

Frequently Asked Questions Document – Release date: October 22, 2010

Model Accommodation Agreement for Long-Term Care Homes

Introduction

Please note that these questions and answers are designed to accompany the Model Agreement Package released on October 18, 2010.

This document provides answers from external legal counsel for OANHSS to questions raised by OANHSS members during teleconferences, e-mails and discussion at the Project Advisory Committee meetings. The questions may not be exactly as submitted by members. The topics, however, have either been addressed within this document, or in the body of the Model Accommodation Agreement itself and the Explanatory Notes included in the October 18, 2010 Model Accommodation Agreement Package.

Although homes may use the answers as references in the use of the agreement, members should not construe this as legal or professional advice from OANHSS. Members seeking further advice about the model accommodation agreements should consult qualified legal counsel.

1. Who should homes authorize to sign the accommodation agreement? Can the admission clerk sign on behalf of the home?

The accommodation is a legal agreement that binds the home. The person signing on behalf of the home should have the authority to bind the home to a legal agreement. This person should have signing authority for legal agreements under the home's by-laws or signing protocols. The person signing the agreement on behalf of the home may sign the agreement in advance and does not have to be present when the resident (or authorized representative) signs the agreement. See note #9.

2. Can a staff member of the home who is not signing the agreement act as a witness?

Another staff member of the home may witness the resident's (or authorized representative's) signature. This staff member does not have to witness the signature of the person signing on behalf of the home, if that person is signing the agreement before the resident signs it.

3. Please provide clarification as to when the home can start charging a resident for accommodation

Refer to section 4 of the agreement and section 185 of the LTCHA regulation. Before the CCAC authorizes admission, an applicant must agree with the home to move into the home on the fifth day following the day on which he or she is informed that accommodation is available in the home. The applicant must pay accommodation charges for those five days. If the resident moves into the home on the day he or she is informed that accommodation is available, the resident must pay accommodation charges for that day. In summary, the home will either, (a) charge the applicant/resident starting the day after the resident is informed that accommodation is available, or (b) for the day that the resident is informed that accommodation is available, if the resident moves into the home on that day.

4. We have concerns that the appendix setting out goods and services included with accommodation may create tax issues if it is unclear whether the Ministry funds these items. Any comment?

Use of the appendix is optional. See note #8.

5. What should a home do if the Public Guardian and Trustee (PGT) will not sign the agreement?

A resident must pay basic accommodation fees, even if there is no accommodation agreement in place. It is unlikely that the PGT would fail to ensure payment on behalf of the resident. In the unlikely case that the resident is selecting preferred accommodation, the home should explain to the PGT that under the LTCHA the home cannot charge the resident for preferred accommodation without an agreement in place, and as a result the home may not offer the resident preferred accommodation. The home should keep in mind that section 83 of the LTCHA requires the home to ensure that the applicant or resident (or authorized

representative) is not led to believe, or not threatened, that failure to sign an agreement will result in discharge or refusal of admission.

6. With regard to rate reductions, when a resident is from another facility the home must subtract one day from discharge. The agreement states that a resident must pay from the time he or she accepts the room. Does this result in an extra charge to the resident?

There will not be an extra charge because where a resident transfers to another home, and the other home admits the resident on the day of discharge, the home that the resident transfers from does not charge the resident for the day of discharge. See section 5 of the agreement and section 256 of the LTCHA regulation.

7. The agreement has a spot for the home to enter the accommodation rate. What should the home enter into this spot if the resident will receive a rate reduction?

If the home does not know the amount of rate reduction, it should enter the current rate for basic accommodation. The agreement now states that the rate is, "subject to any rate reduction approved by the Ministry and in effect" See subsection 1.2 of the agreement."

8. The home uses the Ministry letter to provide thirty days notice of a rate increase. Is this enough time to cover people on rate reductions?

Generally the LTCHA regulation requires homes to provide thirty days written notice of an increase. There are certain exceptions to this rule for residents on rate reductions. See section 259 of the LTCHA regulation.

9. To meet the thirty day requirement for notice of a rate increase, the home uses the Ministry letter. The home does not send out individual letters. Any comment?

The thirty day notice period is a requirement in the LTCHA regulations. Section 259 of the regulation requires the home to provide at least thirty days written notice of an increase to accommodation fees and the amount of the increase. The model agreement provides two options to meet this requirement – see section 2 of the agreement and note #5.

10. Is OANHSS releasing a sample agreement for resident charges for goods and services not relating to accommodation?

Yes. This package will be released during the first week of November 2010.

11. Does use of optional clauses, including the clause relating to the failure to pay preferred rates, affect certification?

No. See note #10.

