

Model Accommodation Agreement Package

Release Date: October 18, 2010

PACKAGE CONTENTS

1. Overview

2. Model Accommodation Agreement

3. Explanatory Notes

4. Certification Letter

MODEL ACCOMMODATION AGREEMENT: OVERVIEW

Introduction

As part of a project to support its members with the implementation of the *Long-Term Care Homes Act, 2007* (LTCHA) and its regulation, OANHSS is releasing a model accommodation agreement for the use of its members. The purpose of the model agreement is to support homes in complying with the LTCHA and to reduce the cost and burden on homes with respect to this compliance.

Members should carefully read this overview, the model agreement, and the explanatory notes. The LTCHA regulation requires a lawyer to certify an accommodation agreement. As explained below, a lawyer has certified the model agreement and homes may use the letter at the back of this package as evidence of certification. *However, if the home makes unpermitted changes to the model agreement and does not follow the instructions in the explanatory notes, it cannot treat the agreement as certified.*

Summary of Relevant Law

The LTCHA and Regulation 79/10 under the LTCHA (the “Regulation”) contain requirements relating to accommodation charges and agreements with residents. A summary of the relevant requirements is as follows:

1. A resident must pay basic accommodation charges, even if the home does not have an accommodation agreement with the resident.
2. To charge a resident for preferred accommodation, a home must have an accommodation agreement with the resident.
3. An accommodation agreement must be separate from an agreement for non-accommodation goods and services.
4. Accommodation agreements (and agreements for non-accommodation goods and services) must be in writing. The agreement must be with the resident or a person with authority to enter into an agreement on the resident’s behalf (which will most likely be a continuing power of attorney for property).
5. Homes must restrict the content of an accommodation agreement to the types of provisions set out in section 227 of the Regulation.
6. An accommodation agreement is a regulated document under section 80 of the LTCHA and section 227 of the Regulation. Section 80 requires a regulated document to comply with all requirements in the Regulation, and for a lawyer to certify this compliance.

Model Agreement is not OANHSS Legal or Professional Advice

As part of the LTCHA Implementation Member Support Project, OANHSS requested external legal counsel to prepare the model agreement in consultation with OANHSS members and staff. Although homes may use the model as a basis for their accommodation agreement, the model agreement or this package is not legal or professional advice from OANHSS, and members should not construe it as such. Members seeking advice about accommodation agreements should consult qualified legal counsel.

Certification of Accommodation Agreements

The LTCHA requires a regulated document to comply with all requirements in the Regulation. In addition, a lawyer must certify this compliance. The lawyer that prepared this model agreement certified that the model agreement complies with the Regulation. *Member homes may use the model agreement as a certified agreement provided that they do not change the agreement beyond inserting names and dates, and making other permissible changes.* The explanatory notes to the agreement set out permissible changes and the conditions homes must meet to consider the agreement certified. Formatting, such as changing the font size or margins, does not affect certification. (Refer to paragraph #10 of the explanatory notes for requirements for retaining certification).

Some homes may decide to adjust the model agreement to fit their own context and requirements. Homes that intend to do so should consult qualified legal counsel. Homes that adjust the model agreement will need a lawyer to certify that the altered agreement complies with the regulation.

OANHSS Member Support Project

The model agreement is part of a series of products that OANHSS is developing through its LTCHA Implementation Member Support Project. Members can find out more about the Project's delivery dates and scheduled teleconference meetings for members through the weekly OANHSS Executive Report. If members have questions or suggestions about the Project and the products in development, they can email Sue Lantz (slantz@oanhss.org) or Margaret Ringland (mringland@oanhss.org).

MODEL ACCOMMODATION AGREEMENT

IMPORTANT NOTE

Members should carefully review the Overview and Explanatory Notes to the Model Agreement, in particular the content relating to certification requirements (see second page of Overview and paragraph 10 of the Explanatory Notes).

MODEL ACCOMMODATION AGREEMENT

The start date of this agreement is [month, date], [year].

The agreement is between two parties:

[Name of home] (the “Home”)

AND

[Name of resident] (the “Resident”)

Background

1. This agreement relates to accommodation in a long-term care home.
2. The purpose of this agreement is to ensure the Resident understands his or her obligation to pay for accommodation in the Home. The Resident should also understand the Home’s obligations with respect to accommodation. More information relating to accommodation is in the Home’s package of information for residents.
3. *The Long-Term Care Homes Act, 2007* (the “LTCHA”) sets out requirements for agreements (such as this one) that relate to accommodation in homes. The LTCHA also sets out additional requirements that apply to accommodation in a home.

