

Ministry of Long-Term Care

The Resident Experience: Air Conditioning

As of April 11, 2023, new and amended provisions in [Ontario Regulation 246/22](#) (the “Regulation”) under the [Fixing Long-Term Care Act, 2021](#) (the “Act”) will come into effect.

Background and Purpose

Amendments have been made to air conditioning requirements to make sure residents can live comfortably in their homes and to reinforce accountability among long-term care homes for complying with air conditioning requirements. Updates include:

- A revised definition of “air conditioning”;
- The introduction of a new \$25,000 Administrative Monetary Penalty (AMP) for failing to ensure that air conditioning is installed, operational and in good working order during the period from May 15 to September 15 in each year;
- Updated exemption criteria for air conditioning requirements in resident rooms;
- Updates to clarify the Director’s existing authority when considering exemption requests;
- Clarification on the circumstances in which licensees are permitted to remove portable air conditioning or window air conditioning units; and
- An amendment to provide those licensees with new/redeveloping homes, who were previously temporarily exempt from the requirement to comply with air conditioning in resident rooms, with more time. These licensees now have until June 30, 2023, to comply.

These amendments have been informed by consultation and valuable feedback from stakeholder groups, including residents and families from the long-term care sector.

*This document is for informational purposes only. Licensees are responsible for ensuring compliance with the requirements of the Fixing Long-Term Care Act, 2021 and its Regulation. In the event of a conflict or inconsistency between this document and the Act or Regulation, the Act or Regulation will prevail. **This document does not constitute legal advice or interpretation. Users should consult their legal counsel for all purposes of legal advice and interpretation.***

Questions?

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Revised Definition of “Air Conditioning”

Under the Regulation, “air conditioning” means a mechanical cooling system that can maintain cool temperatures, including in peak summer conditions, and includes central air conditioning with in-room supply air ducts, portable air conditioning units, window air conditioning units, split air conditioning, package type air conditioning and variable refrigerant flow units, or a combination of any of these systems.

Introduction of New Administrative Monetary Penalty (AMP)

Subsection 23.1 (1) of the Regulation requires licensees to ensure air conditioning is installed, operational and in good working order in the following rooms of the long-term care home during the period from May 15 to September 15 in each year:

- a. Every resident bedroom (in every long-term care home), and
- b. In homes without central air conditioning, every designated cooling area.

Failure to comply with these requirements could result in a \$25,000 Administrative Monetary Penalty (AMP) as set out under section 349 of the Regulation.

Where an order is issued for a failure to comply with this requirement, an AMP of \$25,000 will be imposed. The amount of the AMP for subsequent orders for failure to comply with this requirement would increase as follows: \$50,000 for the second failure, \$75,000 for the third failure, \$100,000 for the fourth failure and \$125,000 for each subsequent failure to comply.

Operation of Air Conditioning

In addition to the May 15 to September 15 time period referred to in subsection (1), subsection (2) sets out that the licensee shall ensure that air conditioning is installed, operational and in good working order in each of the areas described in subsection (1),

1. On any day on which the outside temperature forecasted by Environment and Climate Change Canada for the area in which the home is located is 26 degrees Celsius or above at any point during the day; and
2. Any time the temperature in an area in the home measured by the licensee in accordance with subsections 24 (2) and (3) reaches 26 degrees Celsius or above, for the remainder of the day and the following day.

Furthermore, licensees must ensure that air conditioning is operating, and is used in accordance with the manufacturer's instructions, in each area of the long-term care home listed in subsection (1) in either of the following circumstances:

1. When needed to maintain the temperature at a comfortable level for residents during the period and on the days described above.
2. When the use of air conditioning has been identified in order to protect residents from heat related illness in the heat related illness prevention and management plan.

In addition, the requirement for licensees to develop, update and implement the heat related illness prevention and management plan remains for the same time period and dates described above. The only amendment made to this requirement is to clarify the plan must include the use of air conditioning (as defined in the Regulation) together with cooling equipment and other resources, as necessary, to protect residents from heat related illness.

