

Minister’s Directive to Local Health Integration Networks: Personal Support Services Temporary Wage Enhancement in Response to COVID-19.

The *Local Health System Integration Act, 2006* (LHSIA) authorizes the Minister of Health to issue operational or policy directives to Local Health Integration Networks (LHINs) where the Minister considers it to be in the public interest to do so. Every LHIN must comply with and carry out this Directive.

This Directive is in support of the temporary, targeted wage enhancement initiative that is part of the Ministry of Health’s (the “Ministry”) Integrated Capacity Plan for the response to the ongoing effects of COVID-19 and the annual flu season.

A temporary wage enhancement (hourly wage increase) for eligible workers providing personal support services in the home and community care (HCC) sector aims to support a high-quality workforce of individuals performing publicly funded Personal Support Services (PSS workers), including but not limited to Personal Support Workers (PSWs), to meet Ontario’s current demand for home and community-based services. It is expected to contribute to an increased supply of PSWs and reduced attrition during this crucial period of time.

DEFINITIONS

In this Directive the following terms have the following meanings:

“**Direct Care**” means personal support services as part of an HCC Program whether the service is delivered in person or virtually.

“**Eligible Period**” means October 1, 2020 until the earlier of March 31, 2021 or the date on which Ontario Regulation 195/20 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* either expires or is revoked.

“**HCC Program**” means the following publicly funded home and community care programs:

- All programs in which personal support services (PSS) are provided under the *Home Care and Community Services Act, 1994 (HCCSA)* and provided or funded by the LHINs, including but not limited to:
 - Home care provided by LHINs through LHIN-contracted service provider organizations (SPOs);
 - Palliative care provided in hospices;
 - Home care provided by LHIN-funded approved agencies;
 - Assisted living services in supportive housing;
 - Services for persons with Acquired Brain Injury;
 - Services for First Nations, Inuit, Métis and urban Indigenous communities;
 - Home care provided by LHIN-funded approved agencies in short-term transitional care and other transitional care models; and
 - The Family-Managed Home Care program alternately known as Self-Directed Care (SDC); and

- The Direct Funding Program (DFP) administered by the Centre for Independent Living Toronto (CILT) in accordance with Ontario Regulation 367/94 made under the *Ministry of Community and Social Services Act*.

“**Eligible Worker**” means an individual:

- who may or may not hold a PSW certificate; and
- who provides publicly funded PSS as part of an HCC Program.

“**Home Employer**” means the employer of an individual that is redeployed to perform services for an organization other than his or her employer.

APPLICATION AND SCOPE

This Directive applies to publicly funded PSS delivered by Eligible Workers as part of an HCC Program during the Eligible Period.

This Directive does not apply to the following services, providers and/or programs:

- Long-Term Care Homes; and
- Hospitals

GENERAL MANDATORY REQUIREMENTS

Effective October 1, 2020, I hereby issue the following Directive with respect to every LHIN:

Wage Enhancement for Eligible Workers

- 1) Every LHIN will ensure that every Eligible Worker is provided with a temporary hourly wage increase of \$3 per hour in addition to the Eligible Worker’s base hourly pay for every hour of Direct Care provided during the Eligible Period.
- 2) Every LHIN will ensure that employers and contract holders of Eligible Workers receive up to 22.7% of the total amount payable for the temporary hourly wage increase for Eligible Workers for statutory benefits related to the temporary hourly wage increase provided under paragraph 1.
- 3) Every LHIN will require its contracted service provider organizations, SDC recipients, and all other funded providers with Eligible Workers to:
 - a) Pay all Eligible Workers a temporary hourly wage increase of \$3 per hour for every hour of Direct Care provided during the Eligible Period;

Wage Restraint Legislation

The continued payment of this temporary hourly wage increase to Eligible Workers is contingent upon the extension of Ontario Regulation 195/20 (O. Reg. 195/20) under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (ROA). This regulation was originally an emergency order under the *Emergency Management and Civil Protection Act* and was moved over to the ROA when the declaration of emergency was

lifted and the ROA came into force. It provides an exemption for employers who would otherwise be caught by the 1% salary rate increase limit provided for in the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*. The temporary hourly wage increase can only be paid to Eligible Workers for Direct Care provided while Ontario Regulation 195/20 is in force. The regulation is presently in force until November 21, 2020 and may be extended for periods of up to 30 days at a time.