THE RESIDENT AND HOME AGREE AS FOLLOWS:

1. The Resident’s Obligation to Pay Accommodation Fees

- 1.1 The Home has different classes of accommodation that have different rates. The Ministry of Health and Long-Term Care (the “Ministry”) sets these rates. The LTCHA requires residents to pay homes the rate that is set for his or her class of accommodation.

- 1.2 The Resident has selected [**class of accommodation**]. The current rate for this accommodation is \$[**amount**] per day, or \$[**amount**] per month, subject to any rate reduction approved by the Ministry and in effect. This agreement will refer to these amounts as the “Accommodation Fee”. The Accommodation Fee will change from time to time. (See section 2 below with respect to changes to Accommodation Fees.)
- 1.3 The Resident agrees to pay the Home the Accommodation Fee. Accommodation Fees are payable monthly by the due date set by the Home.
- 1.4 Where the Resident no longer resides in the Home, all Accommodation Fees up to the Resident’s last day in the Home, including overdue amounts, become due.

2. Changes to Accommodation Fees

The Ministry adjusts accommodation rates from time to time. These adjustments will result in changes to the Accommodation Fees. The Home will provide the Resident with thirty (30) days written notice in advance of any increase in Accommodation Fees. The notice will indicate the amount of the increase and the current Accommodation Fees that the Resident must pay under this agreement.

3. Changes to class of accommodation

If the Resident’s class of accommodation changes, the Resident and Home will enter into a new agreement. This agreement will end, except for the Resident’s obligation to pay all Accommodation Fees owing under it up to the date of the change in accommodation.

4. Accommodation Fees and moving into the Home

- 4.1 Regulations under the LTCHA require the Resident to agree to move into the Home before noon of the fifth day following the day on which the Resident receives notice that accommodation is available in the Home (unless the Home agrees to a later time on the fifth day). The Resident must pay the Home Accommodation Fees for each of the five days, whether or not the Resident moves into the Home.
- 4.2 If the Resident moves into the Home on the day he or she receives notice that accommodation is available in the Home, the Resident must pay the Home the

Accommodation Fees for that day.

5. Accommodation Fees and discharge

The Resident must pay Accommodation Fees for the day of discharge. The Resident is not responsible for Accommodation Fees for the day of discharge in the following situations: (a) another long-term care home admits the Resident on the day of discharge, or (b) the Resident is in the short stay program in the Home.

6. Accommodation Fees during an Absence

A Resident who is absent from the Home must continue to pay Accommodation Fees for each day of his or her absence. The term “absence” includes a casual or vacation absence, and also an absence for medical or psychiatric care or assessment.

7. Interest on Overdue Amounts

- 7.1 The Home may charge a reasonable amount of interest for missed, incomplete or late payments. The current rate that the Home charges on overdue accounts is [#]%. The interest rate may change from time to time.
- 7.2 The Home cannot charge interest to a resident who has applied for a rate reduction until the Ministry approves the maximum amount that the Home may charge that resident for accommodation.

8. Rate Reduction for Basic Accommodation

If the Resident is in basic accommodation, he or she may request the Ministry for a reduction in the amount he or she pays for accommodation in the Home. The home’s package of information for residents explains the process for applying for rate reductions.

9. Monthly Statement

The Home will provide the Resident a monthly statement (by item) of his or her charges within thirty (30) days after the end of each month.

10. Goods and Services Included with Accommodation

Certain goods and services are included with basic or preferred accommodation. Information about these goods and services is set out in the Home’s package of information for residents.

SIGNATURES

The Resident’s signature shows that he or she has read the agreement and understands it, and agrees to the terms set out in it.

The parties signed two copies of this agreement on [month, date], [year].

[Name of Home]

Signature of administrator or authorized representative of the Home:

Print name:

Resident

Signature of Resident or Power of Attorney for Property/Guardian/Trustee:

Print name if Power of Attorney for Property/Guardian/Trustee:

Witness

Witness signature:

Print name:

SCHEDULE A

[**Note:** Including this schedule is optional. See paragraph 3 of the explanatory notes]

[**Content (Home may format as desired):**]

1. Accommodation available in the home (optional)
2. The class of accommodation the Resident selected and will occupy
3. The Resident's daily and monthly accommodation fees
4. Current interest rate set by the home for late payments (optional).

APPENDIX

[IMPORTANT: Including this appendix is optional. If a home includes the appendix, the appendix must be included in its entirety, without changes. See paragraph 8 of the explanatory notes.]

