Long-Term Care Homes
Beds in Abeyance Policy

Licensing and Policy Branch,
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Background, Purpose and Policy Content
Beds in Abeyance Policy

1. Background

1.1. What are Beds in Abeyance

Beds in Abeyance (BIA) are licensed or approved long-term care (LTC) Home beds which are unoccupied and not currently available for occupancy pursuant to a written permission of the Director under s. 104(3) of the Long-Term Care Homes Act, 2007 (the “LTCHA”). Under that provision if LTC beds are unoccupied and not available for occupancy for 14 consecutive days or more, the licensee must obtain written permission from the Director for the beds not to be available for occupancy.

For the purposes of this Policy, BIA do not include Occupancy Reduction Protection (ORP) Beds, which are LTC beds that are covered by ORP approved by the Ministry under the Long-Term Care Home Occupancy Reduction Policy, 2016 or a similar policy. ORP Beds are subject to s. 104(9) of the LTCHA, but are not subject to the BIA Policy.

BIA are beds that are approved by the Director for temporary withdrawal from the LTC Home operations and funding system on the condition that they must be returned to the system within a specified period, or surrendered to the Ministry.

1.1.1. Purpose and Application of the Policy

This Policy provides the framework and procedures for making decisions regarding applications for placing and retaining LTC Home beds in abeyance.

This Policy covers beds in LTC Homes licensed or approved under the LTCHA. Licensed beds include beds under either a standard licence or a temporary licence.

2. Definitions

The following definitions apply except where the context indicates otherwise:

“Applicable Law” means all statutes, regulations, orders, approvals, licences, guidelines, policies, manuals and codes of the Province of Ontario, and, where applicable, the federal government, related to LTC homes, including the LTCHA and Ontario Regulation 79/10 (the “Regulation”).

“Bedroom design type” means one of the following three bedroom design types: Private, Semi-private, or standard (basic).

“Beds” mean a bed in a LTC Home that is licensed or approved to be occupied by one resident, or the right in accordance with the applicable legislation to provide such a bed.

“Beds in abeyance” are licensed or approved LTC Home beds that are not ORP Beds, which are unoccupied and not currently available for occupancy, pursuant to a written permission of the Director under s. 104(3) of the LTCHA. Beds in abeyance may physically exist in an operating LTC Home or may have been physically removed from the LTC Home system, either by demolition, change to another use, or by some other means.
“Beds in Abeyance Application Form” is the form used to apply to place beds in abeyance and is attached as Appendix “A”.

“Beds in Abeyance Agreement” means an agreement signed between the Director of the Licensing and Policy Branch (LPB) and the Licensee to place beds in abeyance.

“Beds in Abeyance Recommendation Form” refers to the form (attached as Appendix “B”) used by the Local Health Integration Network (LHIN), MOHLTC Service Area Office (SAO), LPB, and the Health Capital Investment Branch (HCIB), in evaluating the BIA Application.

“BIA” means bed(s) in abeyance.

“Director” means the Director appointed for the purposes of approving a request for permission under s. 104(3) of the LTCHA.

“the Home” means the long-term care Home of the Licensee that is operated under the Applicable Law and which is named in the Beds in Abeyance Application Form.

“LHIN” is the Local Health Integration Network in whose geographic area the Home is located, or as otherwise identified by the Ministry.

“Long-Term Care Home” or LTC Home” means a long-term care Home under the LTCHA.

“LTCHA” or “the Act” means the Long-Term Care Homes Act, 2007.

“Ministry” means Her Majesty the Queen in right of Ontario as represented by the Minister of Health and Long-Term Care.

“the Licensee” means the person named on the Beds in Abeyance Application Form that is approved or licensed under Applicable Law to operate the LTC Home.

“ORP beds” mean LTC beds that are covered by Occupancy Reduction Protection (ORP) approved by the Ministry under the Long-Term Care Home Occupancy Reduction Policy (ORP Policy) or a similar policy. Proposed or approved ORP Beds are subject to s. 104(9) of the Act, (if affected from 14 days or more), but are not subject to the BIA Policy.

“Private bed” means a bed in a Private bedroom.

“Private bedroom” means:

a) A one-bed bedroom in a LTC home previously approved by the Ministry for occupancy under the LTCHA; or

b) A one-bed bedroom in a home with an ensuite or shared washroom that meets the design requirements of the Long-Term Care Facility Design Manual, dated 1999, the Long-Term Care “D” Facility Retrofit Design Manual, 2002 or the Long-Term Care Home Design Manual, 2009 or 2015.

“Semi-private bed” means a bed in a Semi-private bedroom.

