PROTECTING THE ELDERLY & VULNERABLE IN YOUR CARE:

Safe from Harm in Retirement Communities & Long-Term Care Homes

The abuse of a vulnerable person, whether the victim is a child or an adult, tears at the fabric of family and community life and has far-reaching consequences. For the stakeholders of Retirement Communities and Long-Term Care Homes, a serious incident of abuse can undermine years of dedicated service and can lead to declining business, low resident morale, and a diminished sense of confidence within the community. In the end, it is not just the victims that suffer, but also the people who have committed their lives to caring for them.

The World Health Organization defines the abuse of older adults as: "a single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person."

Elder Abuse can take place in the home, in institutional settings (especially Long-Term care facilities), or in the community at large.

Bill C-7, proclaimed by the Government of Canada in August 2000, defines a 'vulnerable adult' as:

"A person who, because of his/her age, a disability or other circumstances, whether temporary or permanent, is in a position of dependence on others or is otherwise at a greater risk than the general population of being harmed by persons in positions of authority or trust relative to him/her."

Types of Abuse & Their Signs or Symptoms

There are six known types of abuse:

1. **Physical abuse:** Any physical contact that harms a person, or is likely to cause them pain or distress.
   - ➜ Indicators include bruising, a history of unexplained falls and/or minor injuries, fractures not consistent with falls or explanations of the injury, unexplained loss of hair in clumps, cuts that are not likely to be explained by self injury, and flinching.

2. **Sexual abuse:** Forcing, inducing, or attempting to engage in any unwelcome form of sexual activity
   - ➜ This includes both physical behaviour and remarks of a sexual nature made towards the resident or service user.

3. **Psychological abuse:** Includes emotional abuse, threats of harm, intimidation, coercion, harassment, verbal abuse, etc.
   - ➜ Indicators include strain within the relationship, an air of silence in the home when the alleged abuser is present, a denial of privacy in relation to their care, and alterations in the psychological state of the victim (possibly withdrawal or fear).

4. **Financial or material abuse:** Includes theft, fraud, exploitation, and pressure in connection with the drafting of wills, the allocation of property or inheritance, or financial transactions, etc.
   - ➜ Indicators include unexplained shortage of money despite a seemingly adequate income, unexplained withdrawals from savings accounts, unexplained disappearance of financial documents (e.g. Bank statements), and the unexplained disappearance of personal possessions.

5. **Neglect and acts of omission:** Includes ignoring medical or physical needs, failure to provide access to appropriate health or social care services, and the withholding of the necessities of life such as medication, adequate nutrition, and heating.
   - ➜ Indicators include persistent hunger, loss of weight, poor hygiene, inappropriate dress, denial of religious or cultural needs, constant fatigue, physical problems and mental needs that are not attended to.

6. **Discriminatory abuse:** This includes negative remarks or actions of a nature that could be considered racist, sexist, ageist, or based on a person's disability. Other forms of harassment or similar treatment could be considered discriminatory abuse.

Consequences of Abuse for the Victims

Older persons who have been subjected to physical pain, injury, or psychological abuse are at a greatly increased risk of death over non-abused older persons. Abuse increases the probability that a senior will be hospitalized, need community health services, require medication or institutional placement.

Consequences of Abuse for the Operators of Retirement Communities and Long-Term Care Facilities

Allegations and proof of Elder Abuse can clearly result in loss of reputation, loss of trust, and a subsequent reduction in customer base. Adverse publicity in the media can be devastating for an otherwise reputable business. Many care workers and volunteers may feel "guilt by association" for not having recognized the symptoms, and families may question the quality of care provided for their loved ones. Without adequate protocols, guidelines, and insurance coverage, the financial consequences of institutional abuse can be overwhelming.

Legal Highlights

Vicarious Liability

There is now clear direction from the Canadian courts that organizations will be held 'vicariously liable' for the actions of their employees and authorized volunteers. The requirement for a finding of vicarious liability is that the abusive activities are able to take place due to a "job created opportunity". Ultimately, this concept imposes a high level of accountability upon the owners and operators of Canadian Retirement and Long-Term Care Facilities, even for the unsanctioned actions of their employees.

Direct Negligence

Direct negligence arises when there are no policies and procedures in place for the hiring and supervision of individuals or when these policies and procedures are judged to be inadequate. There can still be a finding of vicarious liability without a finding of direct negligence, even though the organization is following all proper protocols and has done everything reasonable in its power to ensure that abuse does not occur.

Damages

General Damages for instances of Elder Abuse have increased a great deal in recent years. General Damage awards for claims involving moderate abuse now range from CAD $75,000 to $125,000 and for severe abuse, CAD $150,000 to $250,000.
The final amounts are determined by the severity, duration, and frequency of the abuse. (Approximate dollar values as at July, 2007).

Current and Future Claims:

- **Perpetrators can be family members, employees, and volunteers.**

- **Currently, there are also claims for failure to act quickly and proactively when the organization was advised about an incident.**

- **Claims in the future will likely include allegations of negligence for failure to ensure that appropriate protocols are in place and followed.**

- **Future claims may also arise when protocols are in place but not appropriately followed.**

The Insurer's Response

Abuse Insurance for Retirement Communities & Long-Term Care Homes

Abuse Insurance is designed to respond on behalf of the insured organization when there are allegations of physical or sexual abuse and where the alleged perpetrator(s) could be construed as acting in connection with the insured organization's operations. Abuse Insurance provides insurance cover for the organization that has direct control over the activities of the perpetrator. It does not provide insurance cover for a convicted perpetrator. As with all insurance policies, coverage is subject to the terms and conditions of the contract.

