

COMPLAINTS IN LONG-TERM CARE HOMES

Jane E. Meadus, B.A., LL.B.
Barrister & Solicitor
Institutional Advocate

BACKGROUND

As Institutional Advocate at the Advocacy Centre for the Elderly (ACE), I receive many telephone calls from residents and families of residents of long-term care homes who have complaints about care and other issues in long-term care homes but are unsure about what to do. This paper is intended to provide the reader with suggestions as to how to go about making effective complaints.

COMPLAINTS IN GENERAL

Even in the best homes, there are bound to be complaints. If residents or their loved ones know how to complain and have their issues resolved, they are more likely to be happy with the care at the home than if they have difficulties in resolving the problem.

Upon admission to a long-term care home, a person or their substitute decision-maker must be provided with the *Residents' Bill of Rights*. This document is part of the law governing long-term care homes. Examples of some of the rights include the right to: be treated with courtesy and respect; meet and talk with people; participate on the Residents' Council; and live in a safe and clean environment. If these rights are not upheld, the resident or their representative is entitled to complain about the problem. One should be aware, however, that residents of long-term care homes have other rights besides those listed in the *Residents' Bill of Rights*. Just because a person enters a home does not mean that they lose the rights they would have living in the community.

At the time of admission, a person or their substitute decision-maker must also receive copies of the procedures for making a complaint about the maintenance or operation of the home, the conduct of its staff, or the treatment or care received by the resident.

COMPLAINING WITHIN THE HOME

The complaint procedures provided to the resident will likely identify a specific process to follow. This will usually consist of a list of specific staff members to whom complaints are to be made in specific circumstances. For example, if it is a nursing problem, the resident may be asked to initially direct their complaint to the staff person involved, then the head nurse, then the director of care, and finally, the administrator. If the complaint

is about meals, for example, the resident might be asked to first speak to the head of dietary services before the director of care or administrator of the home.

If a complaint is made to the administrator of the long-term care home, one should do it in writing. If a written complaint is received by the administrator, they must respond to the complaint within ten days of receipt, indicating a possible plan of action. All written complaints must also be sent by the administrator to the Compliance Adviser at the Ministry of Health and Long-Term Care, and contain a description of the follow-up action taken. Compliance Advisers are registered nurses whose duties include conducting annual home inspections and investigating individual complaints.

COMPLAINTS TO THE MINISTRY OF HEALTH AND LONG-TERM CARE

If a resident or representative is unhappy with the response of the home, or for other reasons does not wish to make the complaint directly to the home, they may complain to the Compliance Adviser at the Ministry of Health and Long-Term Care. The home's complaint procedure must include the address and telephone number of the service area office.

Residents and their representatives may be told that they **must** follow the home's procedure in making a complaint and may not complain directly to the Ministry. **THIS IS NOT TRUE.** In some cases, the resident may feel that a complaint should be made directly to the Ministry, without going through the internal complaint procedure. This option is always open to the person. However, we do suggest that for more minor incidents, that one try using the internal mechanism to resolve the issue before contacting the Ministry.

To make a complaint to the Ministry, residents or their representatives can send a written letter of complaint, by mail, to the following address: Ministry of Health and Long-Term Care, Performance Improvement and Compliance Branch, 55 St. Clair Avenue West, 8th Floor, Toronto, Ontario, M4V 2Y7.

The other method of making a complaint to the Ministry is to call the toll-free Long-Term Care ACTION Line at 1-866-434-0144 which is open 7 days a week, from 8:30 a.m. to 7:00 p.m. An agent will speak to the caller, assess the urgency of the situation and forward the information to a Compliance Adviser who will respond within two business days.

An investigation will start within 20 working days of the complaint being received while complaints of an urgent nature should be investigated immediately. The Compliance Adviser will usually attend at the home to interview and observe staff and to review records. She may also interview the complainant and/or resident involved. This does not, however, always occur, so the complaint should be as detailed as possible to ensure that the Compliance Adviser has all the important information.

If the complaint is about something other than nursing or care, it may be directed to someone else at the Ministry other than the Compliance Adviser. For example, dietary or environmental issues may be investigated by those in the Ministry with expertise in these areas. Financial issues should be reviewed by financial officers at the Ministry with expertise in long-term care.

All complaints made to the Ministry **must** be investigated. However, there is no legal requirement for the Ministry to provide a written response to the complainant, so it is suggested that one always request a response be made in writing when making the complaint.

If the resident or their representative does not receive a response to their complaint, they may choose to follow-up with either the Compliance Adviser or the administrator of the home. If the complaint concerns the resident who lodged the complaint or general issues in the home, the resident is entitled to information about its outcome. However, the Compliance Adviser or the administrator may require the resident to make a freedom of information request to the provincial government for this information. If the complaint deals with other residents, the resident or their representative will not be entitled to the information due to reasons of confidentiality.

If residents or their representatives are dissatisfied with the way in which the Compliance Adviser or the Ministry deals with their issue, a complaint can be made to the Ombudsman of Ontario. Although the Ombudsman does not have jurisdiction over hospitals and long-term care homes, the Ombudsman does have authority over government services and the actions of government employees. The Ombudsman's job is to ensure government accountability through effective oversight of government services by investigating complaints. Complaints can be made in a variety of ways, including by phone, mail or online. The phone number for the Ombudsman's office is 416-586-3485 or 1-800-263-1830 while the mailing address is Ombudsman Ontario, Bell Trinity Square, 483 Bay Street, 10th Floor, South Tower, Toronto, Ontario, M5G 2C9.