“Semi-private bedroom” means:

a) A two-bed bedroom in a LTC home previously approved by the Ministry for occupancy under the LTCHA;
b) A two-bed bedroom in a LTC home subject to the *Long-Term Care “D” Facility Retrofit Design Manual* that meets the Option B definition for a Semi-private bedroom;

c) A one-bed bedroom in a LTC home that meets the requirements for a Semi-private bedroom in the *Long-Term Care Facility Design Manual* dated 1999, 2009 or 2015; or

d) A one-bed bedroom in a LTC home subject to the *Long-Term Care “D” Facility Retrofit Design Manual* that meets the Option A definition for a Semi-private bedroom.

“Service Accountability Agreement” means the LTC Home Service Accountability Agreement (LSAA) between the LHIN and the Licensee.

“Standard (basic) bed” means a bed in a standard (basic) bedroom.

“Standard (basic) bedroom” means:

a) A three-bed or four-bed room in a LTC home previously approved by the Ministry for occupancy under the LTCHA;

b) A two-bed bedroom in a LTC home that meets the requirements for a standard (basic) bedroom in the *Long-Term Care Facility Design Manual* dated 1999, the *Long-Term Care Home Design Manual*, 2009 or 2015 or meets the Option A or Option B requirements for a standard (basic) bedroom in the *Long-Term Care “D” Facility Retrofit Design Manual*, 2002; or,

c) Any other bed designated by the Ministry as Standard (basic).

“Structural Premium Category” is one of five categories: New, A, B, C, or D. “New” means a bed funded under the Ministry’s *Policy for Funding Construction Costs of Long-Term Care Facilities*, 1999, the *Policy for Funding Construction Costs of Long-Term Care Homes*, 2009, or the *Construction Funding Subsidy Policy for Long-Term Care Homes*, 2015, and that meets the requirements of the *Long-Term Care Facility Design Manual, dated 1999*, the *Long-Term Care “D” Facility Retrofit Design Manual*, 2002 or the *Long-Term Care Home Design Manual*, 2009 or 2015. “A”, “B”, “C”, and “D” are those categories set by the Ministry as described in the Ministry’s *Policy for Funding Construction Costs of Long-Term Care Facilities*, 1999.

3. Contents of Policy

This Policy describes:

- the circumstances and criteria for placing beds in abeyance;
- the categories of BIA beds;
- the requirements for availability for occupancy; and,
- Ministry funding while beds are in abeyance.

This Policy also sets out Procedures that describe:

- the application process for placing beds in abeyance;
- the process for evaluating a BIA Application;
- the BIA Agreement;
- the different processes for licensed and approved beds;
- notification requirements;
• the process for funding BIA; and
• registration for BIA.

4. BIA Policy Principles

4.1. BIA Bed Categories

A bed placed in abeyance will be categorized in one of the following categories:

1. The facilities to house the Bed physically exist and will continue to exist during the term of the BIA agreement; or,

2. The facilities to house the Bed do not physically exist or may have been physically removed from the LTC home system by demolition, change to another use, or by some other means, during the term of the BIA Agreement.

4.2. Availability for Occupancy

1. Beds can only be put into abeyance when there is a reasonable expectation that they will return to occupancy. The BIA period, unless otherwise approved, may not exceed a maximum of five (5) years, though generally it is expected that this period will be for a shorter duration.

2. Within this five (5) year maximum, the BIA period may be shortened or lengthened as appropriate in accordance with this Policy and the Beds in Abeyance Agreement.

3. For the purposes of calculating the percentage of occupancy (utilization), BIA beds are not included in the LTC home’s occupancy calculation.

4.3. Circumstances for Placing Beds in Abeyance

Beds can be placed in abeyance in any of the following circumstances:

a) It will facilitate an approved transfer of beds;

b) It is necessary to take beds out of service to allow renovations, repairs, reconstruction, replacement, modifications, or redevelopment of a LTC home;

c) It is in the LHIN’s or Ministry’s interest to temporarily reduce the supply of available beds in a Service Area at the request of a Licensee;

d) To achieve a 97% occupancy rate in Homes that have chronically under-utilized bed capacity and/or,

e) Any other circumstances as determined by the Director.

4.4. Criteria and Requirements for Placing Beds in Abeyance

When assessing an application for permission for placing beds in abeyance, both the LHIN and the Director will apply the following criteria, which shall be complied with by the Licensee if the Director permits the beds to be placed in abeyance:

a) Placing beds in abeyance may not jeopardize providing an adequate supply of beds in the relevant Service Area.
b) Where a BIA application is being made to facilitate renovations, repairs, reconstruction, replacement, modifications, or redevelopment to a LTC home:
   i. This work must conform to the Applicable Law and is subject to all necessary approvals; and,
   ii. The applicant must agree in writing to return these beds to operation within a specified time period. This time period, and any related notice period, will be set out in the Beds in Abeyance Agreement.

c) Where a BIA application is being made for under-utilized bed capacity, the Licensee must provide sufficient information that the home has chronically under-utilized capacity for a minimum of one year.

