

# **Staff Reporting & Whistle-blowing Protection**

## **Policy and Procedures**

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## **ABOUT THIS DOCUMENT**

The development and implementation of a policy and procedures for Staff Reporting & Whistle-blowing Protection Against Retaliation is a requirement of the *Long-Term Care Homes Act, 2007* (LTCHA).

This document contains a sample policy and procedures to assist homes in meeting requirements of the *Long-Term Care Homes Act, 2007* (LTCHA) and regulation relating to reporting and whistle-blowing protection.

The package is intended as a resource for OANHSS member homes, and homes may modify and customize it as appropriate. Please note: The project team have compiled these materials during the winter of 2011 and as a result, the information is based on the guidance available at this time.

Members will also need to regularly review the Ministry of Health and Long-Term Care (MOHLTC) Quality Inspection Program Mandatory and Triggered Protocols to ensure that internal policies and procedures align to these compliance expectations.

## **Acknowledgements**

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# STAFF REPORTING & WHISTLE-BLOWING PROTECTION

## Preamble and Purpose

This policy is part of the Home's ongoing efforts to identify and respond to any conduct that may pose a risk of harm to residents or staff, or to the operation of the Home. This policy reflects the strong whistle-blowing protections in the *Long-Term Care Homes Act, 2007* (the "LTCHA"), and reporting under this policy will assist the Home in meeting the requirements of the LTCHA in this and other areas.

Section 26 of the LTCHA forbids retaliation or threats of retaliation against a person for disclosing anything to an inspector or the Ministry of Health and Long-Term Care Director, or for giving evidence in a proceeding under the LTCHA or during a coroner's inquest. Under section 26, staff members, officers, and directors cannot discourage these disclosures.

*The purpose of this policy is as follows:*

1. To encourage and enable reporting within the Home relating to breaches or suspected breaches of the Home's policies, procedures or standards, and legislation that applies to the Home;
2. To ensure that there is no retaliation against those who make reports in good faith under this policy; and
3. To ensure compliance with reporting and whistle-blowing provisions of the LTCHA.
4. [**Note:** homes that have a Code of Conduct or Ethics may wish to include an additional purpose statement with respect to ensuring compliance with the code, or refer to such a code explicitly in #2 above.]

## POLICY

### Staff Reporting

Any staff or board member who is aware of or suspects any of the following must report it as soon as possible in accordance with the reporting procedures in this policy:

1. Improper or incompetent treatment or care of a resident; or unlawful conduct that affects or may affect a resident
2. Abuse of a resident by anyone, or neglect of a resident by a staff member or board member of the Home. This includes misuse or misappropriation of resident property
3. Verbal complaints concerning resident care or operation of the Home
4. Breach of the Home's policies, standards, procedures or by-laws, or breaches of legislation or government policy that applies to the Home, including the LTCHA and its regulations
5. Any retaliation against a person for making a report under this policy, or for disclosing anything to an inspector or the MOHLTC Director, or for giving evidence in a proceeding under the LTCHA or in a coroner's inquest.

[*Note:* Homes may make additions to this list to reflect their individual context.]

## **Staff Reporting and Mandatory/Immediate Reporting under the LTCHA**

Staff should be aware that section 24(1) of the LTCHA requires certain persons to make immediate reports to the MOHLTC Director where there is a reasonable suspicion that certain conduct or events occurred or may occur. (Section 24(1) is set out in the Appendix to this policy and for clarification about who must report see section 105 of the LTCHA regulation, which is included in the Appendix). Staff should immediately report through this policy any conduct or events that may lead to a mandatory/immediate report under section 24(1). Staff should also understand that it is an offence under the LTCHA to discourage or suppress a section 24(1) report.

## **No Retaliation or Discouragement of Reports**

The Home will protect staff members and board members from harassment, coercion, penalty or discipline in the context of the following:

1. Reports in good faith under this policy, and
2. Disclosure of anything to an inspector or the MOHLTC Director, or giving evidence in a proceeding under the LTCHA or during a coroner's inquest.

The Home will protect a resident (and his or her family members, SDM, and persons of importance) against any threats or discrimination in connection with the resident's disclosure of anything to an inspector or the MOHLTC Director, or his or her giving evidence in a proceeding under the LTCHA or during a coroner's inquest.

