

The Role of Community Care Access Centres in Admission to Long-Term Care from Hospital

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Being admitted from hospital to a long-term care home can be difficult and traumatic at the best of times. Often, the person has been coping well at home when they become ill and require hospitalization. Due to deteriorating health, they then require long-term care. The person may never have considered this option but is suddenly having to make life-altering decisions under a great deal of pressure.

Hospital Policies

Many hospitals have implemented policies regarding placement into long-term care homes to help the hospital deal with bed shortage issues. These policies generally consist of requirements or restrictions on the choice of long-term care homes. Policies may require that patients “choose” a specific home, or one from a specific “short list”, which may not be the homes that the person wants.

We do not believe such policies comply with the current legislation. However, we have a large number of callers requesting assistance when confronted with these hospital policies. In the past, we have advised the caller to deal directly with the Community Care Access Centre (CCAC) to arrange placement. Unfortunately, we have recently been hearing from callers that the CCAC is part of the problem, not the solution.

Role of the CCAC in Placement

We are hearing more and more that CCACs are refusing to take applications if the applicant (or their substitute decision-maker) refuses to comply with hospital policies. This refusal is in complete violation of the legislation which governs placement into long-term care homes.¹

¹ There are three pieces of legislation which are identical in governing this process: the *Charitable Institutions Act*, R.S.O. 1990, c. C.9, the *Homes for the Aged and Rest Homes Act*, R.S.O. 1990, c. H.13 and the *Nursing Homes Act*, R.S.O. 1990, c. N.7 (*NHA*). For the purposes of this article, we will be referring to the sections of the *Nursing Homes Act*, however, identical sections can be found in each statute.

Placement coordinators are designated by the Minister of Health and Long-Term Care.² At present, they are employees of the CCAC. Individuals may not be admitted to a long-term care home unless the placement coordinator authorizes the admission.³ The legislation clearly sets out the role of the placement coordinator and how they are to perform the placement function. Please note that there is no legislated role for the hospital social worker, discharge planner or other hospital employee in the placement process. At law, where a statute specifies a class of persons to do a particular task, it must be done by someone in that class unless the law allows for this to be delegated.

The legislation here DOES NOT allow for such delegation. Therefore, only the placement coordinator can perform the following roles:

- If a person or their substitute decision-maker (SDM) applies to the placement coordinator for a determination that they are eligible for placement into long-term care, the placement coordinator must find the person eligible if they meet the criteria set out in the regulations.⁴
- The placement coordinator authorizes admission to the nursing home or homes *as selected by the person/SDM*.⁵
- The placement coordinator *shall*, if requested by the person/SDM, assist the person in selecting homes.⁶
- The Act even sets out the criteria that should be used by the placement coordinator when assisting the person choose a home – namely, the person’s preferences relating to admission based on ethnic, spiritual, linguistic, familial and cultural factors.⁷
- The placement coordinator can approve eligibility or authorize admission to a specific nursing home only if the person/SDM *specifically applies* for such admission. Therefore, if there is no specific consent given authorizing an application for that home, there is no way the person can be considered for that bed. While there may be an “available” bed in a home which meets specific criteria (i.e., a basic room for a female), the placement coordinator cannot determine its appropriateness unless authorized to do so by the person/SDM.

² NHA, s. 20.1(2).

³ NHA, s. 20.1(5).

⁴ NHA, s. 20.1(6) and R.R.O. 1990, R.R.O. 832, s. 130.

⁵ NHA, s. 20.1(6) and R.R.O. 1990, R.R.O. 832, s. 136.

⁶ NHA, s. 20.1(6).

⁷ NHA, s. 20.1(7).

- If a person has already applied for three homes, their eligibility for admission cannot even be *considered* until the person removes one of their choices from the list.⁸ Again, a home can only be removed from the choice sheet with the express consent of the person/SDM. [emphasis added]

Nothing in the legislation makes application for placement from hospital any different from the community.

In the past, we have seen hospitals circumvent the law by trying to get patients to apply to homes that the patient or their family did not feel was appropriate. We are now seeing that the CCACs are supporting these positions in a number of ways, thereby failing to comply with their legislative mandate.

The Issues

1. Refusal of the CCAC to take the application directly

As set out above, the CCAC is authorized by statute to take applications and authorize eligibility for placement. There is no ability to delegate this role. However, this is exactly what CCACs have been doing. Hospital social workers, discharge planners and others have been acting as if they are placement coordinators. This is problematic for many reasons. For example, they are not as knowledgeable about long-term care. Also, they have different objectives – hospital employees are under pressure from their employer to free hospital beds while the placement coordinator's sole obligation is to place the person in an appropriate long-term care home of their choice.

