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Privacy Challenges for Retirement Home Providers

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Protecting privacy rights is a growing concern for retirement home residents and providers. For residents, maintaining privacy helps improve quality of life by promoting dignity, respect and independence. For providers, ensuring resident privacy rights are protected is not only a quality of care issue, but also a legal requirement in most jurisdictions.

Historically, retirement homes were designed to bridge the gap between independent living and care facilities that provide advanced nursing or long-term care. Retirement homes originally focused on providing supervised accommodation to a senior who requires minimal assistance with daily living. However, many retirement homes now offer a variety of resident care options, including moderate to advanced care. As the level of care offered to a retirement home resident increases, the retirement home provider must meet increasingly complex privacy obligations. These obligations relate not only to ensuring privacy of personal and medical information in the provider's possession but also to maintaining the personal privacy of each resident. This is especially challenging in the case of a resident who requires assistance eating, bathing, dressing and with personal hygiene.

Retirement Homes Act, 2010 (Ontario)

Not every jurisdiction has enacted legislation to address privacy requirements specific to retirement homes. However, such legislation is becoming more prevalent. Ontario, for example, recently enacted the *Retirement Homes Act, 2010* ("Ontario Act"), a comprehensive act directed at establishing operational requirements for retirement homes in Ontario. The Ontario Act contains as a fundamental principle, a requirement that a retirement home be "operated so that it is a place where residents live with dignity, respect, privacy and autonomy, in security, safety and comfort" and that it be a place where residents "can make informed choices about their care options." This principle acknowledges a retirement home is more than a facility providing care for seniors - for the residents who live there, it is their home.

The Ontario Act also establishes a 'Resident's Bill of Rights' which specifically grants residents the right to privacy in treatment and in caring for personal needs. Although regulations have yet to be enacted, the Ontario Act contemplates a regulatory board will be established responsible for licensing facilities, developing care standards, performing inspections, and responding to complaints, etc.

The legal requirements relating to privacy for retirement homes vary from jurisdiction to jurisdiction (1.) As such, a provider must ensure it is aware of the specific obligations applicable in whichever jurisdiction(s) the provider may operate. It must also ensure its employees comply with these obligations on an ongoing basis. If an employee violates a resident's privacy rights, the provider should take appropriate disciplinary action. In some cases appropriate discipline may include termination of employment for cause.

Recent examples

Recent arbitral decisions demonstrate the types of privacy issues an employer may encounter and the severity of the consequences for a caregiver who does not respect the privacy rights of a resident.

An Alberta arbitrator recently upheld a provider's dismissal of a caregiver for just cause when the caregiver breached a resident's personal privacy rights.

In that case (2.), the lack of care and respect for privacy by the caregiver resulted in a naked male resident being exposed to a female resident in the home's bathing room, for a prolonged period of time. The incident occurred during an altercation between two caregivers who were each assisting one of the residents with bathing. In this case the arbitrator found termination was a just and responsible response and dismissed the grievance.

In another case, an Ontario arbitrator found the dismissal for cause of a caregiver was reasonable when the employer learned the caregiver had disclosed personal information about some of the residents on her internet blog site (3). The caregiver posted pictures of several residents, commented on their medical conditions and made derogatory comments about the level of care she was required to provide to them on a daily basis.

Best practice

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Meeting and exceeding the basic privacy needs of residents presents increasing practical challenges for retirement home providers. The law is evolving rapidly, residents have come to expect more from their care providers, and standards vary from jurisdiction to jurisdiction. That said, we have set out below some recommended best practices which provide a starting point for discussion, planning and implementation:

1. For example: British Columbia: *Community Care and Assisted Living Act*, S.B.C 2002, Chapter 75; Alberta: *Supportive Living Accommodation Licensing Act*, Chapter S 23.5; Saskatchewan: *The Personal Care Homes Act S.S. 1989-1990* Chapter P-6.01
2. *Re Forest Grove Care Centre Ltd and A.U.P.E* (Atlas) (2010), 197 L.A.C. (4th) 50.
3. *Re Chatham-Kent (Municipality) and C.A.W. Canada Loc. 127* (Clark) (2007) 159 L.A.C. (4th) 321.

- Ensure personal, medical and financial information is kept in a secure location with access limited only to staff who “need to know”
- Ensure workplace policies establish clear and direct privacy expectations for caregivers as well as consequences for non-compliance
- Provide appropriate privacy training (and regular retraining) to all employees
- Provide a respectful, user-friendly and meaningful way for residents and others to report incidents where privacy has not been appropriately respected
- Provide residents with a secure area to keep personal and financial information
- Provide care in a private setting, (*i.e.* behind a curtain that is secluded from view from other residents and staff)
- Ensure medical or personal information about a resident is not shared with a visitor or another resident or discussed in places where others may overhear
- Respect a resident’s right to privacy over personal space:
 1. Knock before entering a resident’s room
 2. Ask the resident if she wants the door left open or closed
 3. Allow the resident to make personal choices about clothing, recreation, and meal options
 4. Avoid looking through the resident’s belongings unless invited to do so or if required to provide care
 5. Ensure the resident is permitted to spend time with a spouse or other family members in private, without interruption

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