



OANHSS

LTCHA Implementation
MEMBER SUPPORT PROJECT

LTCHA 2007: Zero Tolerance on Resident Abuse and Neglect and Whistle-blower Protection

Audience: All staff, contractors and volunteers who have direct contact with residents

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Ontario Association of Non-Profit Homes & Services for Seniors

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Fundamental Principle

A long-term care home is primarily the home of its residents and is to be operated so that it is a place where residents may live with dignity and ***in security, safety and comfort and have their physical, psychological, social, spiritual and cultural needs adequately met.***

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Residents Bill of Rights

Residents' Bill of Rights

- 3. (1)** Every licensee of a long-term care home shall ensure that the following rights of residents are fully respected and promoted:
1. Every resident has the right to be treated with courtesy and respect and in a way that fully recognizes the resident's individuality and respects the resident's dignity.
 2. Every resident has the right to be protected from abuse.
 3. Every resident has the right not to be neglected by the licensee or staff.
 4. Every resident has the right to be properly sheltered, fed, clothed, groomed and cared for in a manner consistent with his or her needs.
 5. Every resident has the right to live in a safe and clean environment.
 6. Every resident has the right to exercise the rights of a citizen.
 7. Every resident has the right to be told who is responsible for and who is providing the resident's direct care.

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Residents Bill of Rights

8. Every resident has the right to be afforded privacy in treatment and in caring for his or her personal needs.
9. Every resident has the right to have his or her participation in decision-making respected.
10. Every resident has the right to keep and display personal possessions, pictures and furnishings in his or her room subject to safety requirements and the rights of other residents.
11. Every resident has the right to,
 - i. participate fully in the development, implementation, review and revision of his or her plan of care,
 - ii. give or refuse consent to any treatment, care or services for which his or her consent is required by law and to be informed of the consequences of giving or refusing consent,

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- iii. participate fully in making any decision concerning any aspect of his or her care, including any decision concerning his or her admission, discharge or transfer to or from a long-term care home or a secure unit and to obtain an independent opinion with regard to any of those matters, and
 - iv. have his or her personal health information within the meaning of the *Personal Health Information Protection Act, 2004* kept confidential in accordance with that Act, and to have access to his or her records of personal health information, including his or her plan of care, in accordance with that Act.
12. Every resident has the right to receive care and assistance towards independence based on a restorative care philosophy to maximize independence to the greatest extent possible.
13. Every resident has the right not to be restrained, except in the limited circumstances provided for under this Act and subject to the requirements provided for under this Act.

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Residents Bill of Rights

14. Every resident has the right to communicate in confidence, receive visitors of his or her choice and consult in private with any person without interference.
15. Every resident who is dying or who is very ill has the right to have family and friends present 24 hours per day.
16. Every resident has the right to designate a person to receive information concerning any transfer or any hospitalization of the resident and to have that person receive that information immediately.
17. Every resident has the right to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the following persons and organizations without interference and without fear of coercion, discrimination or reprisal, whether directed at the resident or anyone else,
 - i. the Residents' Council,
 - ii. the Family Council,

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Residents Bill of Rights

- iii. the licensee, and, if the licensee is a corporation, the directors and officers of the corporation, and, in the case of a home approved under Part VIII, a member of the committee of management for the home under section 132 or of the board of management for the home under section 125 or 129,
 - iv. staff members,
 - v. government officials,
 - vi. any other person inside or outside the long-term care home.
18. Every resident has the right to form friendships and relationships and to participate in the life of the long-term care home.
 19. Every resident has the right to have his or her lifestyle and choices respected.
 20. Every resident has the right to participate in the Residents' Council.
 21. Every resident has the right to meet privately with his or her spouse or another person in a room that assures privacy.

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Residents Bill of Rights

22. Every resident has the right to share a room with another resident according to their mutual wishes, if appropriate accommodation is available.
23. Every resident has the right to pursue social, cultural, religious, spiritual and other interests, to develop his or her potential and to be given reasonable assistance by the licensee to pursue these interests and to develop his or her potential.
24. Every resident has the right to be informed in writing of any law, rule or policy affecting services provided to the resident and of the procedures for initiating complaints.
25. Every resident has the right to manage his or her own financial affairs unless the resident lacks the legal capacity to do so.
26. Every resident has the right to be given access to protected outdoor areas in order to enjoy outdoor activity unless the physical setting makes this impossible.
27. Every resident has the right to have any friend, family member, or other person of importance to the resident attend any meeting with the licensee or the staff of the home. 2007, c. 8, s. 3 (1).

