

LEGISLATIVE UPDATE

April 2021

Frequently Asked Questions

Transfer of Patients Due to Major Surge During COVID-19

Context

On April 9, 2021, the Government of Ontario released a new [Regulation](#)¹ (O. Reg 272/21) under the *Emergency Management and Civil Protection Act* (EMCPA) relating to transfer of patients to an “alternate hospital site” during COVID-19.

As indicated in a memo from the Ministry of Health² to hospitals, this Regulation is intended to address the issue of transferring patients in response to “unprecedented critical care capacity pressures due to the COVID-19 pandemic in Ontario and the transmission of variants of concern across the province.”

The memo further notes that, “The emergency order will enable hospitals to act quickly to optimize capacity across the system in the face of rising hospitalization rates, and to allocate ICU and high acuity medicine beds as necessary during the third wave. It is anticipated that the order will contribute to better population health outcomes and improve hospitals’ ability to provide appropriate care to all patients in need.”

The Ontario Hospital Association (OHA), in consultation with Ontario Health and with the Healthcare Insurance Reciprocal of Canada (HIROC) prepared this Frequently Asked Questions r (FAQ) resource to address common issues about this Regulation.

In addition, building on the comprehensive resources developed by the GTA Hospital IMS Command Centre, the OHA has prepared additional resources to support a consistent approach to patient transfers, including a patient-facing information sheet explaining the effect of the Regulation and what patients and families can expect; and a Checklist for the Receiving Hospital.

Additional resources to support hospitals can be found [here](#).

¹ *Emergency Order (O. Reg. 272/21: Transfer of Hospital Patients) under the Emergency Management and Civil Protection Act to Facilitate Transfers of Hospital Patients to Alternate Hospital Sites in Response to COVID-19 Major Surge Events*, available [here](#).

² Memorandum from the Ministry of Health, Office of the Deputy Minister (Helen Angus) to Public Hospitals and Private Hospitals re: Emergency Order (O. Reg 272/21) (April 9, 2021), not available online at the time of writing

Frequently Asked Questions

1. What are the conditions that must be satisfied to transfer patients pursuant to this Regulation?

In considering a potential transfer of a patient to an alternate hospital site³ pursuant to this Regulation, there are three systemic conditions that need to be met. Specifically, the transfer must be necessary to:

- To respond to a major surge event;⁴
- To optimize the availability of critical care and acute care responses;⁵ and
- To reduce a foreseeable risk of serious bodily harm to a person.⁶ (This is not exclusive to the individual patient being transferred and should be considered within the broader context of flow and capacity across the hospital system).

If these systemic conditions are established, the following patient specific conditions must be met:

- Efforts that are “reasonable in the circumstances” must be made to obtain consent for the transfer.⁷ This includes a dialogue with patients/SDMs, as a substantial component of the consent process, pertaining to the nature of the transfer, risks and benefits, alternatives, and the plan (this is supported by the “Patient Move Letter”).
- The attending clinician needs to be satisfied that:⁸
 - the patient will receive the care they require at the alternate site; and
 - the transfer can be effected without compromising the patient's medical condition.
- If the proposed transfer is to a different hospital, there is a member of the medical, extended class nursing, dental or midwifery staff prepared to order the admission of the patient to that hospital.⁹

If all of the above conditions are met, a hospital is authorized to transfer a patient to an alternate hospital site and the receiving hospital is authorized to admit the patient, with or without the consent of the patient or substitute decision-maker.¹⁰

2. Is the transfer a permanent move for a patient?

No. The Regulation includes a requirement the receiving hospital is required to make reasonable efforts to transfer the patient back to the original (sending) hospital, or to another suitable care location with the consent of the patient or substitute decision maker, as soon as is possible following the conclusion of the major surge event.

³ “Alternate hospital site” is defined in s. 1 of the Regulation and this is addressed in more detail in Question #5 below.

⁴ S. 2(2)(1)(i); “Major surge event” is defined in s. 1 of the Regulation and this is addressed in more detail in Question #6 below.

⁵ S. 2(2)(1)(ii). The resources to be optimized by the transfer can be those of the hospital to which the patient is admitted at the time of the transfer, or to assist another hospital in optimizing the availability of resources. Pursuant to the Regulation, the term “resources” includes health human resources, services, equipment and supplies.

⁶ S. 2(2)(1)(iii)

⁷ S. 2(2)(2)

⁸ S. 2(2)(3)

⁹ S. 2(2)(4)

¹⁰ S.2(1)

3. Is patient or substitute decision-maker consent required to transfer patients?

No. The Regulation provides that a patient may be transferred without consent if the conditions set out in Question #1 are met. However, these conditions include that reasonable efforts must be made to obtain consent from the patient (see Question #1), or substitute decision maker, before a decision is made to transfer a patient pursuant to the Regulation.