Updated Exemption Criteria

The amended Regulation includes two exemption criteria to the requirement to have air conditioning installed, operational, in good working order and operating in resident bedrooms.

A licensee is not required to comply with these requirements where the licensee has provided the Director with information, plans or other materials and the Director is satisfied that the licensee has demonstrated that:

- a. The existing long-term care home building structure, materials or electrical system cannot support or be reasonably modified to support the provision of air conditioning in resident bedrooms; or
- b. The licensee has entered into an agreement or agreements for the purchase, delivery and installation of equipment or materials, or both, necessary to provide air conditioning in accordance with the requirements of this section, but the delivery or installation of the equipment or materials or both has been delayed for reasons beyond the reasonable control of the licensee.

The exemption criterion related to delays entering into an agreement "for the purchase, delivery and installation of equipment or materials or both necessary to provide air conditioning" has been revoked.

Exemptions previously approved under this now revoked provision of the Regulation are no longer valid.

Updates to Director's Authority

The amended Regulation includes revisions to clarify the Director's authority when satisfied that an exemption set out in the Regulation applies or is still applicable.

As existed previous to these regulatory amendments, where the Director is satisfied that an exemption applies, the Director shall inform the licensee in writing of that fact and may specify a date by which the licensee must provide the Director with updated information, plans or other materials so that the Director may evaluate whether they continue to be satisfied that an exemption still applies (re-numbered subsection 23.1(9) in the amended Regulation).

Pursuant to subsection 23.1 (10), the Director may also do any or all of the following:

1. Stipulate a date by which the licensee must comply with applicable air conditioning requirements.
2. Set conditions that the licensee is required to meet during the time that the licensee is not required to comply with applicable air conditioning requirements.
3. Re-evaluate a previous decision, including a decision made under section 23 as it existed before the coming into force of this section, and amend it, including changing a date, adding new conditions, or revoking previous conditions.

Licensees with existing exemptions may receive requests for additional information to assess if existing exemptions continue to apply.

Clarification on Removal of Portable or Window Air Conditioning Units

Section 23.2 of the Regulation sets out requirements for when portable or window air conditioning units may be uninstalled in a resident's bedroom. Licensees may uninstall portable or window air conditioning units at any time of the year. However, if seeking to uninstall the units during the period or on the days when licensees have an obligation to ensure air conditioning is installed, operational and in good working order, then the requirements of section 23.2 must be met by the licensee in order to uninstall the portable or window air conditioning unit.

Licensees may uninstall portable or window air conditioning units in two instances: at the request of the resident or on the licensee's own initiative.

First, licensees shall uninstall a portable or window air conditioning unit if requested by the resident of the room, and the licensee is satisfied that it is feasible to do so, as long as the other residents in the room consent to the uninstallation.

Second, on their own initiative, a licensee may uninstall a portable air conditioning unit or window air conditioning unit in a resident room for the following reasons, as set out in subsection. 23.2(2):

1. To implement cleaning, maintenance or repair required pursuant to section 96.
2. To comply with the minimum temperature requirement in subsection 24 (1).
3. To comply with any other requirement under the Act or Regulation.

A licensee shall not uninstall an air conditioning unit if the uninstalling would compromise the licensee's ability to implement the heat related illness prevention and management plan for the home.

In any case where a licensee uninstalls a portable air conditioning unit or a window air conditioning unit, it must remain accessible and available for use:

- a. At the request of any one or more of the residents who reside in the bedroom, or
- b. When required to cool and maintain the temperature of the bedroom for the health, safety, and comfort of the residents in that bedroom.

The licensee shall reinstall the unit promptly. However, if the licensee uninstalled the unit, based on its own initiative, pursuant to s. 23.2(2), the licensee shall reinstall the unit immediately upon the resolution of the issue that led to the uninstallation.

Revised Grace Period for Newly Licensed Beds

The Regulation was amended to provide those licensees with new/redeveloping homes, who were previously temporarily exempt from the requirement to comply with air conditioning in resident rooms, with more time. These licensees now have until June 30, 2023, to comply.