

PAPERS! PAPERS! PAPERS!

THE WHAT'S WHAT REGARDING PAPERWORK IN LONG-TERM CARE!

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PART I – FINANCIAL DOCUMENTS¹

When a resident or their substitute decision-maker (SDM) is admitted to a long-term care home (LTCH), they are presented with a large amount of documentation they are asked to sign. Often, the resident/SDM is given the impression that they have no choice in signing the documents, and that the documents must be signed “as is”.

This article will review the legislation - the *Long-Term Care Homes Act, 2007 (LTCHA)* - regulating documentation in general, and discuss financial documents specifically. Part II will discuss consent and other personal care documents.

Documentation - General

Licensees (those running the homes), must ensure that residents and SDMs, if any, are provided with specified documents upon admission, and thereafter as revisions are made. These documents must also be available to family members and persons of importance to the resident.² The required documentation is as follows:

1. Residents' Bill of Rights;
2. LTCH's mission statement;
3. LTCH's policy to promote zero tolerance of abuse and neglect of residents;
4. Explanation of the duty under the *LTCHA* to make mandatory reports;
5. LTCH's procedure for initiating complaints to the licensee;
6. Written procedure, provided by the Director³, for making complaints to the Director, together with the name and telephone number of the Director, or the name and telephone number of a person designated by the Director to receive complaints;

¹ Part I was originally published in *Advocacy Centre for the Elderly Newsletter*, Vo. 11, No. 2 (Fall 2014), page 1.

² *LTCHA*, s. 78(1);

³ The Director is the head of the X-Ray Safety and Long-Term Care Homes Branch of the Ministry of Health and Long-Term Care.

7. Notification of the LTCH's policy to minimize the restraining of residents and how a copy of the policy can be obtained;
8. Name and telephone number of the licensee;
9. Statement of the maximum amount that a resident can be charged under the *LTCHA* for each type of accommodation offered in that LTCH;
10. Statement of the reductions available under the regulations, and the amount that qualified residents can be charged for each type of accommodation offered in that LTCH;
11. Information about what is paid for by funding under the LTCHA or the *Local Health System Integration Act, 2006* or the payments that residents make for accommodation and for which residents do not have to pay additional charges;
12. List of what is available in the LTCH for an extra charge, and the amount of the extra charge;
13. Statement that residents are not required to purchase care, services, programs or goods from the licensee and may purchase such things from other providers, subject to any restrictions by the licensee, under the regulations, with respect to the supply of drugs;
14. Disclosure of any non-arm's length relationships that exist between the licensee and other providers who may offer care, services, programs or goods to residents;
15. Information about the Residents' Council, including any information that may be provided by the Residents' Council for inclusion in the package;
16. Information about the Family Council, if any, including any information that may be provided by the Family Council for inclusion in the package;
17. Explanation of the whistle-blowing protections under the *LTCHA*,⁴
18. Resident's ability to retain a physician or registered nurse in the extended class to provide medical care in the home⁵;
19. Resident's obligation to pay the basic accommodation charge;
20. Obligation of the resident to pay accommodation charges during a medical, psychiatric, vacation or casual absence;
21. Method to apply to the Director for a reduction in the charge for basic accommodation and the supporting documentation that may be required, including the resident's Notice of Assessment issued under the *Income Tax Act* (Canada) for the resident's most recent taxation year.
22. List of the charges that a licensee is prohibited from charging a resident under the *LTCHA*.
23. List of goods and services that the licensee may charge for under the *LTCHA* and the charges for those goods and services.

⁴ *LTCHA* s. 78(2).

⁵ Physicians or registered nurses extended class must still meet the requirements of O. Reg. 79/10 sections 82 & 83.

24. Resident's ability to have money deposited in a trust account at the LTCHA; and,
25. Ministry's toll-free telephone number for making complaints about homes and its hours of service.⁶

There is also information which must be posted in the home and communicated to those who cannot read.⁷

Regulated Documents

"Regulated Documents" were introduced as a new requirement under the *LTCHA*.