- b) Apply the temporary hourly wage increase over and above any base hourly pay and any future wage increases or entitlements within the identified Eligible Period available to Eligible Workers in collective agreements or employment contracts in effect on October 1, 2020;
- c) Apply up to 22.7% of the total amount payable for the temporary hourly wage increase for Eligible Workers for statutory benefits related to the wage increase for the incremental increase in the cost of employer contributions to Canada Pension Plan, Employment Insurance, Employer Health Tax, and Workplace Safety & Insurance Board, as well as the incremental increase in the cost of providing statutory entitlements (e.g. holiday pay, vacation pay, or overtime, if applicable) resulting from the wage increase and in accordance with the *Employment Standards Act, 2000* or any applicable collective agreement(s);
- d) For greater certainty, only pay the temporary hourly wage increase to Eligible Workers for Direct Care provided while O. Reg. 195/20 is in force (The regulation is presently in force until November 21, 2020 and may be extended for periods of up to 30 days);
- e) Ensure that temporary hourly wage increases are not paid to Eligible Workers for Direct Care provided outside of the Eligible Period so as to avoid having to recover improperly spent funds;
- f) Provide written notification to each Eligible Worker to whom this temporary hourly wage increase applies on or before November 25, 2020, articulating the following:
 - The temporary hourly wage increase will be applied for publicly-funded PSS hours worked in the home and community care sector on or after October 1, 2020 and up to the first of the earlier of two dates: March 31, 2021 or the date upon which Ontario Regulation 195/20 made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* expires or is revoked, whichever comes first.
- g) Maintain records demonstrating payment of the wage increase to Eligible Workers;
- h) Make records available to the LHIN and Ministry upon request;
- i) Submit to the LHIN the following attestations that must be signed by an authorized representative of the funded organization (i.e. CEO or Board Chair), or, in the case of SDC, by the recipient of funding under the SDC agreement:

- i. By November 30, 2020, an initial attestation (in a format to be provided by the LHIN) attesting to the organization, recipient or provider's confirmation that they will comply with these requirements; and
 - ii. By April 1, 2021, a final attestation confirming compliance (in a format to be provided by the LHIN).
- j) Submit reports to the LHIN and the Ministry as required and outlined in terms and conditions of funding.
- 4) Every LHIN will amend its agreements with its contracted service provider organizations, its service accountability agreements with home and community care agencies, and its SDC recipients that employ or contract with Eligible Workers to reflect the above requirements.

Redeployed Workers

- 5) Every LHIN will ensure that the temporary hourly wage increase is provided to an Eligible Worker who remains employed by their HCC Home Employer and who is redeployed to work in another setting where the Eligible Worker does not have an employment contract with the receiving work setting and their employer is not providing the employee's services under a contract with the receiving work setting. Redeployment does not include services provided under direct contract with the receiving care setting. This should be treated as contracted services.

Notification

- 6) Every LHIN will inform its contracted service provider organizations, SDC recipients, and all other funded providers in a timely fashion if O.Reg. 195/20 expires or is revoked.

Auditing

- 7) Every LHIN will conduct random, periodic spot audits to confirm compliance by contracted service provider organizations, SDC recipients, and all other funded providers.

APPLICATION OF 2014-16 PSS WAGE ENHANCEMENT DIRECTIVE

In 2014, the ministry previously issued another Directive entitled "Directive to Local Health Integration Networks on Personal Support Services Wage Enhancement" with three subsequent addenda, a 2014 Directive Addendum regarding Self-Managed Care; Adult Day; Caregiver Support Respite; a 2015 Directive Addendum that was effective April 1, 2015, and a 2016 Directive Addendum that was effective April 1, 2016 (collectively, the "2014-16 PSS Wage Enhancement Directive").

For greater certainty, this Directive does not amend, alter or otherwise impact the applicability of, or the requirements set out in, the 2014-16 PSS Wage Enhancement Directive, in particular, the requirements contained in the 2016 Directive Addendum providing for the minimum base hourly wage of \$16.50 per hour of those individuals providing publicly funded personal support services in the home and community care sector.

For clarity, the temporary hourly wage increases provided for in this Directive is on top of existing hourly wages payable to Eligible Workers for every hour of Direct Care provided during the Eligible Period negotiated by an employer and employees and/or unions. Employers must pay the \$3 temporary hourly wage increase in addition to a minimum base wage of \$16.50 per hour of Eligible Workers providing Direct Care during the Eligible Period.