Goods and Services included with Accommodation

The following list provides information about the goods and services included in basic or preferred accommodation:

1. Nursing and personal care on a 24-hour basis, the administration of medications, and assistance with activities of daily living
2. Medical care and restorative care as available in the home
3. Certain medical supplies and nursing equipment that are necessary for the care of the resident
4. Supplies and equipment for personal hygiene and grooming
5. Certain equipment for the short-term use of the resident
6. Meal service, hydration and meals (three meals daily, snacks between meals and at bedtime), special and therapeutic diets, dietary supplements and devices enabling residents to eat with minimum assistance
7. Social, recreational, spiritual and physical activities and programs
8. Laundry, including labelling
9. Bedroom furnishings, bedding and linen
10. Cleaning and upkeep of accommodations
11. Maintenance of a trust account on the resident's behalf
12. Information package for residents
13. Prescription pharmaceutical preparations listed in the Ontario Drug Benefit Formulary (the government requires residents to pay a small co-payment)

14. Special preparations or medical devices that may be obtained from the Ontario Drug Benefit Program as interim non-formulary benefits
15. Insured devices, equipment, supplies and services that are available to the resident through certain programs, such as the Ontario Assistive Devices Program (the government covers part of this cost and residents must pay the rest)
16. Non-prescription drugs, medication and treatment products, and supplies obtained through Ontario Government Pharmaceutical and Medical Supply Services upon request

Note: The Resident (or Power of Attorney for Property/ Guardian/ Trustee on behalf of the Resident) may purchase additional goods and services from the Home under a separate agreement.

MODEL ACCOMMODATION AGREEMENT

EXPLANATORY NOTES

Release Date: October 18, 2010

OANHSS MODEL ACCOMMODATION AGREEMENT

EXPLANATORY NOTES

1. **Separate agreement & restricted content:** Section 227 of Regulation 79/10 under the *Long-Term Care Homes Act, 2007* (the “Regulation” and the “LTCHA”) requires an accommodation agreement to be separate from any other agreement, for example an agreement for non-accommodation goods and services. Section 227 also restricts the type of provisions that a home can include in an accommodation agreement.
2. **Page 2, Background:** This section is optional. Homes may delete it or shorten it. In most cases, a home’s information package for residents will include this information.
3. **Page 2, Section 1, class of accommodation and fees in schedule:** The model agreement sets out the class of accommodation and corresponding fee. Another option is to attach a schedule to the agreement. If the home uses a schedule approach, the home may replace subsection 1.2 as follows:

Schedule A forms part of this agreement and sets out the class of accommodation the Resident will receive in the Home and the rate set for that accommodation. This agreement will refer to the applicable rate as the “Accommodation Fee”. The Accommodation Fee will change from time to time. (See Section 2 below with respect to changes in Accommodation Fees.)

The home may then attach Schedule A to the back of the agreement. Schedule A sets out the following:

- A. Accommodation available in the home (optional);
 - B. The class of accommodation the Resident selected and will occupy;
 - C. The Resident’s daily and monthly accommodation fees; and
 - D. Current interest rate set by the home for late payments (optional).
4. **Page 3, Section 1, failure to pay preferred rate:** The home may choose to include the following optional clause in section 1, as a new subsection 1.5:

Failure of the Resident to pay the preferred accommodation rate may result in his or her transfer to basic accommodation.

5. **Page 3, Section 2, changes to fees or accommodation with schedule approach:** If the home is using a Schedule A, it may revise section 2 by adding a final sentence as follows:

Where there is a rate adjustment, the Home will attach a new Schedule A to this agreement that sets out the current Accommodation Fees that the Resident must pay to the Home under this agreement.

6. **Page 3, Section 3, Changes to Class of Accommodation:** Where a resident transfers from one class to another class of accommodation it may be prudent to enter into a new agreement. However, if a home is using Schedule A, the home can amend the schedule to reflect the change. Homes using this approach should delete section 3 and replace it with the following:

Where the Resident changes from one class of accommodation to another, the Home will attach a new Schedule A to this agreement to reflect the change. The Resident's obligation to pay all accommodation fees that applied to his or her previous class of accommodation remain in effect, despite any change to Schedule A.

7. **Page 4, Section 7, current interest rate on overdue accounts.** Homes may charge interest on overdue accounts at their discretion. Homes that plan to include the current or new interest rate in the written notice of rate/accommodation fee increase may add the following optional wording to the end of subsection 7.1:

The Home will include the current rate of interest in the written notice that it sends the Resident with regard to changes in Accommodation Fees. (See Section 2 above with respect to changes in Accommodation Fees).

If a home is using Schedule A, and wants to indicate the current rate of interest in the Schedule, it can delete the second last sentence of subsection 7.1, replacing it with the following:

The current rate of interest on overdue accounts is set out in Schedule A.