Long-Term Care Homes Act 2007

At the completion of this session, participants will understand:

- Prevention of Abuse and Neglect
 - Duty to Protect
 - Policy to promote Zero Tolerance
- Reporting (Internal Home and MOHLTC) of Abuse and Neglect
 - Whistle-blower Protection
 - Critical Incident Reporting

Prevention of Abuse and Neglect (Duty to Protect Residents)

- Our Home is committed to providing a safe and supportive environment in which all residents, regardless of their cognitive ability, are treated with dignity and respect.
- It is the responsibility of all staff members and contractors to ensure the safety of the residents entrusted to our care.
- Abuse and Neglect of residents are not tolerated.

Promoting Zero Tolerance of Abuse and Neglect of Residents

Policy Statement

The home is committed **to a zero tolerance** of abuse or neglect of its residents.

Promoting Zero Tolerance of Abuse and Neglect of Residents

Procedures that support the implementation of the policy of Zero Tolerance of Abuse and Neglect include:

- education and training on the policy of Zero Tolerance of Abuse and Neglect of residents within a Home
- reporting and notification obligations of a Home
- actions to be taken according to staff roles and responsibilities when there has been an incident or an allegation of abuse or neglect of a resident
- evaluation of the effectiveness of the policy on **Zero Tolerance of Abuse and Neglect**

Definitions of Abuse and Neglect

- Defined within LTCHA 2007 and Regulation
- Important for residents, families, staff and board members to know and understand these legal definitions

Definitions

“abuse”

in relation to a resident, means physical, sexual, emotional, verbal or financial abuse, as defined in the regulations in each case

For the purposes of the definition of “abuse” in subsection 2(1) of the Act

Definitions

“emotional abuse”

- (a) any threatening, insulting, intimidating or humiliating gestures, actions, behaviour or remarks, including imposed social isolation, shunning, ignoring, lack of acknowledgement or infantilization that are performed by anyone other than a resident, or
- (b) any threatening or intimidating gestures, actions, behaviour or remarks by a resident that causes alarm or fear to another resident where the resident performing the gestures, actions, behaviour or remarks understands and appreciates their consequences.

Definitions

“financial abuse”

any misappropriation or misuse of a resident’s money or property

Definitions

- “**physical abuse**” means subject to subsection (2),
- (a) the use of physical force by anyone other than a resident that causes physical injury or pain
 - (b) administering or withholding a drug for an inappropriate purpose
 - (c) the use of physical force by a resident that causes physical injury to another resident

Definitions

“physical abuse” *does not include:*

the use of force that is appropriate to the provision of care or assisting a resident with activities of daily living, unless the force used is excessive in the circumstances (O. Reg. 79/10,s.2(2)).

Definitions

“sexual abuse”

- (a) any consensual or non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation that is directed towards a resident by a licensee or staff member, or
- (b) any non-consensual touching, behaviour or remarks of a sexual nature or sexual exploitation directed towards a resident by a person other than a licensee or staff member

Definitions

“sexual abuse” *does not include:*

- (a) touching, behaviour or remarks of a clinical nature that are appropriate to the provision of care or assisting a resident with activities of daily living; or
- (b) consensual touching, behaviour or remarks of a sexual nature between a resident and a licensee or staff member that is in the course of a sexual relationship that began before the resident was admitted to the long-term care home or before the licensee or staff member became a licensee or staff member (*O.Reg. 79/10 s.2(3)*)

Definitions

“verbal abuse”

- (a) any form of verbal communication of a threatening or intimidating nature or any form of verbal communication of a belittling or degrading nature which diminishes a resident’s sense of well-being, dignity or self-worth, that is made by anyone other than a resident, or
- (b) any form of verbal communication of a threatening or intimidating nature made by a resident that leads another resident to fear for his or her safety where the resident making the communication understands and appreciates its consequences (*O.Reg. 79/10 s.2(1)*)

Definitions

“Neglect”

the failure to provide a resident with the treatment, care, services or assistance required for health, safety or well-being, and includes inaction or a pattern of inaction that jeopardizes the health, safety or well-being of one or more residents (*O.Reg. 79/10 s.5*)

Staff Review: Abuse and Neglect Prevention and Reporting

[Each Home to shape the review they carry out with staff based on policies, audience for training, etc.]

