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# CANADIAN CONFERENCE ON ELDER LAW CONFERENCE

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# *DISCHARGE FROM HOSPITAL TO LONG-TERM CARE ISSUES IN ONTARIO*

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# *LONG-TERM CARE HOMES ACT, 2007*

- *Long-Term Care Homes Act, 2007 (LTCHA*) came into force July 1, 2010
- All sections except section 32
  - This section deals with admission to secure units, rights advice and the right to a hearing
  - Will be enacted in the future – likely changes will occur to the legislation with respect to this particular section
- General Regulation - O. Reg. 79/10

# Long-Term Care Homes

- Are licensed and funded by the Ministry of Health and Long-Term Care
- Residents must require 24 hour on-site care
- Heavily regulated - both care and admission
- Residents pay only for accommodation – Ministry pays for care

# ADMISSION TO LONG-TERM CARE IN ONTARIO

- Admission is regulated by the *LTCHA*
- Consent is regulated by the *LTCHA* and the *Health Care Consent Act* (*HCCA*)

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# COMMUNITY CARE ACCESS CENTRES

- Admission to long-term care is managed by the Community Care Access Centre or CCAC
- There are 14 CCACs across the province divided by geographical boundaries
- Person who is in charge of placement called a “placement co-ordinator”

# CONTROL OF PROCESS

- The *LTCHA* mandates that CCAC controls the placement process
- There is no role set in legislation for hospitals, discharge planners
- CCAC – no authority to delegate except in specific circumstances

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# ROLE OF CCAC

- taking applications
- determining eligibility
- assisting with selecting homes when requested
- managing waiting lists
- authorizing admission
- obtaining valid consents
- providing information about other community resources, including retirement homes
- reviewing reassessments
- monitoring and managing waiting lists.
- collaborate with the home and resident where alternate accommodation is required where the home can no longer provide a sufficient safe environment
- assist the resident where they are contacted when the resident has improved and no longer requires care in a long-term care home and wishes to move to other accommodation

# CCAC ROLE AFTER DETERMINATION OF ELIGIBILITY

- Once the person is found to be eligible – placement co-ordinator must provide the following information:
  - the length of waiting lists and approximate times to admission for long-term care homes;
  - vacancies in long-term care homes; and
  - how to obtain information from the Ministry about long-term care homes.

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# CONSENT

- Consent for all parts of process must be obtained
- If person is capable – consent must be from them
- If not – from their substitute decision-maker as set out in s. 21 of the *HCCA*
- Person cannot "transfer" ability to consent to another person if they are capable

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# CHOICES

- Person may choose a **maximum** of **5** LTCHs
- Except in crisis situations where may choose more
- Is based upon choice
- Elements of consent are set out in the legislation
- Up to the CCAC to obtain valid consent

# ELEMENTS OF CONSENT – IN *LTCHA*

46. (1)The following are the elements required for consent to admission to a long-term care home:

1. The consent must relate to the admission.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

# INFORMED CONSENT

46. (2) A consent to admission is informed if, before giving it,

(a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the admission; and

(b) the person received responses to his or her requests for additional information about those matters.

# MATTERS REFERRED TO IN (2)

(3) The matters referred to in subsection (2) are:

1. What the admission entails.
2. The expected advantages and disadvantages of the admission.
3. Alternatives to the admission.
4. The likely consequences of not being admitted.

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# CONSENT

- If person is capable, they must consent or refuse consent
- If reason to believe that the person is incapable, then an evaluation of capacity is undertaken by one of a class of evaluators
- If incapable, substitute decision-maker who is highest in hierarchy set out in s. 20 of *HCCA* and who meets the legal requirements will make decision

# PRINCIPLES FOR GIVING OR REFUSING CONSENT

42(1) A person who gives or refuses consent on an incapable person's behalf to his or her admission to a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests.

# BEST INTERESTS

**Best interests**

(2) In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

(a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;

# BEST INTERESTS (cont'd.)

(b) any wishes expressed by the incapable person with respect to admission to a care facility that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether admission to the care facility is likely to,

   i. improve the quality of the incapable person's life,

   ii. prevent the quality of the incapable person's life from deteriorating, or

   iii. reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate.