COMPLAINTS TO RESIDENTS' COUNCILS

Residents should also be aware that the Residents' Council is a good place to discuss complaints. Residents' Councils have legislated authority to review certain documentation of the home, such as financial information. They can also assist in bringing complaints to the attention of the home on an anonymous basis. Suggestions and complaints brought to the administrator in writing from the Residents' Council must be documented, investigated and responded to in writing by the administrator within 21 days of receipt.

COMPLAINTS TO FAMILY COUNCILS

More and more homes have active Family Councils. Although Family Councils currently do not have any authority specified in legislation (this will change once the *Long-Term Care Homes Act, 2007* is enacted), many homes view these Councils as having an important role in bringing issues to their attention. Complaints by family members are often brought to these Councils and then brought to the attention of the Administrator, who will treat them similarly to those brought by Resident's Councils.

COMPLAINTS TO GOVERNING BODIES

Complaints may also be brought to the governing body of the home, such as the board of directors, the owner of the home or municipalities. The contact for each governing body can be found on the Ministry of Health and Long-Term Care website under "Reports on Long-Term Care Homes". Go into the report for the specific home you are interested in and the information will be found under "Home Operator". As well, some homes have a management firm which is in charge of the actual day-to-day running of the home, and you may want to contact them when there are issues.

HOW TO PREPARE FOR A COMPLAINT

When a resident or their representative encounters problems in a home, there are certain steps they should take to better equip themselves for the complaint process.

Details of the incident should be written down, describing the problem and the involvement of third parties as thoroughly as possible. One should always record who, what and when they spoke to another person about the problem. Also, they should record attempts to contact individuals, even if unsuccessful. If there are injuries involved, take pictures where possible. This is very helpful, especially where a Compliance Adviser might be coming to investigate at a later date when the injuries have healed. One must always keep copies of all correspondence and other documentation.

Even if a resident or their representative is not planning to complain, one should keep track of any incidents of concern. All homes keep records of events so it is a good idea for the resident or family to do the same in order to capture their version of the incident. If someone wishes to complain in the future or to refer back to other incidents, it is easier to do if the individual has their own documentation. A good strategy is to keep a small diary in the bedside table of the resident where the resident, their family or visitors can make notes of any incidents that may occur or any observations that they may have. It is important to put the date and time of incident as well as the names of anyone involved, including staff members. (The *Residents' Bill of Rights* requires staff members to be identifiable: they should have name tags and provide their names if asked.)

COMPLAINTS ON BEHALF OF OTHER RESIDENTS

A difficult issue is complaints about the care of others. While happy with their own care, visitors and other residents may be concerned about the treatment of others in the home. Many homes discourage such complaints. However, one should be aware that the *Nursing Homes Act* contains the following **mandatory** reporting requirement of suspected harm:

A person other than a resident who has reasonable grounds to suspect that a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect shall forthwith report the suspicion and the information upon which it is based to the Director [complaints may also be made to the ACTION Line or the regional offices of the Ministry].

While this section does not appear in the legislation governing homes for the aged, it is treated the same by policy, and one can use this section to support such reporting to the Ministry.

COMPLAINTS TO THIRD PARTIES

One should be aware that there are other general avenues of complaint available to residents and representatives of families. Just because a person is in a long-term care home does not mean that they have lost other basic civic rights.

Police: If there is a suspected crime (such as assault or theft), one should contact the local police department. Residents and representatives may obtain legal assistance from either the private bar or a legal clinic to assist them with their complaint.

Political Representative: One can also contact the Member of Provincial Parliament for the riding in which the home is located for assistance. Contact with the municipal representative (such as a city councilor or alderman) may be particularly helpful where the issue involves a municipal home for the aged.

Ombudsman Ontario: If a complaint is made to the Ministry of Health and Long-Term Care but one is not happy with the response received, a complaint may be brought to the Ombudsman's office about the Ministry's actions. At this time, the Ombudsman does not have any authority to investigate the long-term care home itself.

Professional Colleges: If the complaint is about the action of a specific person who is a member of a professional college (for example, doctor, nurse, social worker), a complaint about that person can be brought to the College itself for investigation.

Information and Privacy Commissioner/Ontario: Where the issue deals with privacy or access to health information, one can contact the Office of the Information and Privacy Commissioner/Ontario. For example, if the resident's privacy was breached (the home gave personal information to a third party without consent), or if the home refused to allow the resident or their substitute decision-maker access to the resident's records, this office could be of assistance.

FEAR OF REPRISAL

Often, residents and families do not wish to make complaints, fearing reprisals from staff. It should be pointed out that the *Residents' Bill of Rights* does uphold the right of the resident or someone on their behalf to raise concerns and make complaints without fear of reprisal. It is recognized, however, that having such a right does not mean that it will be respected. While it is our experience that reprisals are rare, if they do occur, they should be reported immediately to the Ministry of Health and Long-Term Care.

Whether a resident wishes to complain is always a personal decision, as such fears may be justified. Where the issue is one where someone else believes there may have been harm to the resident, one must always be aware of the duty to report set out in the law (see the section called "Complaints on Behalf of Other Residents" above). However, when there is no such legal duty, it will be up to the individual to decide whether the act of making the complaint is worth the risk of perceived reprisals.

CONCLUSION

We encourage residents and their representatives to bring issues and complaints to the attention of staff at the long-term care home, the Ministry of Health and Long-Term Care, or other parties as appropriate, as soon as possible after they occur. If one does not bring problems to the attention of the authorities, the problem may never be fixed. By being proactive, the homes can be improved for not only an individual resident but all of the residents living there.