LEGISLATION INTRODUCES CHANGES TO ADMISSION AND DISCHARGE PROCESS FOR NURSING HOMES AND HOMES FOR THE AGED

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As of May 1, 2002, new regulations were introduced that change both the admission process and the discharge process for long-term care facilities. Procedures and priorities governing waiting lists have been changed. There are new rules governing when a resident may be discharged from a facility. Some of the changes are beneficial to applicants, while others are cause for concern. In what follows we highlight significant changes.

1. **An applicant may <u>not</u> be placed on more than three long-term care facility waiting lists.**

Applicants for a bed in a long-term care facility must apply to a Community Care Access Centre (CCAC). Applicants are asked to indicate which homes they are willing to go to when a bed becomes available. Sometimes an applicant may be asked to list several homes, when in fact they really are interested in only two or three. The new regulation ensures that after May 1st, no one may legally be asked to list more than three choices. This should guarantee some uniformity throughout Ontario, where at present there is none.

Those already on more than three waiting lists prior to May 1, 2002, may remain on those lists if they so choose. However, there may be good reason to reduce the list of choices to three (please see the discussion under item 2 below). If an applicant on more than three waiting lists wants to add a home to the list of choices, he or she can only do so by agreeing to reduce the total number of choices to three.

2. **There is now a penalty if an applicant refuses to go to a facility that is one of the applicant's choices when a bed becomes available. In these circumstances, the applicant is removed from all waiting lists. The applicant may not get back on the waiting lists for 24 weeks.**

Applicants for long-term care living in the community (not in a hospital) and those in long-term care facilities waiting to transfer to another facility will now be on waiting lists for one, two, or three facilities. If a bed in one of the facilities is offered, and the applicant refuses to take it, the applicant may now be taken off all waiting lists and placed on a special "refusal list". Once on the refusal list, the applicant may have to wait 24 weeks before being put back on waiting lists.

There are some important exceptions to this that are discussed below. However, the risk of being placed on the refusal list highlights the importance of making sure that applicants are serious about the facilities they name. A facility should not be named unless the applicant intends to go there if a bed is offered. If there is a change of mind about a facility on an applicant's list, the CCAC should be notified immediately.

An applicant will not be placed on the "refusal list" if they have experienced an injury or suffer from a short-term illness which prevents them from moving into the facility, or the injury or illness would make the move detrimental to their health. These are the only exceptions to being placed on the "refusal list" for refusing to go to one of the wait-listed facilities.

Once on the refusal list, an applicant must wait 24 weeks before being returned to the waiting lists unless "there has been a deterioration in the person's condition or circumstances". The meaning of this phrase is not elaborated upon in the regulations. However, it is clear that there are situations where an applicant can be placed back on the waiting lists even if they have refused one of their original three choices if something in their situation changes.

The "refusal list" penalty does not apply to hospital-based applicants and does not apply to other applicants who refuse an offer prior to May 1, 2002.

3. There is a new Health Assessment Form that replaces the Medical Report. This Form may now be signed by either a registered nurse or a doctor.

This is one of a number of forms that must be completed in applying for a bed in a long-term care facility. The new Health Assessment Form includes a section for "Diagnosis", one for "History", and one for "Current medications and diet" which includes "Current treatments required", among other items. Under the new regulations, this Form may be completed and signed by a physician or a registered nurse . In contrast, the old Medical Report which it replaces could only be signed by a physician. While there may be no cause for concern in permitting nurse practitioners with special training to complete this Form, there is concern that other registered nurses do not have the expertise to diagnose applicants. Perhaps all that is intended is that registered nurses may fill in the forms after they obtain the relevant information from a physician. If this is what is intended, it should be clarified.

4. Beds may now be held for an applicant for up to 5 days (up from 3 days).

There are many legitimate reasons why an applicant offered a bed in a facility may not be able to move in immediately. The person helping them may be ill or out of town and not be available to help with the move. This fact has been acknowledged by extending the number of days a bed may be held from three to five.

If an applicant moves in the next day after the offer, they pay only the accommodation rate from the day they move in. If the applicant moves in the second day after the offer, they pay only the accommodation rate from the first day after the offer. If the applicant moves in the 3rd, 4th, or 5th day after the offer, they pay both the accommodation rate beginning on the first day after the offer, as well as a bed-holding fee (now $53 per day). The bed-holding fee is for each day the bed is held from the second day after the offer until but not including the day the

applicant moves in. If the applicant does not move in, they pay the accommodation rate for five days and the bed holding fee for four days.