Regulated Documents are defined in the legislation and regulations, and must meet certain requirements.⁸ Licensees are prohibited from presenting these documents to prospective residents, residents or their SDMs unless the documents comply with all the legislative requirements and have been "certified" by a lawyer. Certification appears to mean that the licensee's lawyer has reviewed the document and states that, in their opinion, the document is legally correct and meets the standards set out in the *LTCHA* and its regulations. Whether it actually does or not may be the subject of some debate, as you will see later.

At present, there are two types of regulated documents. These are:

1. An agreement between the licensee and a resident or a person authorized to enter into such an agreement on the resident's behalf for allowable resident charges; or
2. Any document containing a consent or directive with respect to "treatment" as defined in the *Heath Care Consent Act* ("*HCCA*") including a "course of treatment" or a "plan of treatment".⁹

The *LTCHA* also prohibits the home from coercing residents into signing documents or agreements. The home is prohibited from telling a resident/SDM that the resident will be discharged from the home, or refused admission, because they:

1. Refuse to sign a document;
2. Void an agreement; or
3. Give, refuse to give, withdraw or revoke a consent or directive with respect to treatment or care.¹⁰

⁶ O. Reg. 79/10, s. 224(1).

⁷ *LTCHA*, s. 79(2).

⁸ *LTCHA*, s. 80., O. Reg. 79/10, s. 227.

⁹ O. Reg. 79/10, s. 227(1).

¹⁰ *LTCHA*, s. 83(1).

However, this section does not apply to admission to a LTCH or transfer to a secure unit within the home, as there MUST be consent or the admission cannot take place.¹¹

Admission Agreements

While homes may present “admission agreements” to residents/SDMs, there is no requirement that the person sign such a document in order to be admitted into basic accommodation. Whether or not the resident signs such a document, the *LTCHA* makes them responsible for paying the fee.¹² Residents cannot be refused admission because they do not sign an “admission agreement” or similar document.

Agreements for Allowable Charges

Long-term care homes may present two different types of resident charge agreements.

1. Accommodation

The first type of agreement relates to basic or preferred accommodation. These documents must be separate from all other agreements and can contain only provisions about the following:

1. The amount of the charge, subject to any reduction in the charge approved by the Director, and the financial obligation of the resident to pay the charge.
2. The licensee’s obligation to provide the goods and services included in basic accommodation or preferred accommodation.
3. The licensee’s obligation to give the resident at least 30 days written notice of any increases in accommodation charges.
4. Reasonable interest charges if the home is going to charge interest for missed, incomplete or late payments. It also must clearly state that if the home is charging interest, they cannot do so if the resident has applied for a rate reduction and is waiting for approval.
5. The licensee’s obligation to provide a monthly statement with an itemized statement of the charges made to the resident within the month.

If the home wishes to charge more than the basic accommodation rate for a room which is designated as semi-private or private accommodation,¹³ there

¹¹ *LTCHA*, s. 83(2).

¹² *LTCHA*, s. 91(3).

¹³ What can be designated as private or semi-private accommodation is set out in O. Reg. 79/10, s. (1).

must be an agreement in writing for the higher rate, called the preferred accommodation rate. Unlike the basic accommodation rate, which is the same no matter what home you live in, preferred accommodation varies between homes based on the age of the home and the date of admission.¹⁴ If the resident or their SDM does not sign such an agreement, the home may only charge the basic accommodation rate, even if the room is structurally preferred accommodation.¹⁵

2. Unfunded Services

The second type of resident charge agreement relates to “unfunded services”. These are services such as cable, telephone, hairdressing or chiropody. There must be a written agreement signed by the resident, the person authorized to manage their finances, or the person who is agreeing to pay for those services. If there is no written agreement, the home cannot charge for these services.

