

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, and includes the most recent changes in the *Long-Term Care Homes Act, 2007* which was proclaimed on July 1, 2010.

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 in private; 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 complaints to both the home and the Ministry of Health and Long-Term Care.

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 licensee of the home. 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 licensee of the home.

If a written complaint is received by the licensee about the care of the resident or the operation of the home, the licensee must forward a copy of that complaint immediately to the Ministry of Health and Long-Term Care.

Any complaint made to the home about the care of a resident or the operation of the home, whether verbal or written, must be investigated and resolved (where possible) within ten business days of receipt of the complaint. This includes providing a written response to the person who made the complaint. Where there is an allegation of harm or risk of harm to one or more residents, the investigation must be started *immediately*.

Where the complaint cannot be investigated and resolved within this ten day timeframe, the licensee must acknowledge receipt within ten business days and provide a date by which the complaint can reasonably be expected to be resolved. A follow-up response should be provided as soon as is reasonably possible.

The response to the person who made the complaint must:

1. Explain what steps the licensee has taken to resolve the complaint; or
2. State that the licensee believes the complaint to be unfounded and the reasons for this belief.

The licensee is now required to keep a record of specific information regarding complaints, including:

1. The nature of each verbal or written complaint;
2. The date the complaint was received;
3. The type of action taken to resolve the complaint (including the date of the action, timeframes for action to be taken and any follow-up action required);
4. The final resolution, if any;
5. Every date on which any response was provided to the complainant and a description of the response; and
6. Any additional response made by complainants after receiving the licensee's response.

The licensee must also review and analyze the records for trends on at least a quarterly basis. These results must be considered to determine what improvements are required at the home. The licensee must keep a written record of each review and the improvements. Where the complaint is made verbally and resolved within 24 hours of receipt, it does not have to be included in the analysis.

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 Ministry of Health and Long-Term Care. The home's complaint procedure must include the address and telephone number of the Director at the Ministry or the person designated by the Director to take complaints. This information must also be posted at the home.

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: Director, 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 an inspector (formerly known as a compliance adviser).

Where the Director receives a complaint, he or she must have an inspector conduct an inspection or make inquiries to ensure compliance with the legislation, if the allegations deal with one of the following:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident;
2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident;
3. Unlawful conduct that resulted in harm or a risk of harm to a resident;
4. A violation of section 26 (whistle blowing protections);
5. Misuse or misappropriation of a resident's money;
6. Misuse or misappropriation of funding provided to a licensee;
7. A failure to comply with a requirement under the legislation;
8. Any other matter provided for in the regulations.

An inspector shall immediately visit the home if he or she believes any of the first three complaints listed above has occurred and it resulted in serious harm or a risk of serious

harm to any resident where there has been a violation of the whistle-blowing protections, or as required by the regulations.

Where there are other matters that come to the attention of the Director which do not fall under these grounds but may cause harm to a resident, the Director shall also have an inspector inspect or make enquiries to ensure compliance with the legislation.

When making a complaint, the person should provide as much detail as possible about the incident. Documentation, photos and names of witnesses are very helpful.

The type of complaint determines who will investigate. In most cases, the inspector will be a nurse. Issues relating to such things as dietary matters, environmental issues or finances, will be investigated by investigators with expertise in those areas.

As the complainant is now legally entitled to a response about their complaint, from both the home and the Ministry of Health and Long-Term Care, this should end the previous practice of having complainants make a freedom of information request to find out how their complaint was resolved. Additionally, the reports resulting from matters investigated by the Ministry will be a matter of public record (although some information may be blocked to maintain the privacy of the complainant and the resident involved).

If residents or their representatives are dissatisfied with the way in which the inspector 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 by the Residents' Council to the Ministry or licensee of the home about the operation of the home must be responded to in writing by the licensee within ten days of receipt.

COMPLAINTS TO FAMILY COUNCILS

Family Councils also play an important role in raising issues of concern and they have powers similar to those of Residents' Councils. If complaints or recommendations are brought by the Family Council to the attention of the Ministry, or complaints or recommendations are brought to the licensee about the operation of the home, the licensee must respond in writing within ten days.

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 that 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 an inspector 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 *Long-Term Care Homes Act* requires mandatory reporting to the Ministry by **any person** (except a resident) where the following resulted in either harm or a risk of harm to a resident:

- Improper or incompetent treatment or care;
- Abuse of a resident by anyone or neglect of a resident by a staff or licensee;
- Unlawful conduct;
- Misuse or misappropriation of a resident's money; and
- Misuse or misappropriate of funding.

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 or 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. 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 says:

Every resident has the right to raise concerns or recommend changes in policies and services on behalf of himself or herself or others to the following persons and organizations without interference and without fear of coercion, discrimination or reprisal, whether directed at the resident or anyone else,

- i) the Residents' Council,
- ii) the Family Council,
- iii) the licensee, and, if the licensee is a corporation, the directors and officers of the corporation, and, in the case of a home approved under Part VIII, a member of the committee of management for the home under section 132 or of the board of management for the home under section 125 or 129,
- iv) staff members,
- v) government officials,
- vi) any other person inside or outside the long-term care home.

Further, the legislation now contains whistle-blowing protections. Homes may not discourage reporting or threaten or subject residents to discriminatory treatment because a complaint was made. If any of this occurs, it should be reported immediately to the Ministry of Health and Long-Term Care.

The decision to make a complaint is always a personal choice, as any fears about doing so 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

The *Long-Term Care Homes Act* includes detailed rights and requirements regarding complaints against long-term care homes. 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.