In practice, however, what has happened is that almost the entire role of the placement coordinator has been taken over by the hospital employee – they commence the application process, take all the information and complete most of the paperwork. At some point, the hospital staff pass this information along to the placement coordinator. The placement coordinator will then visit the person (well into the process) and complete the MDS-RAI assessment tool. The rationale for this process is likely twofold: to lighten the load of overburdened placement coordinators; and to allow the hospital to keep a tight reign over the placement process.

Given that the hospital has no role in this application process, the person/SDM has the right to demand assistance from the placement coordinator, not a hospital employee. Unfortunately, some placement coordinators have been refusing to accept applications or take any other steps unless the application is commenced by the hospital employee as is “usually” done. This has the effect of allowing the hospital employee to try to pressure the patient/SDM into complying with the hospital policy without involvement of the CCAC.

⁸ R.R.O. 832, s. 137.1(1) and (2).

This is not legal. The placement coordinator is legally obliged to complete all paperwork him/herself without relying on hospital personnel.

2. Refusal of the CCAC to accept the application/choice sheet unless it complies with hospital policy

This is a variation on the theme set out above where the placement coordinator refuses to accept the application or choice sheet unless the person has complied with hospital policy. Again, the law says placement coordinators must: accept the application; determine eligibility; obtain consent in accordance with the law; authorize admission; and place the person on waiting lists for homes of their choice. There is no place in the process for the consideration of hospital policy.

3. Refusal of the CCAC to accept choices or changes

The person/SDM not only has the right to choose the homes to which they wish to apply, they also can change or withdraw consent to those homes at any time prior to a bed offer being made. Often, people initially include choices of homes that the hospital has told them they “must” include, only to find out later that this was not true.

If this happens, the person/SDM then has the right to demand that the home be removed from the list and replace it with any other home they choose. In some cases, placement coordinators tell the person/SDM that they cannot make any changes or withdraw a name from a list because it violates hospital policy. Alternatively, placement coordinators may say that they will only make a change if certain criteria are met (e.g., the hospital discharge planner “okays” the change or one “short list” home is exchanged for another).

The right to withdraw consent or to change choices is absolute. The law does not allow the placement coordinator to restrict the person’s choices in long-term care.

4. Refusal of the CCAC to make an application from hospital

ACE is now seeing some CCACs refuse to take applications for long-term care homes from hospital patients or only accepting applications under strict circumstances. Generally, this is associated with the new “Aging at Home Strategy” of the Ministry of Health and Long-Term Care. In this program, increased funding is being made available to seniors to allow them to stay in their home in the community longer. Another purpose of this strategy is to ease pressure on hospitals, enabling seniors to return home with enhanced levels of care rather than go into long-term care.

While this program sounds laudable in theory, we are already seeing problems in practice. Patients are being told that they must return home, even though they believe this would be inappropriate. Take the example of an elderly couple where one spouse is bedridden; even with increased services, the healthier spouse often cannot care for their loved one. As well, the increased services may only be for a set period of time which may create problems when that time is over. We have been advised that placement coordinators have told people that they have to go home into this program and then they can apply for long-term care. As discussed above, this program is available to people but it is not mandatory. If the person/SDM does not feel it would be appropriate, they do not have to accept it. The placement coordinator cannot refuse to take an application just because the person is in hospital or they are not willing to go into this program.

Another variant on this program is the applicant being placed into a retirement home pending placement in a long-term care home. Please see the article in this newsletter, on page 2, entitled *Using Retirement Homes as Way Stations between Hospitals and Long-Term Care Homes: What You Need to Know* by Judith Wahl. Again, a placement coordinator cannot refuse to take and approve your application if you choose not to accept this option.

Legal Remedies

If you have difficulties with the actions (or inactions) of a placement coordinator, we recommend that you seek legal advice. Also, as the Ombudsman of Ontario has authority to oversee and investigate the actions of CCACs and their employees, complaints can be made free of charge to the Ombudsman's office.

Conclusion

Placement coordinators are legally obligated to take applications for long-term care, determine eligibility, get valid consents, and authorize admission to long-term care homes in Ontario in accordance with the law.

They have no authority to delegate any of those responsibilities to third parties, such as hospital personnel, or to refuse to act in accordance with the law. Instead, placement coordinators should work with their clients to assist in making choices that are best for them.