One should be very careful when deciding which services to pay for: ask yourself whether or not it is something that the resident truly needs. For example, “valet” services, paying for sewing buttons on, ironing, hemming, is generally a monthly fee for which the resident gets little service. On the other hand, cable TV may be something that the resident uses all the time and will be of great benefit.

Issues

There are a number of issues which are common amongst these documents.

First, despite the law, one should not assume that documents have been “certified” by a lawyer. Many homes have, to date, failed to retain a lawyer to review their documents. Further, the documents may contain legal errors. Despite the fact that the *LTCHA* was proclaimed in 2010, homes continue to use out-dated documents referencing repealed legislation. These documents may also contain clauses that are not allowed under the legislation. One should review these documents carefully to ensure that they only contain allowable clauses.

These agreements may also try to require you to do things that you do not have to do. The first thing is requiring a “guarantor” or “responsible party”. Guarantors are persons who agree to be responsible to pay outstanding amounts if the person themselves is unable or unwilling to do so. Homes want to be able to sue third parties if the resident is, for some reason, unable to pay the fees out of their own money. There is no requirement for a guarantor and we never recommend

¹⁴ O. Reg. 79/10, s. 247-247.3, for a list of which homes can charge higher rates, go to http://www.health.gov.on.ca/en/public/programs/ltc/docs/rates_charged_preferred_accommodation.pdf

¹⁵ O. Reg. 79/10, s. 91(1)(2.)

that a person sign as same. In fact, we do not believe that, under the *LTCHA*, guarantors are allowed. If the resident is incapable, the person who has legal authority should sign the document on their behalf, striking out any references to “guarantor” or “responsible party” or being “personally responsible” and should sign the document referencing their legal authority to do so, such as attorney for property.

In some instances the resident may not be able to pay for preferred accommodation out of their own funds, and their family will be paying for it themselves. In this circumstance, there should be a separate agreement between the home and the person paying regarding these fees outlining their responsibility.

The document may also state that if fees are not paid, the licensee has the authority to redirect pensions, tax refunds or other monies to pay off these fees. This should be removed from the document. The licensee has no authority to do so and, in fact, will not be able garnish these funds even if they were to win a judgment against the resident if the resident’s only income is government benefits.¹⁶ Further, just because the licensee claims the money, does not mean that it is in fact owed to them, so it is not prudent to allow them to recoup money unless they have proper legal authority to do so.

One must also review the interest being charged: often, the interest payment is shown as a monthly payment instead of yearly. For example, 12% monthly is 144.95% annually - non-compounded, and a whopping 286.5% annually – compounded!¹⁷

In most cases, this is likely based on some confusion by the persons drafting the document in putting an annual instead of monthly rate into the document – however, one cannot be sure that they are not charging the wrong rate when it is in the document.

These agreements may also include clauses there are strictly prohibited by the *LTCHA* in a fee agreement: examples are waivers of liability, clauses demanding compliance with policies or behavioural codes, and clauses relating to medical treatment or personal care.

Refusal to sign these agreements is unrelated to admission. However, it may change the type of accommodation that the person lives in. While there are circumstances where a person may be entitled to reside in preferred accommodation without agreeing to pay the higher rate, this is not universal. In

¹⁶ *Metropolitan Toronto (Municipality) v. O'Brien*, 1995 CanLII 7053 (ON SC), <<http://canlii.ca/t/1vt5n>> retrieved on 2014-09-04

¹⁷ In fact, entering into an agreement where the payee charges an interest rate of more than 60% is a criminal offence under s. 347 of the *Criminal Code of Canada*.

general, if a resident requests preferred accommodation but will not enter into a written agreement for same, they can be moved into basic accommodation.

Other Financial Related Documents

Pre-Authorized Payments

Many homes will “require” residents to enter into a pre-authorized payment scheme; however, they have no such ability. While this method of payment may be helpful for many, it is up to the individual to decide whether or not it is right for them. Residents can insist that they pay by cash, cheque, or any other method that the home may accept (debit/credit card).

