



LTCHA Implementation
MEMBER SUPPORT PROJECT

LTCHA: Board Liability and Response

Presentation to Governors and
Senior Managers – January 20, 2011

Ontario Association of Non-Profit Homes & Services for Seniors

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Outline

- Board role in LTCHA context
- Director liability and standard of care
- Liability and standard of care under the LTCHA
- Board/director response to the LTCHA

The Board's Role

- Oversight and final decisions
- Corporate governance and maintenance
- Passing by-laws and policies
- Governance versus management

Board Responsibilities

- Governance and corporate maintenance
- Strategic planning and mission
- Executive supervision and evaluation
- Oversight of risk management, finance and audit
- Accountability and external relations
(Government, LHIN, sector & stakeholders)
- **Oversight of performance and operations**

Oversight of Quality and Operations

- Compliance with applicable laws
- Meeting terms and conditions of funding
- Performance and quality

Legislative Compliance

- Governing statute:
 - LTCHA and regulation
 - LTCHA related programs, e.g. LQIP
- Other statutes, including:
 - Occupational Health and Safety Act
 - Income Tax Act
 - Local Health System Integration Act
 - Commitment to the Future of Medicare Act

Funding Conditions

- Service Accountability Agreements
 - Compliance with applicable law
- LHIN orders and policy
- Other funding agreements and policies

Performance & Quality

- Required measures and programs
 - Mandatory quality improvement program (LTCHA and regulations)
 - Service Accountability Agreement conditions and indicators
- Internal benchmarks
- Reporting obligations (external)

Director's Obligations

- Directors stand in a fiduciary relationship with the corporation
- Directors must act in the best interests of the corporation
- Non-profit directors held to a subjective standard of care, unless a statute provides otherwise

Personal Liability

- Limited liability of directors
 - Directors are not personally liable for corporate obligations
- Exceptions: sources of personal liability
 - **Statutory liability**
 - Breach of fiduciary duty
 - Negligence/contract

Section 69 of LTCHA (New)

- Every director and officer must, “exercise the care, diligence and skill that a **reasonably prudent person** would exercise in comparable circumstances”
- And, “take such measures as necessary to ensure that a corporation complies with all requirements under this Act”
- Objective standard of care

Meeting the Standard

- Reasonable versus perfect decisions:
 - Not liable for errors of judgement
 - Follow a reasonable and informed process, and make prudent decisions
 - Continuous attention not required
- Relying on others
 - Directors may assume management and staff are performing duties honestly, unless there is evidence to the contrary
- ‘Well-informed’ versus detailed, expert knowledge

Managing Liability

- Immunity/modification for NFP directors
- Insurance and indemnity protection
- **Due diligence and good governance**
 - Full and candid discussion
 - Use of experts
 - Independence
 - Participation and preparation
- Board quality (orientation and recruitment)

LTCHA Governance Response

- Review board structure and processes
 - Committees
 - Agenda setting
 - Keeping of minutes
- Address board composition
- Information: what gets to the board and how
 - Standing items and staff reports
 - Use of experts
 - Tools (Compliance checklist, dashboard, etc.)
- Education, deliberation & discussion

Concluding Summary

- Board has oversight role for ensuring effective organizational/operational performance
- The board, and its members, must take steps to ensure the home complies with legislation, uses resources effectively, and maintains and improves the quality of its programs and services
- These may involve changes to board composition, structure, processes, committees and education
- Subject to exceptions, directors are not personally liable for corporate obligations, but must act diligently and with prudence

LTCHA Overview

RESIDENT CARE & SERVICES

- 1. Plans of care**
 - Admission care plan
 - Plan of care
- 2. Prevention of abuse and neglect**
 - Policy to promote zero tolerance
 - Police notification
- 3. Restraining**
 - Written policy to minimize
 - Prohibited devices
 - Conditions to include in plan of care
 - In-restraint requirements
 - Record keeping
 - (Transfer to secure unit)
- 4. Programs and services**
 - 8 resident care/services programs
 - 4 interdisciplinary programs
 - 3 misc programs
 - Infection control
 - Quality improvement
 - Satisfaction surveys
- 5. Admissions**
 - Specialized units
 - (Secure units)
- 6. Absences and discharge**
 - Restrictions on discharge

RESIDENT RIGHTS AND FINANCES

- 7. Resident bill of rights**
 - Enforcement of bill of rights
 - Mission statement
- 8. Resident and family councils**
 - Assistance
 - Non-interference
- 9. Information for residents**
 - Package of information
 - Posting of information
- 10. Resident charges**
 - Accommodation
 - Non-accommodation services
 - Monthly statement
- 11. Regulated documents**
 - Resident agreements
 - Written consent forms
 - Voidable agreements
 - Coercion prohibited
- 12. Trust accounts**
 - Accounts
 - Written policy
 - Authorizations

ADMINISTRATION AND OPERATIONS

- 13. Senior staff**
 - Positions
 - Qualifications
 - On-site requirements
- 14. Training and screening**
 - Criminal reference checks
 - Orientation
- 15. Complaints and Reports**
 - Written complaints procedure
 - Investigation and reports
 - Whistle-blower protection
 - Critical incidents
- 16. Drugs and pharmacy**
- 17. Compliance & enforcement**
- 18. Licensing**
 - Beds available for occupancy
 - Restriction on transfers
- 19. Records and reports**
 - On-site retention
- 20. Facility related requirements**
 - Design
 - Approval for construction
 - Emergency plans
- 21. Duties of directors and officers**

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