12. What happens if the resident refuses to sign the accommodation agreement?

A resident must pay basic accommodation fees, even if there is no accommodation agreement in place. If the resident is selecting preferred accommodation, the home should explain that under the LTCHA, the home cannot charge the resident for preferred accommodation without an agreement in place, and as a result the home may not offer the resident preferred accommodation. **Important:** Section 83 of the LTCHA requires the home to ensure that the applicant or resident (or authorized representative) is not led to believe, or not threatened, that failure to sign an agreement will result in discharge or refusal of admission.

13. Must the home charge interest on overdue accounts?

No. Charging interest is at the home's discretion.

14. When the Ministry changes accommodation rates, do residents have to sign a new agreement?

No, but the home must provide written notice of the increase. This notice should provide the current rate that the resident must pay. If the home is using a schedule to indicate the current rate, the home would attach a new schedule to the agreement. See section 2 of the agreement and note #2.

15. What happens if the home does not have all the accommodation agreements signed by January 1, 2011?

Starting on January 1, 2011, any accommodation agreement that the home presents to a resident must comply with the requirements in section 227 of the LTCHA regulation. The home does not have to replace existing accommodation agreements (for current residents) with new agreements unless some event triggers the signing of a new agreement, for example a change in class of accommodation. See slide on page 9 of the presentation, "Model Accommodation Agreement: Context and Content Presentation" from the Member Forum Teleconference Meeting on October 7, 2010.

16. Can the home use class of accommodation to refer to the accommodation rate instead of referring to a difference in accommodation?

No. To treat the agreement as certified the home should indicate the accommodation rate as set out in subsection 1.2, or in a schedule (see note #3). In your situation, it appears that you would simply have residents in the same class of accommodation paying different rates.

17. If the Ministry processes rate reduction applications annually, does the home have to wait a year before charging interest on overdue amounts for residents who apply for a rate reduction?

Section 254 of the LTCHA regulation states that, "Where a resident has applied for a reduction under section 253, a licensee of a long-term care home may not charge interest for missed, incomplete or late payments, until the Director has approved the maximum amount that may be charged for accommodation under that section." If you have concerns or questions about how and when to assess and charge interest in this context, you should seek legal or accounting advice. This may also be an issue to address with the Ministry.

18. Can the home use a resident's comfort allowance to pay arrears?

Residents who qualify for a high level of rate reduction retain an allowance from their income source. This allowance is part of a resident's income. The home cannot "use" or obtain resident money without the resident's consent or, in the context of trust funds, written authorization.

19. Can we add additional items to this list in the Goods and Services Appendix, and still consider the agreement certified?

No. Homes cannot treat the agreement as certified if they add items to the appendix, or change the appendix. Adding items will require a lawyer to provide certification. Member homes can, however, choose to explain the additional services included with accommodation in more detail (including adding items) within their full Package of Information for Residents.

20. Can homes stipulate that changes to accommodation styles/class must be made in writing by residents?

Homes cannot add this stipulation and treat the model agreement as certified. The LTCHA regulation restricts the content of an accommodation agreement to certain types of provisions. Section 227 of the regulation governs the content of accommodation agreements and does not explicitly refer to this type of provision as a type of provision that a licensee can include in an accommodation agreement. Homes adding such a stipulation will require a lawyer to provide certification.

21. What does certification look like? How can homes demonstrate to the Ministry that legal certification has been obtained?

There is a certification letter in the Model Accommodation Agreement Package (Release Date: October 18, 2010). See note #10.

22. The wording of the agreement specifies only when the home discharges the resident. What about situations where a resident chooses to discharge themselves (e.g. where client is on medical leave and then does not come back)?

Ultimately the home discharges the resident. See sections 145 and 146 of the LTCHA regulation.

23. How do we handle the situations where the resident does not have a Continuing Power of Attorney? Can we use a guarantor in these cases?

The agreement must be with the resident or a person authorized to enter into such an agreement on the resident's behalf. This representative will be a person with power of attorney for property, or a trustee or guardian for property. A guarantor is a different legal concept. It is a person who agrees to be liable for the resident's debt or failure to make payment and as such is not a person authorized to enter into the agreement. In addition, the LTCHA regulation restricts the content of an accommodation agreement to certain types of provisions. Homes that are considering including a guarantor in the agreement should seek legal advice. A home cannot include or add a guarantor and treat the model agreement as certified. See note #9.

24. Can the home use the rate reduction application currently in use along with this agreement, and would a rate reduction be considered a "change of rate?"

Your rate reduction form may not be current. The Ministry is providing further information in the coming weeks regarding rate reduction applications, including two webcasts planned for October.

25. Can the home include additional clauses regarding limitation of liability and indemnification into the accommodation agreement?

No, The LTCHA regulation restricts the content of an accommodation agreement to certain types of provisions. Homes that are considering including such clauses in the agreement should seek legal advice. Section 227 of the regulation governs the content of accommodation agreements. This section does not explicitly list limitation of liability or indemnity as a type of provision that a licensee can include in an accommodation agreement. A home cannot include or add such clauses and treat the model agreement as certified.