d) Where a BIA application is being made to place licensed beds in abeyance, and the facilities to house these licensed beds will physically cease to exist and will not be physically replaced by the Licensee with other beds in the LTC home within 2 years of the signing of the Beds in Abeyance Agreement, the Licensee must either provide replacement beds in another LTC home within 2 years of the signing of the Beds in Abeyance Agreement, or effect the transfer of these BIA beds with all required approvals within 2 years of the signing of the Beds in Abeyance Agreement, or perform an agreement with the LHIN to provide replacement beds within 3 years following the transfer. These replacement beds must meet Ministry standards.

e) Beds may not be placed in abeyance while they are ORP beds.

f) The Licensee must comply with its agreements with the Ministry and the LHIN, and Applicable Law, in respect of the LTC home.

g) After placing beds in abeyance, the Licensee must continue to provide the same or better quality service to the LTC home residents, and have the same or higher staffing ratios as before beds were placed in abeyance.

h) Beds may not be placed into abeyance unless, when returned to operation, they will be of the same Structural Premium Category or higher.

i) The Licensee shall not be eligible to place beds in abeyance in respect of a LTC home if:
   i. the Licensee has not submitted a compliance plan when requested to do so by the Ministry or the LHIN for the LTC home, that is acceptable to the requesting party, for any non-compliance with the LSAA, any other agreement between the Licensee and the Ministry or the LHIN, or Applicable Law;
   ii. the LTC home does not comply in a manner acceptable to the Ministry with any current compliance plan in respect of the home;
   iii. the LTC home has had its admissions suspended;
   iv. the Ministry has suspended or revoked an approval or licence under Applicable Law or given notice of its intention to suspend or revoke an approval or licence under Applicable Law, in respect of the LTC home;
v. A receiver, receiver-manager, trustee or other official with similar powers, is or has been, appointed for the Licensee or the LTC home or any person has moved to appoint a receiver, receiver-manager, trustee or other official with similar powers for the Licensee or the LTC home; or,

vi. Any bankruptcy, reorganization, insolvency, liquidation or winding-up proceeding or proceeding for the benefit of creditors is or has been instituted by or against the Licensee, including an assignment, proposal, compromise or arrangement for the benefit of creditors.

The above criteria/requirements are for the benefit of the Ministry and any or all may be waived in writing by the Director, in whole or in part, at his or her sole discretion.

5. Funding

1. The Licensee must agree, as a condition of being permitted to place beds in abeyance, that despite any provision to the contrary in the LSAA or any other relevant funding agreement between the Licensee and the Ministry or the LHIN, BIA beds in a LTC home will not receive the following funding from the LHIN or the Ministry (as noted below) for those days these beds are in abeyance:

a) Nursing and Personal Care (LHIN)
b) Program and Support Services (LHIN)
c) Raw Food (LHIN)
d) Other Accommodation (LHIN)
e) Accreditation Differential (Ministry)
f) Red Circle Per Diem (Ministry)
g) Structural Compliance Premium (Ministry)
h) Equalization Funding (Ministry)
i) Any other funding that is not referred to in s 5.2 below and is not otherwise expressly agreed in writing to be paid in respect of BIAs.

2. Where applicable, the Licensee will continue to receive funding unaffected by beds being placed in abeyance as follows:

a) Municipal Tax Allowance Funding
b) Construction Funding Subsidy
c) Pay Equity
d) Claim based funding e.g. Laboratory Services Funding, High Intensity Needs Funding
6. Returning BIA Beds to Operation and Compliance with Policy

It is a condition of permitting any beds to be placed in abeyance that the Licensee thereby agrees to return the BIA beds to operation as set out in this Policy and the relevant Beds in Abeyance Agreement, and that where the Licensee fails to do so, or if the Licensee fails to meet any of the applicable requirements set out above, particularly in s. 4.4 (“Criteria and Requirements for Placing Beds in Abeyance”), as determined by the Director, the Director, in his or her discretion, and in consultation with the LHIN, may take any steps that the Director is entitled to take under s 104(3) of the Act, as if the permission had not been given, subject to the right of appeal set out in s. 104(4).
Procedures and Process
Application Process for Placing Beds in Abeyance

7. Process

1. A Licensee seeking to place beds in abeyance must make an application to the LHIN using the Beds in Abeyance Application Form (Appendix “A”). Where a BIA Application is tied to any physical change in structure, the Licensee will simultaneously submit 2 copies of the architectural drawings, an operational plan and a project summary to the Technical Specialist, Health Capital Division (HCD).

2. A Licensee can re-apply to place beds in abeyance after the beds, having previously been placed in abeyance, have been returned to service.