8. **Page 5, Section 10, Goods and services included with accommodation:** Homes must provide certain goods and services to the Resident without charge in return for receiving accommodation fees and funding under the LTHCA. Section 78 of the LTCHA requires the package of information for residents to provide information about the goods and services a resident receives under basic or preferred accommodation without additional charge. As a supplement to the information package, a home may choose to include with the agreement the appendix setting out the list of goods and services. Including the appendix with the agreement is

optional. If the home wishes to include the appendix with the agreement, it must replace Section 10 with the following:

The Home must provide certain goods and services without charge under basic or preferred accommodation. Information about these goods and services is set out in an appendix to this agreement. The Home's package of information for residents also contains this information.

The home would then include the appendix that is at the back of the model agreement. **Important Note:** To treat the agreement as certified and include the appendix setting out goods and services, the home must include the appendix supplied with the model agreement in its entirety, without changes (aside from formatting). See paragraph #10 below for more information about certification.

9. **Page 5, Signatures:** The person signing on behalf of the home should have signing authority under the home's by-laws or signing protocols. Another staff member of the home may witness the signatures. The resident must sign the agreement, or a person authorized to enter into the agreement on behalf of the resident. This person will be one of the following vis-à-vis the resident:

- A. continuing power of attorney for property
- B. Guardian or trustee for property
- C. In rare cases, general power of attorney for property (which is not applicable where the resident or applicant is mentally incapable).

A guarantor is a different legal concept than an attorney for property, or a guardian or trustee. A guarantor is a person who agrees to be liable for the resident's debt or failure to make payment. As such, a guarantor is not a person authorized on the resident's behalf to enter into an agreement for accommodation charges. In addition, the Regulation restricts the content of an accommodation agreement to certain types of provisions. Homes that are considering including a guarantor provision and signature in the agreement should seek legal advice.

Important: A home cannot include a guarantor and treat the model agreement as certified.

10. **Certification:** An accommodation agreement is a regulated document under section 80 of the LTCHA and section 227 of the Regulation. Section 80 requires a regulated document to comply with all requirements in the Regulation, and for a lawyer to certify this compliance. A lawyer has certified that the model

accommodation agreement complies with the Regulation. A letter providing evidence of certification is included with this package.

Terms of Certification

A home may use the model agreement as a certified accommodation agreement subject to the condition that the home restricts any changes to the model agreement, or use of its components, to the following:

- A. Insertion of the home's corporate name and resident name (or the name of a person authorized to enter into the agreement on behalf of the resident).
- B. Insertion of accommodation fees payable by the resident and the resident's class of accommodation.
- C. Use of optional wording in accordance with the explanatory notes above.
- D. Use of Schedule A in accordance with the explanatory notes (see paragraph 3 above) and any notes and instructions in the model agreement.
- E. Use of the Appendix, "Goods and Services Included with Accommodation" without changes (aside from formatting) and in its entirety (see paragraph 8 above).

Changes to format or font, deleting square bracketed notes on the model agreement, or use of the home's logo, do not affect certification.

IF THE HOME DOES NOT MEET THE REQUIREMENTS IN PARAGRAPH 10, IT CANNOT TREAT THE ACCOMMODATION AGREEMENT AS CERTIFIED AND THE HOME WILL NEED TO HAVE A LAWYER CERTIFY THAT THE HOME'S AGREEMENT COMPLIES WITH THE REGULATION.

MODEL ACCOMMODATION AGREEMENT

CERTIFICATION LETTER

Release Date: October 18, 2010

John Risk, LL.B.

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October 18, 2010

Ms. Donna Rubin
Chief Executive Officer
Ontario Association of Non-Profit Homes and Services for Seniors
7050 Weston Road, Suite 700
Woodbridge, Ontario, L4L 8G7

Re: Certification of Model Accommodation Agreement

Dear Ms. Rubin,

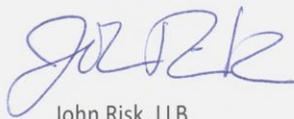
This letter relates to the model accommodation agreement I prepared for the LTCHA Implementation Member Support Project. The letter's purpose is to provide evidence of legal certification for those OANHSS members who decide to adopt the model and use it as a resident accommodation agreement under the *Long-Term Care Homes Act, 2007* ("LTCHA") and regulation.

The model agreement is part of package OANHSS released to members today. The package also includes an overview and explanatory notes to the agreement.

I certify that the model agreement (release date October 18, 2010) complies with Ontario Regulation 79/10 under the LTCHA. OANHSS members may consider the model agreement as certified, subject to their strict adherence to the instructions and conditions for certification set out in the explanatory notes accompanying the model agreement. These instructions and conditions are set out in paragraph 10 (page 4 & 5) of the explanatory notes. The overview to the model agreement also includes information about certification.

You have my permission to distribute this letter to OANHSS members. I expect member homes will want to keep a copy of this letter for their files as evidence of certification.

Yours sincerely,



John Risk, LLB