Staff members and board members must not do anything to discourage any of the following:

1. Reports under this policy,
2. Mandatory/immediate reports under the LTCHA, and
3. Disclosures to an inspector or the MOHLTC Director, or the giving of evidence in a proceeding under the LTCHA or during a coroner's inquest.

A staff member or board member who retaliates, threatens a resident, or discourages a report in breach of this policy may be subject to disciplinary action, which may include termination or removal.

## **Reporting in Good Faith**

In making a report under this policy, a person must not act maliciously or in bad faith. A person who makes a report maliciously or in bad faith may be subject to disciplinary action, which may include termination or removal.

## ***Procedure***

**[Note:** Homes should adapt and supplement these procedures to fit their individual context and requirements. In particular, homes should set out in their procedures:

- in what circumstances the Administrator/CEO (or delegate) and Director of Care will be notified of a report under this policy,
- the method of reporting, and
- the situations in which a report should go immediately to the Administrator/CEO (or delegate); for example, reports in connection to harm or risk of harm to a resident, or misuse or misappropriation of resident property.]

## **A. Reporting**

1. The Home will process and respond to reports of resident abuse and neglect through its Policy to Promote Zero Tolerance of Abuse and Neglect.
2. The Home will process and respond to verbal complaints through its complaints policy/procedures.
3. All reports under this policy should be to a staff member's immediate supervisor or manager. Where an immediate supervisor is implicated, or where a staff member is uncomfortable reporting to their supervisor, the report should go to the next level of leadership or a member of senior management.
4. Board members should report to the Chair or Vice-Chair, where appropriate.
5. Reports concerning management staff members should be to the Administrator/CEO; or if the report implicates the Administrator/CEO, to the Board Chair.
6. Reports concerning conduct of professional staff or service providers (physicians and medical students, dentists, nurses in the extended class, Director of Care, supervisors) should be to the Administrator/CEO.
7. A staff member or board member who experiences any form of retaliation before or after submitting a report should immediately inform their supervisor or a member of the management team; or in the case of a board member, the Board Chair or a Vice-Chair.

## **B. Investigation**

1. The person receiving the report will review, and if warranted, investigate and resolve the subject matter of the report. Where necessary, that person will advise or involve members of senior management.
2. Responsibility for investigation and resolution may be referred to senior management or the board. The Home expects staff members to cooperate during any investigation.
3. If feasible and appropriate, the Home will inform the individual who made the report about the results of an investigation and the steps taken to address the conduct in question.

## **C. Confidentiality**

The Home will accept reports under this policy on an anonymous or confidential basis. The Home's normal procedure will be to keep all reports confidential to the extent possible, subject to the need to conduct an effective investigation or to take action to comply with the LTCHA or other law. The home will not tolerate any attempt by a person or group to identify a person who submits a report in good faith on an anonymous or confidential basis.

## **D. Staff Orientation and Training**

Staff members will receive orientation and annual re-training on the reporting obligations under the LTCHA, the home's internal procedures for reporting, and the whistle-blowing protections in the LTCHA.

## APPENDIX A: LTCHA MANDATORY/IMMEDIATE REPORTS

The first excerpt sets out the matters that must be immediately reported to the MOHLTC Director - section 24(1). The second excerpt sets out certain staff to which this requirement does not apply - section 105 of the regulation and the definition of “staff” from the LTCHA.

### Reporting certain matters to Director

**24. (1)** A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.
3. Unlawful conduct that resulted in harm or a risk of harm to a resident.
4. Misuse or misappropriation of a resident’s money.
5. Misuse or misappropriation of funding provided to a licensee under this Act or the *Local Health System Integration Act, 2006*. 2007, c. 8, ss. 24 (1), 195 (2).

### Non-application re certain staff

**105.** Paragraph 4 of subsection 24 (5) of the Act does not apply to a staff member who,  
(a) falls under clause (b) or (c) of the definition of “staff” in subsection 2 (1) of the Act;  
(b) only provides occasional maintenance or repair services to the home; and  
(c) does not provide direct care to residents. O. Reg. 79/10, s. 105.

“staff”, in relation to a long-term care home, means persons who work at the home,

- (a) as employees of the licensee,
- (b) pursuant to a contract or agreement with the licensee, or
- (c) pursuant to a contract or agreement between the licensee and an employment agency or other third party; (“personnel”)