



Ministry of Health and Long-Term Care

Long-Term Care Homes Division
 Long-Term Care Inspections Branch

Ministère de la Santé et des Soins de longue durée

Division des foyers de soins de longue durée
 Inspection de soins de longue durée

Order(s) of the Director

under the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8

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| | <input type="checkbox"/> Licensee Copy/Copie du Titulaire <input checked="" type="checkbox"/> Public Copy/Copie Public |
| Name of Director: | Pamela Chou |
| Order Type: | <input type="checkbox"/> Amend or Impose Conditions on Licence Order, section 104 <input type="checkbox"/> Renovation of Municipal Home Order, section 135 <input checked="" type="checkbox"/> Compliance Order, section 153 <input type="checkbox"/> Work and Activity Order, section 154 <input type="checkbox"/> Return of Funding Order, section 155 <input type="checkbox"/> Mandatory Management Order, section 156 <input type="checkbox"/> Revocation of Licence Order, section 157 <input type="checkbox"/> Interim Manager Order, section 157 |
| Intake Log # of original inspection (if applicable): | |
| Original Inspection #: | Inspection #: 2018_486653_0014 (A2) |
| Licensee: | Markhaven, Inc. |
| LTC Home: | Markhaven |
| Name of Administrator: | Mike Bakewell, Executive Director/Administrator |

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| Background: | <p>Ministry of Health and Long-Term Care (MOHLTC) Inspectors #110, #624, and #653 conducted a Resident Quality Inspection (RQI) at Markhaven long-term care home (LTC home) on the following dates: July 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 2018 (Inspection #: 2018_486653_0014 (A2)).</p> <p>During the RQI, the following intake logs were also inspected concurrently: Complaint Logs (#018531-17, #018891-17) and Critical Incident Logs (#016768-17, #024588-17, #004887-18).</p> <p>As part of the inspection, the Inspectors found that the Licensee, Markhaven, Inc. (Markhaven or the Licensee) failed to comply with paragraph 1 of s. 245 under Ontario Regulation 79/10 (<i>Regulation</i>) of the <i>Long-Term Care Homes Act, 2007 (LTCHA)</i>, and issued Compliance Order #002.</p> |
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Pursuant to s. 153(1)(a) of the *LTCHA*, Inspector #653 issued the following Order:

Compliance Order #002 relates to O. Reg 79/10, s. 245(1.) and reads as follows:

The licensee must be compliant with s. 245 (1) of the O. Reg. 79/10.

Specifically, the licensee shall ensure the following:

1. Immediately cease charging residents for the identified care service.
2. For every resident present in the home that has paid for the contracted service for the identified care service from their time of admission, the home shall reimburse total charges paid (fees paid to the home including fees forwarded to the contracted service provider). Document a breakdown of the calculations for every resident and retain this record.
3. Notify and explain the reason for the reimbursement of charges for the identified care service and include the name of the resident/ Substitute Decision-Maker (SDM) to whom this discussion was provided to in documentation, in the health record.
4. Obtain signature of receipt of total fees reimbursed to each resident or respective SDM.
5. Revise the "Long-Term Care Home Unfunded Services Agreement" form to clearly identify that the identified care service is to be provided by the home to the residents at no charge.
6. Provide the approved and revised "Long-Term Care Home Unfunded Services Agreement" form as outlined above to residents who are present in the home, and their respective SDMs. Have the resident/ SDM sign the revised form and retain a copy of the form in the residents' health record (former "Long-Term Care Home Unfunded Services Agreement" form shall be made null and void).
7. Include details on admission and in the admission package related to the identified care service, and outline the procedure and any related costs for advance care.
8. Revise the home's policy on the identified care service to clearly identify the staff members responsible for providing the care service to residents. Outline the procedure including required assessments, referrals, and consent when advance care is necessary.
9. Educate all PSWs and registered staff on the home's revised policy on the identified care service. Maintain a record of the education provided including the content, facilitator, attendees, dates, and times.

The above mentioned documentation shall be made available to the inspector upon request. This order shall be complied no later than April 2, 2019.

Following a review of the Inspector's Order #002 by the Director, this order has been altered and substituted with the Director's Order below.