5. There are many new rules as to who on waiting lists has priority.

There are not only new rules with respect to who has priority, new classifications have been introduced. All applicants already on waiting lists on May 1st,will be reclassified according to the new criteria. There are too many technical changes to discuss them all here. However, the intention is to end up with a priority scheme that more nearly matches the applicant's level of need for a long-term care bed with the applicant's position on the waiting list.

6. To facilitate the admission process nursing homes and homes for the aged must report all bed vacancies to Community Care Access Centres within 24 hours.

This requirement ensures that CCACs know about all vacancies immediately in order to more quickly alert people on waiting lists to the availability of a bed. It also makes it very difficult for facilities to subvert the CCAC admission process by making private placement arrangements that the CCAC is unaware of. The law is very clear that all placements must go through the CCAC. The CCAC must both determine who is eligible for long-term care and must authorize all placements.

7. Community Care Access Centres must now inform all applicants about retirement homes and other services.

CCACs now have an obligation to inform all applicants about retirement homes and other alternatives such as supportive housing. While this information may be of value to someone who is not sure whether they want to enter a long-term care facility or not, it should not be used to persuade a person who is eligible for long-term care that they go elsewhere. Retirement homes are not long-term care facilities. There are significant differences between the two types of facilities and CCACs should make applicants aware of these differences.

Cost is one of the main differences. Many cannot afford a retirement home if they need to also pay for extra care. When CCACs gather information from an applicant for long-term care, they are not entitled to financial information since long-term care placement has nothing to do with the applicant's financial position. However, CCACs may come to realize that an applicant is low income or that they are financially well off. Such information should not be used as the basis for persuading an applicant to go to a retirement home instead of a long-term care facility, if the applicant is eligible for long-term care. To do so is to create a two-tier health care system.

Applicants must also be told that with retirement homes everything is a matter of contract. Unlike long-term care facilities, the home does not assume responsibility for meeting changing care needs by accepting an applicant. If health care needs increase, the tenant will likely have to pay more for services. On the other hand, long-term care facilities are under a legal obligation to meet changing care needs at no additional cost to the resident.

Applicants must also be told that those who live in retirement homes are tenants, with all

that implies, whereas they are not tenants in long-term care facilities. The *Tenant Protection Act* applies to retirement homes whereas it does not apply to nursing homes and homes for the aged. The Act ensures that those living in retirement homes have all the rights of ordinary tenants, as well as some special rights such as the right to a written tenancy agreement and an information package, as well as the right to end the tenancy with only 30 days notice.

Aside from pointing out general differences between retirement homes and long-term care facilities, this new obligation imposed by regulation may be interpreted as requiring CCACs to inform applicants of what homes are in the relevant area. The Ontario Residential Care Association (ORCA) is a voluntary trade association of retirement homes. Member homes must pay a fee and meet certain association standards to become members. However, not all retirement homes are members of ORCA. Perhaps as many as half of the homes in Ontario are not members, although no one is certain as to the exact numbers. CCACs must remember this when giving applicants information about retirement homes. It is not enough to give someone the ORCA phone number. They must be given the full picture, including some general information as to how to contact other homes.

8. Residents may now be discharged from a home if the home "cannot provide a sufficiently secure environment to ensure the safety of the resident or the safety of persons who come into contact with the resident".

Prior to May 1, 2002, a resident could only be discharged from a facility if the resident's care team informs the home that the resident's continuing care needs can no longer be met by the home and that other arrangements (such as hospitalization) have been made. This has been replaced by the provision that the resident may be discharged if the home "cannot provide a sufficiently secure environment to ensure the safety of the resident or the safety of persons who come into contact with the resident". This new provision refers to the concept of "safety" rather than "care needs of the resident" "Safety" appears to be a broader concept that "care needs", and there is clear reference here to the safety of persons other than the resident. It remains to be seen how this will be interpreted.

9. There are new rules governing closures of long-term care facilities.

A facility that plans to close, whether permanently or temporarily, must now notify all parties at least 16 weeks in advance, instead of 8 weeks as before. The Ministry of Health and Long-Term Care, the administrator of the home, the CCAC placement coordinator for the home, and the resident or their substitute decision maker must be notified. There are now new rules about how to classify residents in such facilities for the purposes of priority and waiting lists.

The new regulations take effect on May 1, 2002. Anyone who is concerned about the implications for their own situation may contact the Advocacy Centre for the Elderly at (416) 598-2656.

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