



INFOGUIDE

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Admission to Long-Term Care – What are my rights?

Disclaimer: The following is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

What is a long-term care facility?

- A long-term care facility is a government-regulated institution that provides housing and care to persons who can no longer live independently and/or require 24-hour care. They are often called nursing homes, homes for the aged, or charitable homes.
- While many people in long-term care are elderly, persons who have debilitating illnesses may also reside in long-term care.
- Long-term care facilities are not the same as retirement homes or care homes, which are not regulated. For information about retirement and care homes, see Community and Legal Education Ontario's pamphlet "Care Homes" at www.cleo.on.ca or visit the Ontario Rental Housing Tribunal's site at www.orht.gov.on.ca. The Ontario Rental Housing Tribunal can be contacted at (416) 645-8080 or 1-888-332-3234.

How do I qualify for long-term care?

- Community Care Access Centres ("CCACs") provide simplified access to home and community care and authorize admissions to long-term care facilities. CCACs are located throughout the province. For more information about CCACs visit www.oaccac.on.ca or www.health.gov.on.ca and click on "Seniors' Care."
- One of the responsibilities of CCACs is to place persons in long-term care and to maintain waiting lists.
- Before being placed in long-term care you will be assessed by staff from the CCAC to determine eligibility. They will determine your needs and whether or not the placement in long-term care is appropriate at this stage. To assess your needs, you will have to complete a number of documents that collect

information from your doctors, you and your family about your health and ability to care for yourself.

- If you meet the eligibility criteria, you will be asked which facilities you prefer and your application will be forwarded to your 3 preferred facility choices. The facility then determines whether or not you will be approved for admission. A long-term care facility must approve the admission of an applicant unless the facility lacks the physical facilities necessary to meet the person's care requirements or the staff lack the expertise necessary to meet the person's care requirements.

Do I have to pay for long-term care?

- Yes. The amount that you pay depends on your income. Ask CCAC staff what the cost will be.

I don't want to go into long-term care but I'm getting pressure from my family. What can I do?

- Admission to long-term care is based on consent. If you are capable of making decisions about your placement in long-term care, you cannot be admitted against your wishes.

Who decides if I am capable?

- An evaluator will decide if you are capable of making decisions regarding placement in long-term care. An evaluator is a health care practitioner and is usually a doctor, nurse or social worker.

What does "capable" mean?

- You are capable if you understand the information relevant to making a decision about your placement in long-term care, and are able to appreciate the reasonably foreseeable consequences of making or not making a decision.
- There are strict rules that an evaluator must follow when they are assessing your capacity. If they do not follow the appropriate rules then any finding they make may be invalid. An evaluator **must**:
 1. Tell you the purpose of the assessment, the significance and effect of a finding of incapacity and your right to refuse an assessment.
 2. If you refuse the assessment, they cannot continue.
 3. If you are found incapable, the evaluator must tell you about that finding and tell you that you can apply to the Consent and Capacity Board ("Board") to challenge the evaluator's finding.
 4. The evaluator must give you a "rights advice" sheet with information about your rights.

What can I do if I am found incapable of making decisions about placement in long-term care?

- You have the right to have a lawyer and to have the evaluator's decision reviewed by an independent body, the Consent and Capacity Board, an independent tribunal. You can contact the Board at 1-800-461-2036 or visit their website at www.ccboard.on.ca for more information.
- If you would like to challenge the evaluator's finding, fill in a form called "Form A". You have the right to have a lawyer represent you before the Board and you may qualify for legal aid, depending on your financial situation.
- If you have applied to the Board to challenge the evaluator's finding, you cannot be placed in long-term care while you are waiting for your hearing.

If I am found incapable of making a decision about placement in a long-term care facility do I see a Rights Adviser?

- No. This is not a mandatory rights advice situation under the Mental Health Act. However, the evaluator who found you incapable should provide you with information regarding the decision and what you can do if you disagree with the decision. The evaluator should also help you apply to the Board if you wish to challenge the evaluator's decision.

Who makes decisions for me if I am incapable to make decisions about my placement?

- If you are incapable, your substitute decision-maker "SDM" will make the decision for you (for more information about SDMs, see the PPAO's InfoGuide on this topic). Your SDM may be someone appointed by the Board but it is usually the person you named in your power of attorney for personal care or a close family member.

Can my SDM make a decision even if I disagree?

- If you are incapable of making decisions about your placement, your SDM does not have to have your agreement when making a decision. However, the SDM has to follow certain principles set out in legislation whenever they are making a decision on your behalf.
- If you have a prior capable wish about placement in long-term care then your SDM must follow that wish. For example, you may have put a provision in your power of attorney that you did not wish to be placed in long-term care. Generally, your SDM will have to follow that wish. A prior capable wish does not have to be in a power of attorney, as it can be either written or oral.
- In limited circumstances, your SDM may apply to the Board to either seek directions if your prior capable wish was unclear, or to ask the Board to allow them to depart from your wishes.

- If you do not have a prior capable wish, your SDM must still act in your “best interests.” There are a number of factors, set out in law, that must be considered when determining what is in a person's "best interests."

Questions?

If you have questions contact your local Patient Advocate or Rights Adviser or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.