- Review of case examples of situations that would meet the definitions of Abuse or Neglect
- Quiz of staff (definitions, policy on Zero Tolerance of Abuse and Neglect, policy on Minimizing Restraining, etc)
- Role play of staff (e.g. person receiving the report of abuse, person reporting the investigation of abuse to MOHLTC, etc)
- Ontario Network for the Prevention of Elder Abuse (ONPEA) staff training tools

Abuse and Neglect Reporting and Investigation

In accordance with the home's policies and procedures, the staff and/or a board member must report to the MOHLTC Director all alleged, suspected or witnessed incidents of:

- Abuse of a resident by anyone, and
- Neglect of a resident by a staff member of the Home

Abuse and Neglect Reporting and Investigation

There are two types of Procedures for Reporting suspected or witnessed abuse or neglect of a resident:

- 1) Within the Home (*enter home specific procedure*)
- 2) To the MOHLTC - mandatory reporting (*enter appendix D Table 1 of policy document*)
 - Incidents of abuse or neglect
 - Critical incidents

Abuse and Neglect Mandatory Reporting

- The decision about whether a MOHLTC report is required, will depend upon whether the circumstances of the alleged abuse or neglect meet the definitions outlined earlier.
- It is an offence under the LTCHA 2007 to discourage or suppress a mandatory report.

Abuse and Neglect Notifications

- If a resident is harmed, the Substitute Decision Maker (SDM), if any, or other person specified by the resident, must be notified immediately.
- And, the SDM must be notified within 12 hours of the Home becoming aware of any incident of abuse/neglect (alleged, suspected, witnessed, unwitnessed).

Abuse and Neglect Notifications

- Police – the police must be notified if an alleged, suspected or witnessed incident of abuse or neglect of a resident may constitute a criminal offence.
- Ministry of Labour - if a staff member has been physically injured (and/or hospitalized) as a result of the incident.

Source: MOHLTC Clarification of Mandatory and Critical Incident Reporting Requirements – August 4, 2010

Mandatory Reporting to MOHLTC

It is also mandatory to report to the MOHLTC Director the following:

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).

Reporting Complaints

Complaints Procedure:

- [insert home's procedure for initiating a complaint]
- [insert the home's information about "who" is to receive complaints within the home]
- [Insert the home's response to the person initiating the complaint within 10 business days of receipt of the complaint – this should include the including action taken, resolution, time frame and follow up action if required]
- [Insert the home's decision tree or diagram to illustrate procedures]

Whistle-blower Protection

Refer to OANHSS sample policies on Staff Reporting and Whistle-blower Protection posted on February 10, 2011. Also Refer to the OANHSS sample policy and procedure posted on February 18, 2011) on Zero Tolerance of Abuse and Neglect

Any staff or board member who is aware of or suspects any of the following, must report it as soon as possible:

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, 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.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure].

Individual receiving the report (Supervisor or Manager or Registered Nurse) of alleged abuse or neglect:

- Notify the Director of Care/Nursing (DOC/N) or designate immediately upon receipt of the report of alleged, witnessed or unwitnessed abuse or neglect, and initiate the investigation.

Consider:

- Whether the circumstances of the alleged abuse or neglect meet the definitions of Abuse in LTCHA
- Who is the source of the report
- Whether the incident of abuse involved a physical injury to a resident, another resident, or a staff member.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure, and their specific procedures].

Continued

Individual receiving the report of alleged abuse or neglect:

- Notify the police if the alleged, suspected or witnessed or unwitnessed incident of abuse or neglect of a resident may constitute a criminal offence. (*LTCHA Reg 79/10 s. 98*).
- Maintain the security and integrity of the physical evidence at the site of incident, including documenting this evidence appropriately.
- Co-ordinate with the Supervisor/Manager to fully investigate the incident, and complete the documentation of all known details of the reported incident.
- Notify SDM or person requested by the resident of the incident immediately, if the resident is harmed, or within 12 hours for any other abuse.

Procedures for Staff In Situations of Abuse and Neglect

Homes to customize this section according to the roles and responsibilities within their organizational structure, and their specific procedures].