7.1. Process for Evaluating a BIA Application

1. Once a completed application has been submitted to the LHIN, the LHIN will review the application and make a recommendation using the Recommendation Form (Appendix “B”). The application and the LHIN recommendation will then be sent to LPB, whether or not the LHIN is in agreement with the application.

2. The application and LHIN recommendation will be circulated to the following offices for further evaluation. (Each office will use a separate Recommendation Form (Appendix “B”)):
   a) Technical Specialist, HCD (will only recommend approval for an application if the architectural plans are approved);
   b) Service Area Office Compliance Inspection Manager; and
   c) The Director.

3. Once input is received from the above parties, or the parties have not responded to the request for input within 20 business days, LPB will prepare the draft BIA Agreement (if all approvals have been given), and have this package reviewed and approved by Legal Services Branch (LSB) for the consideration of the Director. The Director will consider the application and the LHIN recommendation. There is no automatic right for the Licensee to be given permission merely by completing an application. The Director will provide notice of his or her decision to both the Licensee and the LHIN.

7.2. Beds in Abeyance Agreement

1. Once the signed BIA Agreement is returned from the Licensee, the Director will sign the Agreement sending one signed original back to the LTC Home Licensee, one original to the LHIN CEO and filing one copy with LPB.

2. Only one BIA Agreement shall be in effect at a time for any home, unless the Director determines otherwise. When additional beds are placed in abeyance in a Home where there is an existing BIA Agreement, this existing agreement shall be terminated and replaced by a new BIA Agreement. The BIA beds in the existing agreement will be incorporated into the new Agreement, including, in the Director’s discretion, any relevant information, terms, and conditions from this existing agreement, with any appropriate modifications.
3. When a new BIA Agreement is prepared, where previously approved BIA beds are still in abeyance in a Home for which no Beds in Abeyance Agreement has been prepared, these existing BIA beds shall, subject to the Director’s discretion, be incorporated into the new Beds in Abeyance Agreement, including any information, terms, and conditions for these existing BIA beds that the Director deems advisable.

7.3. Notification
1. Once a BIA Agreement has been signed by both the Director and the Licensee, a copy of the Agreement will be sent to the following:
   a) Administrator, LTC home – if different from the Licensee
   b) Compliance Inspection Manager, SAO
   c) The local Community Care Access Centre (CCAC)
   d) Director, Financial Management Branch, MOHLTC
   e) The LHIN
2. These same parties noted above (7.3, paragraph [1]) must also be notified once the beds are returned to operation.

7.4. Funding
1. Funding to the Licensee will be adjusted based on the Beds in Abeyance Policy:
   a) Funding will be adjusted for the period during which beds are placed in abeyance;
   b) Placing beds in abeyance will reduce the maximum number of Resident Days recorded in the LTC Home Annual Reconciliation Report;
   c) BIA beds will be reflected in the Subsidy Calculation Worksheet; and,
   d) The number of beds placed in abeyance will be reflected in the number of beds used in the LTC Home Payment Calculation Notice.

7.5. Adjustment of LTC Home Bed Numbers
Licensed/approved beds placed in abeyance will be removed from the Provincial LTC bed inventory but, subject to the terms of this Policy, the BIA Agreement and Applicable Law will continue to be reflected in the licensed/approved bed number.

7.6. Registration of Beds in Abeyance
The ministry will maintain a record of all beds in abeyance including the following information:
   a) LTC ID Number
   b) MOHLTC Number
   c) Home Name
   d) Licensee
   e) Home address
f) Upper Tier Municipality

g) Information on the beds recommended to be placed in abeyance including:
   
i. The number of BIA beds.
   
ii. The bedroom design type of the bedrooms where the BIA beds are located.
   
iii. The applicable design standards for the BIA beds
   
iv. The Structural Premium Category for the BIA beds.
   
v. The BIA Category (see section 4, Appendix A on BIA Categories)

h) Home bed information (after beds are put into abeyance) including:
   
i. Total beds available for occupancy
   
ii. Number of beds by Structural Premium Category (New, A, B, C, D)
   
iii. Number of beds by bedroom design type (Basic, Semi-private, Private)
   
iv. The beginning and end dates for the abeyance periods for all beds placed in abeyance, including for existing beds in abeyance which will remain in abeyance, either under an existing Beds in Abeyance Agreement or not.
   
v. Date the Beds in Abeyance Agreement was signed and the expiry date.

7.7. Returning BIA Beds Into Operation

1. Prior to the expiration of the BIA Agreement, the Licensee will notify LPB, the LHIN and the SAO Compliance Inspection Manager so that the LHIN can then initiate a plan to bring the beds back into operation.

2. The LHIN will notify LPB, the SAO Compliance Inspection Manager and the local CCAC when the beds will return to operation.

3. The return of BIA Beds to operation may be subject to pre-occupancy inspection and approval by the Ministry to ensure these beds meet all applicable requirements.