

## **LONG-TERM CARE FACILITY ADMISSION CONTRACTS: THE DESPERATE NEED FOR CONSUMER PROTECTION LEGISLATION**

Advocacy Centre for the Elderly  
2 Carlton Street  
Suite 701  
Toronto, Ontario  
M5B 1J3  
(416) 598-2656  
(416) 598-7924 (fax)

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### **BACKGROUND**

In 1990, the ACE Newsletter stated that the single best piece of advice for prospective residents of nursing homes who are asked to sign an admission contract is "to read the contract carefully and ask questions when in doubt". That is still good advice. In the seven years since that article was written, not much has changed for the better regarding admission contracts for those entering a nursing home or home for the aged. There still is no standard form contract that all homes must use. There is nothing new in legislation to protect the consumer (resident). And homes persist in asking residents to sign unfavourable contracts, some with illegal terms. For example, homes persist in attempting to make someone other than the resident responsible for payment, and clauses are included which say that a resident may be discharged in circumstances where the law is clear they cannot be. If there is anything new in 1997, it is that some of the admission contracts are worse now than they were in 1990.

### **ADMISSION CONTRACTS AND LEGISLATION**

There is very little in legislation which applies to admission contracts. The *Nursing Homes Act*, the *Homes for the Aged and Rest Homes Act*, and the *Charitable Institutions Act* have only one thing to say about them. The legislation deems there to be a contract between the home and the resident guaranteeing that the Resident's Bill of Rights applies. While the Bill of Rights is very important, there are many other contract issues for which consumer protection would be helpful. The Ministry of Health has published a *Long-Term Care Facilities Program Manual* which stipulates that facilities must prepare a written agreement to be signed by a resident which contains among other things, the Bill of Rights, the type and rate of accommodation, and the resident's obligations with respect to their responsibilities and payment. Facilities argue that this means residents must sign an admission contract. However, it is important to note that if a resident refuses to sign any agreement, facilities can do nothing.

## **A NEED FOR CONSUMER LEGISLATION**

There are powerful reasons why there should be consumer legislation to protect residents of long-term care facilities from signing admission contracts filled with illegal and unfavourable terms.

Residents are expected to know the law regarding long-term care facilities. But they do not. Most people living in Ontario have no idea what the Acts referred to above allow long-term care facilities to do. So most would not know an illegal term in an admission contract when they saw it. This might be said of many of Ontario's laws. People are not familiar with them. However, the situation of applicants for long-term care is importantly different from others and deserves special recognition.

Prospective residents of long-term care facilities are vulnerable. The applicant normally is frail and unwell, requiring both medical attention and personal care assistance. Such a person cannot be expected to shop around, ask questions, and query contract terms in the same way a well adult buying a backyard barbecue or automobile might be expected to do. If the applicant has a friend or relative who will act as an advocate, then they may be able to challenge the terms of a contract. But many applicants are not so fortunate, and some may even have relatives whose only interest is in getting them to the first available bed no matter what.

Prospective residents are made even more vulnerable by long delays in finding a suitable long-term care bed. Imagine if you will, that your old car has finally stopped running. When you go to the dealer for a new car, you are told that there is a one to three year waiting list, and that when your car is finally delivered you have 48 hours to accept it or you end up on another waiting list. When your car arrives, you are less likely to challenge some of the fine print in the contract put in front of you to sign, even if you have concerns. This is exactly the position of many elderly persons waiting for a long-term care bed. There are long waiting lists. When a bed finally is available, the last thing the applicant wants to do is jeopardize their chances for it by questioning contract terms. They become easy prey for unfavourable contract terms.

This is especially so since most applicants are working under false assumptions. They assume that a contract must be signed or the home will either not admit them, or if they have already moved into the home, they will be asked to leave. **Neither of these assumptions is true.** A long-term care facility cannot refuse to admit someone because they have not signed a contract, nor can they discharge someone for refusing to sign a contract. Legislation is very clear about these matters, although most people do not know this.