Trust Account Authorization

Homes must establish and maintain a trust account where residents or their families can deposit money for their daily cash needs. Residents are not **required** to use the trust account. Any agreement regarding this account must meet the requirements set out in section 241 of the *LTCHA* Regulations.

Rate Reduction Applications

Where a resident is in basic accommodation and may be entitled to a rate reduction, a rate reduction application must be applied for. There are numerous applications, depending on the resident’s personal situation, that are to be used, as follows:

1. Resident With a Notice of Assessment (NOA)
2. Resident Without Notice of Assessment (NOA)
3. Resident With a Notice of Assessment and Transitioning to new Government Benefit(s)
4. Resident Receiving ODSP
5. Schedule A: Spouse Dependant
6. Schedule B: Child Dependant
7. Schedule C: Continuation of Previous Dependant Deduction.

While home staff should be knowledgeable about the rate reduction process and required documents, they often are not. If the resident or the person who is applying on their behalf is unsure or do not believe that they are being granted the appropriate reduction, they should seek further advice. See “Issues with Long-Term Care Rate Reductions” for a discussion of these problems.¹⁸

¹⁸ Jane E. Meadus, Advocacy Centre for the Elderly, *ACE Newsletter*, Winter, 2014.

COMPLAINTS

Like any other issue in a long-term care home, the resident has a right to complain if there are any issues relating to the documentation that has been provided to them. A complaint can be made to the Ministry of Health and Long Term Care regarding these documents, and the Ministry will inspect regarding same and can require the home to correct the issue.¹⁹

CONCLUSION

One should review all documents carefully, whether upon admission or at another time during the residency, as the documents provided may not meet legal standards and cannot be “required” as part of the residency. Where there are concerns, one should carefully review the documents and consult with a lawyer regarding the resident’s rights.

PART II - THE WHAT’S WHAT REGARDING PAPERWORK IN LONG-TERM CARE!²⁰

When a resident or their substitute decision-maker (SDM) is admitted to a long-term care home (LTCH), they are presented with a large amount of documentation they are asked to sign. Often, the resident/SDM is given the impression that they have no choice in signing the documents, and that each document must be signed “as is”.

Part I of this article appeared in the Fall 2014 Newsletter (Volume 11, Number 2) and looked at the regulation of documentation pursuant to the *Long-Term Care Homes Act (LTCHA)* in general, and specifically at financial documents.

In Part II, we will discuss the issue as it relates to “consent” forms which you may be asked to sign upon admission to a long-term care home.

Regulated Documents

Regulated Documents are defined in the legislation and regulations, and must meet certain requirements. Licensees are prohibited from presenting these

¹⁹ For examples of inspection findings regarding non-compliance related to documentation, see Caressant Care Marmora, Inspection No. 2013_179103_0026 dated August 2, 2013 at <http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=8055&FacilityID=20063> and Stirling Manor Nursing Home, Inspection NO. 2013_179103_0030 dated August 2, 2013 at <http://publicreporting.ltchomes.net/en-ca/File.aspx?RecID=8056&FacilityID=20472>

²⁰ Part II was originally published in *Advocacy Centre for the Elderly Newsletter*, Vo. 12, No. 1 (Spring/Summer 2015), page 1.

documents to residents, or their SDMs unless the documents comply with all the legislative requirements and have been “certified” by a lawyer.

Certification appears to mean that the licensee’s lawyer has reviewed the document and states that, in their opinion, the document is legally correct and meets the standards set out in the *LTCHA* and its regulations. Whether it actually does or does not may be the subject of some debate, as you will see later.