# BEST INTERESTS (cont'd.)

2. Whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without admission to the care facility.
3. Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to him or her.
4. Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances.

# *PUBLIC HOSPITALS ACT* - DISCHARGE

- 16(1) If a patient is no longer in need of treatment in the hospital, one of the following persons shall make an order that the patient be discharged and communicate the order to the patient:
- 1. The attending physician or midwife or, if the attending dentist is an oral and maxillofacial surgeon, the attending dentist.
- 2. A member of the medical, dental or midwifery staff designated by a person referred to in paragraph 1.
- (2) Where an order has been made with respect to the discharge of a patient, the hospital shall discharge the patient and the patient shall leave the hospital on the date set out in the discharge order.
- (3) Despite subsection (2), the administrator may grant permission for a patient to remain in the hospital for a period of up to twenty-four hours after the date set out in the discharge order.

# PLACEMENT CATEGORIES UNDER THE *LTCHA*

1. The crisis category now includes hospital patients where the following criteria are met:

- An applicant shall be placed in category 1 on the waiting list for a long-term care home if the applicant,
  - occupies a bed in a hospital under the *Public Hospitals Act*, requires an alternate level of care and requires an immediate admission to a long-term care home;
  - the hospital is experiencing severe capacity pressures; and
  - the local health integration network for the geographic area in which the hospital is located has, taking into account consultation with the affected hospital and the appropriate placement co-ordinator, verified these pressures to the appropriate placement co-ordinator in writing and set out the time period for which the verification applies.[1]

2. In categories 3 (religious, ethnic or linguistic origin), and category 4(others) on the waiting list, those in hospital awaiting placement are in the higher “A” category rather than the more general “B” category.

# ADMISSION TO INTERIM BEDS UNDER THE *LTCHA*

- the person occupies a bed in a hospital under the *Public Hospitals Act* and requires an alternate level of care;
- a physician has determined that the person does not require the acute care services provided by the hospital;
- the person is determined by a placement co-ordinator to be eligible for long-term care home admission as a long-stay resident under section 155;
- the person is on at least one waiting list for admission to a bed in a long-stay program of a long-term care home;
- placing the person on the waiting list will not result in the total number of short-stay waiting lists on which the person is placed exceeding five;
- the person applies in accordance with this Regulation for authorization of his or her admission to an interim bed in the home; and
- the licensee of the home approves the person's admission to an interim bed in the home.

# ALTERNATIVE LEVEL OF CARE (ALC)

- When a patient is in hospital and would be discharged to an alternate setting, ie long-term care, complex continuing care (chronic care), rehabilitation, palliative, etc., the doctor may designate the patient as “ALC”

# CHRONIC CARE CO-PAYMENT

- Where the patient would pay for accommodation in the other setting, the hospital may charge a similar fee while the person is in hospital awaiting placement
- Fee is governed by the regulations to the *Health Insurance Act*

# CHALLENGE TO DECISIONS

- No ability to challenge the decision of the capable person
- If believe incapable person is making a decision that is contrary to the principles set out in the *HCCA*, the **placement co-ordinator** may bring an application to the Consent and Capacity Board – a tribunal which will determine compliance and can order the SDM to comply
- No ability for hospital/doctor to challenge

# APPLICATIONS ANC CHOICES

- No requirement in legislation to choose “short list”, “available bed”, etc.
- Even in crisis – no requirements – person simply goes to top of lists for facilities chosen
- Hospitals – cannot enact “policies” which try to circumvent law

# APPLICATIONS AND CHOICES (cont'd.)

- CCACs cannot refuse to take applications
  - Cannot force compliance with hospital policy
  - Cannot require applications from community only
  - Cannot refuse to take an application because the person has a spouse/family member they are living with or who has been caring for them
  - Cannot require person to go to a retirement home (presently an unregulated/unfunded setting)

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# INELIGIBILITY

- If deemed ineligible by CCAC for admission to long-term care, applicant has right of appeal to the *Health Services Appeal and Review Board*
- Very important for applications to be made in cases noted above where CCACs may be determining ineligibility on grounds contrary to the legislation

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