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| Order: | CO #001 |
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To **Markhaven, Inc.**, you are hereby required to comply with the following order(s) by the date(s) set out below:

Pursuant to:

Compliance Order #001 relates to Ontario Regulation 79/10 of the LTCHA, 2007, s. 245 and reads as follows:

Non-allowable resident charges

245. The following charges are prohibited for the purposes of paragraph 4 of subsection 91 (1) of the Act:

- 1. Charges for goods and services that a licensee is required to provide to a resident using funding that the licensee receives from,**
 - i. a local health integration network under section 19 of the *Local Health System Integration Act, 2006*, including goods and services funded by a local health integration network under a service accountability agreement, and**
 - ii. the Minister under section 90 of the Act.**
2. Charges for goods and services paid for by the Government of Canada, the Government of Ontario, including a local health integration network, or a municipal government in Ontario.
3. Charges for goods and services that the licensee is required to provide to residents under any agreement between the licensee and the Ministry or between the licensee and a local health integration network.
4. Charges for goods and services provided without the resident's consent.
5. Charges, other than the accommodation charge that every resident is required to pay under subsections 91 (1) and (3) of the Act, to hold a bed for a resident during an absence contemplated under section 138 or during the period permitted for a resident to move into a long-term care home once the placement co-ordinator has authorized admission to the home.
6. Charges for accommodation under paragraph 1 or 2 of subsection 91 (1) of the Act for residents in the short-stay convalescent care program.
7. Transaction fees for deposits to and withdrawals from a trust account required by section 241, or for anything else related to a trust account.
- 8. Charges for anything the licensee shall ensure is provided to a resident under this Regulation, unless a charge is expressly permitted. O. Reg. 79/10, s. 245.**

Order:

The Licensee must be compliant with s. 245 of O. Reg 79/10.

Specifically, the Licensee shall ensure the following:

1. Immediately cease charging residents for basic foot care including cutting of toenails.
2. Notify through a memorandum of communication to current residents and their Substitute Decision Maker (SDM) related to the previous charges for foot care services. The memorandum must incorporate the following points:
 - Markhaven, Inc., was determined to be in non-compliance with paragraphs 1 and 8 of section 245 of the *Regulation* when it charged residents for basic foot care services, including cutting of toenails. Markhaven Inc. was not permitted to charge residents for these services and will not be doing so going forward.
 - Markhaven Inc. is required under s. 35(1) of the Regulation, to ensure that each resident of the LTC home receives preventative and basic foot care services, including the cutting of toenails, to ensure comfort and prevent infection. This service must be provided to residents at no charge.
3. Revise the “Long-Term Care Home Unfunded Services Agreement” form to clearly identify that basic foot care including cutting of toenails, is to be provided by the home to the residents at no charge.
4. Provide the approved and revised “Long-Term Care Home Unfunded Services Agreement” form to residents who are present in the home, and their respective SDMs. Have the resident/SDM sign the revised form and retain a copy of the form in the residents’ health record (former “Long-Term Care Home Unfunded Services Agreement” form shall be made null and void).
5. Include details on admission and in the admission package related to basic foot care, and outline the procedure and any related costs for advance/specialized foot care.
6. Revise the home’s policy on foot care services to clearly identify the staff members responsible for providing basic foot care including cutting of toenails, to residents. Outline the procedure including required assessments, referrals, and consent when advanced/specialized foot care is necessary.
7. Educate all PSWs, registered staff, and the leadership team on the home’s revised policy on foot care services. Maintain a record of the education provided including the content, facilitator, attendees, dates, and times.

The above mentioned documentation shall be made available to Ministry inspector(s) upon request. This order shall be complied no later than April 2, 2019.

Grounds:

The Licensee has failed to ensure that they have complied with paragraph 1 and paragraph 8 of section 245 of the O. Reg 79/10 related to non-allowable resident charges.



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Section 245 paragraph 1 of O. Reg. 79/10 states that "Charges for goods and services that a licensee is required to provide to a resident using funding that the licensee receives from, i. a local health integration network under section 19 of the *Local Health System Integration Act, 2006*, including goods and services funded by a local health integration network under a service accountability agreement, and ii. the Minister under section 90 of the Act" are considered non-allowable resident charges.

Section 245 paragraph 8 of O. Reg 79/10 states that "Charges for anything the licensee shall ensure is provided to a resident under this Regulation, unless a charge is expressly permitted", is considered non-allowable resident charges.