At present, there are two types of regulated documents. These are:

1. An agreement between the licensee and the resident or a person authorized to enter into such an agreement on the resident’s behalf for allowable resident charges; and
2. Any document containing a consent or directive with respect to “treatment” as defined in the *Health Care Consent Act (HCCA)* including a “course of treatment” or a “plan of treatment”.²¹

The *LTCHA* also prohibits the home from coercing residents into signing documents or agreements. The home is prohibited from telling a resident/SDM that the resident will be discharged from the home, or refused admission, because they:

1. Refuse to sign a document;
2. Void an agreement; or
3. Give, refuse to give, withdraw or revoke a consent or directive with respect to treatment or care.²²

However, this section does not apply to admission to a LTCH or transfer to a secure unit within the home, as there **must** be consent or the admission cannot take place.²³

Consent Documents

Upon or after admission to a LTCH, you may be asked to sign one or more documents related to treatment or care related to the resident of the LTCH. There are many legal issues related to these documents, which are usually not well understood by the resident, their SDM, or the staff of the LTCH.

Who Signs the Document?

It is important to understand who has the authority to sign treatment and care related documents for residents of LTCHs. Often, documents are provided to the

²¹ O. Reg. 79/10, s. 227(1).

²² *LTCHA*, s. 83(1).

²³ *LTCHA*, s. 83(2).

family upon admission to sign, without any consideration given to whether the person is mentally capable or not.

In Ontario, if a person is mentally capable, they are the only one who may consent to treatment or other issues with respect to their own care. Even if the person has given a power of attorney for personal care which would allow another person, called an attorney for personal care, to make decisions for them, they cannot do so until the person is unable to make decisions themselves. If a consent or treatment document is signed by a third party while the resident is capable, it is not valid.

If the resident is found to be mentally incapable, a person called a “substitute decision-maker” will make the decision for them. The SDM may be an attorney for personal care, or a family member, pursuant to the hierarchy set out in the *HCCA*.²⁴ If an incapable person has no one in their life who meets the requirements to be a substitute decision-maker under the *HCCA*, then the Public Guardian and Trustee must make decisions on their behalf.

Who Talks to You about the Documents?

Consent documents typically make up part of a package of documents provided to the resident, their family or SDM upon admission. This is often provided by the administrator, office manager or other members of the administrative staff. These staff members are not legally authorized to obtain consent to treatment, and any such consent would be void.

Firstly, only a health practitioner with the necessary knowledge can determine whether or not the person is capable of making the decision.²⁵ The resident could be capable of making some treatment decisions and not others. The administrative staff cannot make this determination.

Secondly, consent must be informed. This means that the person must be given information about the treatment, such as the nature of the treatment, the risks, benefits and side effects of the treatment, alternatives to the treatment and what would happen if they did not take the treatment. The person is also entitled to have any questions they may have about the treatment answered.²⁶ Only a health practitioner with the necessary knowledge can provide this information and answer the questions.

When a number of papers, including consents are handed to a person on admission, it is unlikely that they are being properly explained by a health practitioner and that proper consent is not being obtained. Residents and their

²⁴ *HCCA*, s. 20.

²⁵ *HCCA* s. 10.

²⁶ *HCCA*, s. 11(2) & (3).

SDMs should not sign such documents without discussing them with the physician or other appropriate health practitioner.

Types of Documents

Consent to Treatment

Consent forms for treatment may include a variety of types of consent.

1. **Consent to ongoing treatment.** This treatment will be included on a consent form simply as a continuation of treatment that the resident was already undergoing in the community. While it should still be discussed with the health practitioner, there is a presumption that there was consent prior to admission and that this consent continues. If the person has already consented and understands the treatment, this may be all that is necessary;
2. **Consent to future treatment.** Consents may ask that you agree to “future” treatments, such as antibiotics if you get an infection. These are **not** consents and should **not** be signed. Consent can only be obtained in respect of your present health condition, as you need to know all of the information about the illness, the specific treatment options and their effects, etc.
3. **Changes to treatments.** Some changes to treatment are called “included” consents, and do not require a new consent to be signed²⁷. When a variation to a treatment is not expected to cause a material change in the risk, benefits and side effects of the original treatment, specific consent is not required. It depends on the treatment as to whether or not a new consent would be needed. Examples of this are a change in dose or timing of treatments. However, one should be wary about signing any consents regarding these changes to treatment, as it may be assumed that you are agreeing to all changes to treatment.
4. **Blanket consents.** Some homes will attempt to obtain “blanket consents” which are agreements for any treatment that may be ordered in the future. These consents would not be valid, as they would not meet the legal requirements of “informed consent” as required by the *HCCA*.²⁸