4. What kind of documentation should hospitals maintain with respect to transfers?

In addition to the usual and expected documentation for transfers in patient care (i.e. interfacility checklist), it is strongly recommended that there be clear documentation confirming that the conditions for transfer were met, including that:

- The transfer is necessary to respond to a major surge event, to optimize the availability of critical care and acute care responses and to reduce a foreseeable risk of serious bodily harm to a person;
- Reasonable efforts were made to offer a dialogue with the patient/substitute decision-maker regarding the nature of the transfer, risks and benefits, alternatives if any, and the plan;
- The attending clinician is satisfied that the patient will receive the care they require at the alternate site and that the transfer can be effected without compromising the patient's medical condition; and
- Identifying the member of the medical, extended class nursing, dental or midwifery staff who will be assuming care of the patient and, in the event of a transfer to a different hospital who is prepared to order the admission of the patient to that hospital.

5. Is patient or substitute decision-maker consent required to transfer personal health information to a different hospital?

No. The Regulation provides that when a patient is transferred to a different hospital, the sending hospital is authorized to disclose to the receiving hospital “any information, including personal health information, that is necessary to facilitate the provision of care to the patient.”¹¹

6. How is an “alternate hospital site” defined?

An “alternate hospital site” is a different location, or site, of the same hospital or a different hospital.¹²

¹¹ S. 5.

¹² S. 1.

For the purposes of the Regulation, a “hospital” is a “health service provider” as defined in paragraphs 1, 2 or 3 in subsection 1 (2) of the *Connecting Care Act, 2019* (CCA), which are as follows:

1. A person or entity that operates a hospital within the meaning of the *Public Hospitals Act* or a private hospital within the meaning of the *Private Hospitals Act*.
2. A person or entity that operates a psychiatric facility within the meaning of the *Mental Health Act* except if the facility is,
 - i. a correctional institution operated or maintained by a member of the Executive Council, other than the Minister, or
 - ii. a prison or penitentiary operated or maintained by the Government of Canada.
3. The University of Ottawa Heart Institute/Institut de cardiologie de l’Université d’Ottawa.

7. How is a “major surge event” defined?

The Regulation defines "major surge event" as “an increase in demand for critical care resources of a hospital that is attributable to COVID-19 and which is overwhelming, or imminently threatens to overwhelm, the critical care resources of one or more hospitals.”¹³ “Resources” are defined to include “health human resources, services, equipment and supplies.”¹⁴

How a major surge is defined locally and regionally will depend on the specific circumstances of each hospital. There is no specific threshold of critical care bed occupancy or other numeric thresholds indicated in the Regulation to trigger a “major surge event.”

8. Does the Regulation permit transfer to long-term care (LTC) facilities without consent? What about hospitals with co-located LTC facilities?

No. The transfers permitted under this Regulation without consent are only to “alternate hospital sites”. This does not include LTC facilities or to LTC beds in facilities co-located with hospitals. Transfer to LTC facilities (or other “care facilities”) continue to require the consent of the patient or substitute decision maker.

9. Does the Regulation permit transfer to a “reactivation site” or a similar site temporarily established in response to COVID-19?

If a site is designated as part of a hospital that falls within the definition of a “health service provider” under the CCA as set out in Question #5, then such a transfer will be permitted. This includes reactivation sites and temporary sites established in response to COVID-19.

As set out in Question #7, this will not include LTC beds co-located with hospitals.

¹³ S. 1.

¹⁴ S. 1.

10. Does the Regulation contemplate any changes to hospital family and caregiver policies?

No. Care partners should be limited to a number that works for each specific hospital given its individual circumstances, to ensure appropriate physical distancing and infection prevention and control, especially within clinical spaces. The various Ontario Health regions have developed essential care partner visiting guidance to ensure consistency of approach across regions.

11. How long does the Regulation remain in effect?

This Regulation remain valid for 14 calendar days unless revoked or extended in accordance with the EMCPA.

The Regulation came into effect on Friday, April 9, 2021 and will therefore remain in effect until Friday, April 23, 2021.

More information can be found in the [Ontario government news release](#)¹⁵ and memo from the Ministry of Health¹⁶ on transfer of hospital patients.

12. Does this Regulation apply only to patients admitted on or after April 9, 2021?

No. The Regulation is not limited in its application to patients admitted on or after April 9, 2021. It may be applied to all patients with respect of whom the required conditions are met.

Questions?

For more information, please contact Melissa Prokopy, Director of Legal, Policy and Professional Issues at mprokopy@oha.com or Adam Pennell, Senior Legal Advisor at apennell@oha.com.

¹⁵ Ontario Government News Release, “Ontario Supporting Health System Response During Third Wave of COVID-19” April 9, 2021 available [online](#).

¹⁶ *Supra* note 2.