As per subsection 35 (1) of O. Reg 79/10, "Every licensee of a long-term care home shall ensure that each resident of the home receives preventive and basic foot care services, including the cutting of toenails, to ensure comfort and prevent infection".

LTC homes are funded by the LHINs through the Level-of-Care, Nursing and Personal Care envelope, pursuant to the Long-Term Care Home Service Accountability Agreement (L-SAA). As noted in the MOHLTC financial policies, *Eligible Expenditures for Long-Term Care Home* policy and the *Long-Term Care Home Level-of-Care Funding* policy, the funding for nursing and personal care covers assistance with the activities of daily living including personal hygiene services, administration of medication, and nursing care to residents.

Subsection 101(4) of the LTCHA, 2007 requires every Licensee to comply with the conditions of their licence. Subsection 101(3) of the LTCHA, 2007 states that "It is a condition of every licence that the licensee shall comply with this Act, the *Local Health System Integration Act, 2006*, the *Commitment to the Future of Medicare Act, 2004*, the regulations, and every directive issued, order made or agreement entered into under this Act and those Acts." As the above MOHLTC financial policies are made pursuant to the L-SAA, which is an agreement entered into under the *Local Health System Integration Act, 2006*, Licensees must comply with these MOHLTC financial policies as required by subsection 101(4).

During stage one of the Resident Quality Inspection (RQI), two family interviews conducted by the Inspector had identified that the staff in the LTC home do not cut the residents' toenails, and family members had to pay a fee to have the residents' toenails cut. As a result, the Inspector looked into three residents' basic foot care.

The Inspector interviewed four PSWs who all indicated that they were not allowed and/or have not provided basic foot care to the three sampled residents. The PSWs indicated that the foot care nurse provides basic foot care services including cutting of the residents' toenails.

The Inspector interviewed a RPN, who stated that they were a full-time RPN employed in the home, and that they come on their day off to provide foot care services to some residents in the home. The inspector confirmed with the RPN who provided the care that they were under an agreement with the home and they would come in and provide foot care services for the residents at a charge.

When asked by the Inspector what type of foot care service the RPN provided to residents the three sampled residents, the RPN confirmed that basic foot care was provided, including cutting of the toenails on a regular basis.



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A review of the three residents' Long-Term Care Home Unfunded Services Agreement forms signed by the residents' Substitute Decision Makers (SDM) on an identified date, indicated their approval of "professional foot care services (not covered by OHIP, every 6 to 8 weeks)" to be provided for a fee per visit. A review of the three residents' invoices and progress notes between an identified period revealed that the residents were charged for foot care provided by the RPN.

The Inspector also interviewed the Director of Care (DOC) and the Executive Director (ED). Both the DOC and ED acknowledged that fees were charged to the residents for basic foot care, including cutting of toenails from the RPN.

The severity of this issue was determined to be a level 1 as there was minimum risk to the residents. The scope of the issue was a level 3 as it related to three of three residents reviewed. This may potentially affect all current residents who are currently paying for basic foot care services. The home had a level 2 compliance history as they had one or more unrelated non-compliances in the last three years.

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| This order must be complied with by: | April 2, 2019 |
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REVIEW/APEAL INFORMATION

TAKE NOTICE:

The Licensee has the right to appeal this Order(s) to the Health Services Appeal and Review Board (HSARB) in accordance with section 164 of the *Long-Term Care Homes Act, 2007*. If the Licensee decides to request a hearing, the Licensee must, with 28 days of being served with this Order, mail or deliver a written notice of appeal to both:

Health Services Appeal and Review Board
Attention Registrar
151 Bloor Street West
9th Floor
Toronto, ON
M5S 2T5

and the

Director
c/o Appeals Clerk
Long-Term Care Inspections Branch
347 Preston Street, 4th Floor, Suite 420
Ottawa ON K1S 3J4
Fax: 416-327-7603

Upon receipt, the HSARB will acknowledge your notice of appeal and will provide instructions regarding the appeal process. The Licensee may learn more about the HSARB on the website www.hsarb.on.ca.

Issued on this 12th day of December, 2018.

Signature of Director:

Name of Director:

Pamela Chou