Employee(s) who witnessed the alleged incident of resident abuse or neglect:

- Intervene, if safe to do so, or identify needed interventions (e.g. call 911) to ensure resident/staff safety.
- Report any witnessed, suspected, or alleged abuse to a supervisor or manager immediately.
- Document facts of the alleged or witnessed abuse or neglect as soon as possible.
- Maintain confidentiality.
- Cooperate fully with those responsible for the investigation.
- Report any retaliation actions experienced related to the reporting of abuse or neglect under this policy.
- Seek supportive counseling or resources if desired.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure, and their specific procedures].

Clinical Staff Responsible for Care of the Resident (s) (Registered Nurse) involved :

- Ensure safety of staff and resident(s) involved and all other residents under his/her care.
- Conduct head-to-toe physical assessment on the alleged victim and document findings if physical abuse is alleged.
- If necessary, contact physician or other health practitioners for further assessment, treatment and follow-up.
- Document factual information in appropriate locations (e.g. resident chart or record) according to policy
- Communicate the status of the resident health condition, further assessments arranged, and health investigation findings to the Manager/Administrator.
- Maintain confidentiality regarding the report and names of all those involved in the incident.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure, and their specific procedures].

Staff Member alleged to have caused the abuse or neglect:

- Document details as soon as possible including dates, times, witnesses.
- Cooperate fully with individuals or organizations responsible for the investigation. It is the right of anyone alleged of abuse or neglect to be accompanied by a co-worker (or union representative) during the investigatory meetings.
- Seek supportive counseling if desired.
- Maintain confidentiality regarding the report and names of all those involved in the incident.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure and their specific procedures].

Most Senior Manager Responsible or On-Duty or On- Call (e.g. Administrator, Director of Care):

- Ensure all of the necessary steps have been taken .
- Ensure an investigation and reporting process is underway by the staff person to whom the alleged abuse or neglect was reported.
- Notify relevant Professional College, if applicable.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure and their specific procedures].

Most Senior Manager Responsible or On-Duty or On- Call (e.g. Administrator, Director of Care):

- Determine the appropriate management action (s) to be taken as a result of the findings of investigation (e.g. education, discipline, policy revision, mandatory reporting to relevant professional college).
- Provide debriefs to the appropriate parties (e.g. Board Chair, MOHLTC Inspector, Senior Management Team, Staff Members) as necessary.
- Cooperate with police investigation (if applicable) in consultation with the Home's legal advisor.
- Maintain confidentiality regarding the report and names of all those involved in the incident.

Procedures for Staff In Situations of Abuse and Neglect

[Homes to customize this section according to the roles and responsibilities within their organizational structure and their specific procedures].

Administrator or Designate:

- Oversee the completion of all steps required by the policy and procedures, in order to manage the case to resolution.
- Ensure, if necessary, that the Board or Board Chair is informed.
- Oversee reporting to MOHLTC.
- Ensure that the Home's legal advisor has been contacted if circumstances require.
- Maintain the official copy of confidential investigatory file in their office in a secure manner.

Prevention/Elimination of Abuse or Neglect of Residents

- **Communication Approaches:** *see Ontario Network for the Prevention of Elder Abuse (ONPEA) training tools*
- **Restorative Care Approach:** *see sample Restorative Care policy posted December 17, 2010*
- **Responsive Behaviours Approaches:** *see sample Responsive Behaviours resources posted January 21, 2011*
- **Strategies for:**
 - Preventing resident abuse by caregivers
 - Recognizing and preventing caregiver stress
 - Preventing abuse by other residents
- **Whistle-blower Protection:** *see sample Whistle-blower Policy posted January 2011*

Discussion Topics

[Homes to insert their own topics – these are illustrative only]

- Specific approaches in relation to a particular “resident home area” for reporting abuse or neglect: e.g. focus on the resident, their needs, report to the supervisor, and support the gathering of the facts about the situation
- Ideas for increasing staff sensitivity and skills for identifying potential situations of abuse in relation to the definitions within LTCHA 2007.

Additional Resources

- **Ontario Network for the Prevention of Elder Abuse :**
[Prevention of Elder Abuse and Neglect – Policy and Program Lens](#)
published by the Ontario Seniors Secretariat
- **Ontario Network for the Prevention of Elder Abuse:**
[Training Tools](#) posted on the website
- **College of Nurses of Ontario:**
Abuse Prevention Program: [One is One Too Many](#)
- **Registered Nurses' Association of Ontario:**
[Promoting the Awareness of Elder Abuse in Long-Term Care](#)
- **Ontario Seniors` Secretariat :**
[Diversity in Action A Tool kit for Seniors Residential Settings](#)