Care Plans

A care plan is a document which will include both medical treatment as well as personal care issues, such as toileting, bathing, dressing, etc. The home should be asking for consent to all of these things in one document.

²⁷ *HCCA*, s. 12.

²⁸ *HCCA*, s. 11.

Not signing these documents does not mean that the home cannot provide personal care. If the resident is capable, their verbal consent or compliance with personal care is sufficient. If the resident is not capable, the SDM will need to provide consent. However, the home must still provide basic care, such as feeding, dressing, bathing, until formal consent is obtained.

Regarding the consent to any medical treatment, the comments above apply.

Level of Care Forms

“Level of Care” forms have many different names, but they have similarities. These documents will generally contain four to five different “levels” of care, and you will be asked to “choose” from among them.

Examples of the different levels are “Comfort Measures Only”; “Comfort Measures with Additional Treatment at the Long-Term Care Home”; “Transfer to Hospital Without CPR”; and “Full Code”.

It must be understood that these are **not** consents, and are only expressions of wishes. **only** a capable resident can sign these, as SDMs **cannot** express wishes: they can only give informed consent when an actual treatment is being proposed.

We **do not** recommend that these documents be signed, even by the resident. The problem is that when these documents are signed, the person “becomes” the level (i.e. – “he’s a level 4”), and informed consent is not obtained when treatment is needed.

The law of informed consent requires informed consent at the time the treatment is offered, and must be based on the requisite information. Level of Care documents simply list types of treatments that one may or may not wish at a later date. As there is no context to them, they cannot be consents.

An example of this is the use of antibiotics. Many Level of Care documents have a level where it is indicated that antibiotics are not to be prescribed. This generally relates to persons who have pneumonia, who may wish to go untreated and let the illness take its course when they are elderly, sick and frail. However, the person may get a different type infection, such as a tooth abscess, which causes pain and is easily treated. When this level is signed, many homes will either fail to even advise the person or their SDM of this possible treatment, or may even refuse to provide it because of a level of care document being signed many months or years prior. We have also seen homes refuse to send people to hospital because a “no hospitalization” level was chosen. This level was chosen by the person understanding it to apply at end of life only, and instead, when a bone is broken, they are not sent to hospital for treatment, and as a result are in great pain.

LTCHs wish to have these forms signed believing it makes their job “easier” as they have consent on a number of issues. However, this is far from the case.

The documents are often signed by a family member who is not an SDM, who may have no authority to do so, and without appropriate information. They do not meet the legal requirements for consent and may open up the LTCH and its health practitioners to legal action.

Appointment of a Representative

Some homes continue to present documents which purport to allow the resident or a family member to “appoint” someone to make health-care decisions on their behalf. Such an appointment can only be made through a power of attorney for personal care, and therefore these documents are void. Further, if the person is incapable, they cannot appoint anyone, and no one can do it for them. If the person has not written a power of attorney for personal care appointing someone to be their attorney, the health practitioner must look to the *HCCA* to determine who is highest on the hierarchy of decision-makers.

Consents to Disclose Personal Health Information

Residents or their SDM may be asked to sign a consent to disclose personal health information to other family members or third parties. This is purely voluntary. Pursuant to the *Personal Health Information Protection Act*, if there is no consent, the health practitioner cannot disclose any information about the resident.

