19 vaccine, for reasons related to disability, pregnancy or creed, unless it would amount to undue hardship based on cost or health and safety;
- employee entitlements to up to three paid sick days under the *Employment Standards Act, 2000*, and any contractual entitlements to paid sick leave, related to getting vaccinated and recovery from any associated side effects;
- privacy issues which may emerge from the collection and use of medical documentation from staff, students and volunteers. For instance, the Human Rights Commission has taken the position that employers should only request and share medical information, including proof of vaccination, in a way that intrudes as little as possible on an individual's privacy, and does not go beyond what is necessary to ensure fitness to safely perform work, protect residents receiving services in the home; and accommodate any individual needs;
- duties under the *Occupational Health and Safety Act* to protect workers who are not vaccinated from workplace harassment; and
- in unionized workplaces, the terms of any collective agreements in place and any obligations to consult with the union or the joint health and safety committee.

Torkin Manes LLP will provide additional details regarding mandatory COVID-19 vaccination policies, including resources available to long-term care homes, as they are made available by the Ministry.

*Long-term care homes seeking assistance with preparing mandatory COVID-19 vaccination policies may contact **Lisa Corrente**. More information about dealing with COVID-19 is available by visiting our **COVID-19 Resource Centre**.*

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