## **SOME TERMS TO WATCH OUT FOR IN ADMISSION CONTRACTS**

Applicants for long-term care beds should watch out for the following terms in admission contracts [paraphrased from actual contracts]:

**(1) "The resident agrees to pay the accommodation charge in accordance with prescribed rates as are varied by law from time to time. If the resident cannot pay the minimum rate, the family and/or substitute decision maker and/or representative agrees to pay the difference between the prescribed rate and what the resident can pay."**

There are a number of problems with this contract term. In the first place, if the resident cannot pay the minimum amount required by law, the law provides for special reductions in the rates. Residents must apply for these reductions, and in most cases they will receive them if they do not have sufficient monthly income. So there need not be an agreement to make up the difference between what the resident has available and what they must pay. This term leads one to believe that there has to be.

Secondly, long-term care facilities often try to convince an applicant to provide a guarantor for payment in case the resident defaults, and these are sometimes labelled "representatives" in the contract. Residents should know that they do not have to provide a guarantor for payment unless they want preferred accommodation (private or semi-private) and do not have sufficient income to pay for it. In other situations there is no need to provide a guarantor and generally speaking, residents should refuse to do so. A guarantor or representative can often undermine the resident's decision-making authority.

Finally, a contract cannot bind anyone who has not signed the contract. The above clause may be trying to bind a family member who has not signed. Many callers to ACE believe that a family member is on the hook for payment, even if the family member knows nothing about a contract and has never signed anything. The only time that a family member might have an obligation is if the resident has donated their power of attorney to them. If so, the family member has an obligation to pay the debts of the resident from the resident's money, not from their own money. The family member should sign cheques as "Power of Attorney".

**(2) "Where payment is not received, the home will have a lien on all monies held by the home on the resident's behalf."**

Long-term care facilities are required by law to maintain a trust account for every resident who would like to have one. Many residents find this useful as they are not physically capable of doing ordinary banking. The home is only entitled to withdraw money from the resident's trust account if authorized by the resident or where appropriate, the resident's substitute decision maker. The home cannot withdraw money to pay itself in the event that the resident fails to make a monthly payment unless it has been authorized to do so. To the extent that this clause suggests otherwise, it is illegal and should be taken out of the contract.

**(3) "Where in the opinion of the home or the resident's attending physician, the resident can no longer be appropriately cared for in the home, or becomes a hazard to the health and safety of him/herself, other residents and/or staff, the home will notify the resident and may take steps to arrange a transfer or discharge of the**

**resident to a more appropriate setting notwithstanding any statutory provisions to the contrary."**

This term openly acknowledges that it may be contrary to the law. In fact, it is contrary to the law, since legislation does not permit a home to discharge a resident if the home (the Executive Director or Administrator) decides their care needs cannot be met or that they are a hazard to the health or safety of either themselves or others.

The law says that residents may be discharged if the attending physician or care team informs the home that the resident's care needs can no longer be met in the home and other conditions are met.

There are only four other situations in which a home may discharge a resident: the resident has died, the resident has left or will be leaving the home and requests a discharge, or the resident is absent for a longer period of time than is allowed by the legislation.

Another reason why the above clause should be taken out of any contract has to do with the last phrase. It states that the resident may be transferred to "a more appropriate setting". It is not clear what a more appropriate setting would be, whereas the legislation states that the home must make arrangements which "provide the care and accommodation required by the resident".

### **REVIEW ALL OF THE CONTRACT**

The above clauses are just a few of the contract items to watch for and eliminate before signing. It is likely that terms such as these cannot be enforced by a long-term care facility wanting to rely on them, but it is better to remove them in the first place and not allow the facility to argue that the terms should be enforced because the resident signed the contract. If you are uncertain about a proposed contract term, consult a lawyer or advocate. Remember, in the case of long-term care facility admission contracts, you cannot be penalized for refusing to sign even if the home insists that you must sign.