Patient Enrolment and Consent to Release Personal Health Information

Some physicians may request that patients sign a document enrolling them in their practice. This is a special Ministry of Health and Long-Term Care form that they require to be signed. Residents or their SDMs should sign this document to obtain the service of the physician.

Other Consents and Releases

The LTCH may ask that you sign other consents and releases. These documents are signed for the protection of the home. These may include use of photos of the resident in displays or publications, such as newsletters or websites. They may request that you to sign a release regarding certain types of events. If the resident is capable, they can decide whether or not to sign. If the resident is not capable and has an attorney for personal care (or court appointed guardian), most of these documents can be signed by the attorney. If the resident does not have an attorney or guardian, there may be no one with legal authority to sign the documents. This would mean that if a family member signed

a document on behalf of the resident, it may not have any legal effect if something went wrong.

Do Not Resuscitate Confirmation Form

Occasionally, homes will ask that residents or their substitute decision-makers consent to a “Do Not Resuscitate Confirmation Form” as a part of the admission process.

The “Do Not Resuscitate Confirmation Form” is a Ministry of Health and Long-Term Care form that relates **only** to the issue of whether or not a person is to be resuscitated **during transportation in an ambulance**.

Resuscitation of the elderly is often contraindicated as it generally has very poor outcomes, and many people do not want this type of intervention late in life. However, as ambulance personnel are not regulated health professionals, they are required to resuscitate when necessary. When this form is signed, it accompanies the resident when being transported in an ambulance and resuscitation will be withheld.

This form is signed by a physician or member of the College of Nurses from the LTCH, and can only be done after a discussion between the physician and the resident or their SDM occurs. It is included in their plan of care.

Other Issues Related to Consent Documents

Flu or Other Vaccines

Residents and their SDMs will often be asked on admission if they can be given the annual flu vaccine. Consent for this can only be given at the time that the flu vaccine is being administered, as there are many issues which must be considered, for example, the patient’s health condition at the time, type of vaccine, etc. Informed consent must be based upon the person’s present health condition— not six months in advance.

Anti-viral Medicine

Homes may also ask for consent for anti-viral medication in the case of flu outbreaks. Again, this cannot be obtained ahead of time, as there is no context. Consent must be obtained at the time the treatment is actually proposed.

Alcohol

Many consent forms or plans of care include doctors “orders” for alcohol. Alcohol is not a treatment, does not require a prescription, and is not something that the physician can control. LTCHs have no authority to prevent residents from

drinking, even when they think that it is contraindicated. Guardians and attorneys for personal care may have authority in some cases to limit alcohol, but only if it relates to one of the enumerated fields of authority, such as safety. Where there is no guardian or attorney, there would be no one with such authority.

Treatment Without Consent

Informed consent is always required for medical treatment, except in an emergency as defined in the *HCCA*. Treatment, such as giving medication, without first getting informed consent, is against the law. A health practitioner who treats a patient without informed consent risks discipline by their regulating college as well as a lawsuit. While a signed consent form is not required for medical treatment, it is a good idea as it provides evidence of the consent for both the LTCH and the resident.

Refusal or Withdrawal of Consent

Any consent regarding treatment or care can be refused or withdrawn at any time by either the capable resident or their SDM. Residents cannot be penalized for such withdrawals. If the health practitioner believes that a SDM is not complying with the *HCCA* when refusing or withdrawing consent, there is a process they may follow under the *HCCA* to challenge the decision. However, a resident cannot be discharged or otherwise penalized because of such a refusal or withdrawal.

Conclusion

The issue of consents and personal care is one which is often not well understood by the long-term care home staff. Unfortunately, documentation continues to be proffered that is not in compliance with the law. Residents and their SDMs should carefully review the documentation they are asked to sign as part of the admission process and seek legal advice where necessary. Documents should not be signed until they are fully understood and proper informed consent is obtained.