Two Types of Coverage

The two types of insurance coverage for Abuse currently available in the marketplace are a Claims-made form and an Occurrence form.

With a Claims-made form – typically the lower cost option – any claim must be presented within the policy term or within the Extended Reporting Period (usually within 60 days of the policy's expiration date). If the policy is cancelled, any claim presented following this Extended Reporting Period is not covered by the policy in question. In insurance terms, this is referred to as the 'tail.' Where the insured stays with the same insurer, the need for tail cover is eliminated, because any claim will be presented within the term of the current policy. In this case, a Claims-made form is sufficient. In the event that the policy is cancelled by the insurance company, or simply not renewed by the insured, then to remain protected against possible future claims that may arise from allegations of abuse in prior years, tail cover (also referred to as nose cover or retro cover) will need to be purchased. The most common way of doing this is through the purchase of retroactive cover from the new insurance company. There is a potential problem however, because while the new insurance company may be willing to offer retroactive cover for the previous one or two years, it is very unlikely that they would entertain requests for cover of over five years back.

Under an Occurrence form, once cover is in effect for a particular period, it will apply for injury occurring during that period – whenever the claim is made. As such, there is no need to purchase tail cover, as a claim may be presented at any time in the future. The need to cover losses that may have occurred in prior years, but which remain unreported, is priced into the product at the outset.

Insurance coverage should form the cornerstone of any comprehensive risk management plan. Still, it is important to remember that even the best coverage cannot entirely erase the damage caused by an instance of abuse. In the interest of protecting their reputations, their futures, and most importantly, the health and safety of staff and residents, facility operators should take care to ensure that sufficient preventative measures are in place.

Guidelines to Prevent Elder Abuse

Phase One: Assessing & Minimizing Risks

Facility operators must work with their employees, residents, and community members, both formally and informally, to ensure that the elderly in their care are protected from harm and afforded the highest levels of dignity and self-determination.

The Importance of a Resident's Council/Elder Abuse Protection Committee

In order to proactively address the issue of abuse, every Retirement Community and Long-Term Care Facility should form a council charged with ensuring that the fundamental rights and best interests of residents are respected. Ideally, this council should be comprised of residents, applicable medical professionals, frontline staff, administrative interests, and community leaders. This group would have five key mandates:

1. To develop a Policies and Procedures Manual for all pertinent activities taking place in the facility. Part of this exercise may also be to develop a mission statement that embodies the collective goals and principles of residents, staff, and facility management.

2. To communicate agreed-upon policies and procedures to all relevant groups, including nursing staff, personal care assistants, catering and housekeeping staff, administrative staff, maintenance/custodial staff and volunteers. Where specialist services are provided within the home by outside organizations such as hairdressing, chiropody, health and beauty etc., then the policies and procedures relating to Elder Abuse should also be communicated to these individuals or organizations.

3. To oversee the implementation of procedures, conduct annual reviews, and make changes and adjustments as required. This should also involve providing necessary information and training to all staff and volunteers concerning Elder Abuse, including what to watch for, how to report suspected instances of abuse, and who to report it to.

4. To direct the proper recruitment and supervision of medical professionals, frontline staff, and volunteers.

5. To draft a formal internal protocol for abuse prevention. This document should work in concord with the principles outlined in the *Policies and Procedures Manual*.

Identifying & Minimizing Risks

Prior to developing a Policies and Procedures Manual, it is important to consider the risks inherent in all day-to-day activities performed by residents and staff.

Questions to ask include:

- Are the facilities designed so that it is easy to view/monitor activities whilst respecting the privacy and dignity of the resident?

- What procedures are in place to deal with potentially violent or aggressive residents?

- Is it necessary to restrain residents, and are there reasonable alternatives that do not involve physical restraint?

- Do staff members have access to residents' money or pension books?

- What is the staff-to-resident ratio, and does this meet the needs and demands of the residents and not just the minimum provincial requirements?

Please note that the recommendations listed here are intended to serve as a guide only. They do not supersede or contravene any applicable federal or provincial regulations, including but not limited to: the Nursing Homes Act, the Charitable Institutions Act, and the Homes for the Aged and Rest Homes Act.

The following are some examples of practical measures that facilities can implement in order to minimize the risk of abusive or unhealthy situations:

- Upon admittance to the facility, ensure that each resident is given a thorough initial assessment. This will allow staff to draw up and implement a detailed care plan with the input of medical professionals and facility staff, family members, and the residents themselves. This plan should be regularly re-assessed and updated, with any changes clearly communicated to applicable parties.

- Provide conflict resolution training to all staff.

- Distill a Residents' "Bill of Rights" from the agreed-upon Policies and Procedures Manual, and ensure that all staff and residents have access to a copy.

- Assign and rotate staff to avoid burnout, but also, when possible, strive to assign one person to provide consistent care and develop a relationship with a high-need resident.

- Ensure that all staff members make use of industry-accepted 'best practices' with regard to lifting and transference.

- Appoint a facility ombudsman to deal with issues related to resident abuse in a discrete and confidential manner.

- Conduct confidential interviews/surveys with all residents (and if possible, residents' family members) as frequently as is practicable.

- Implement an organization-wide policy protecting 'whistleblowers' and ensure that all staff are made aware of their rights and responsibilities when it comes to identifying and reporting abuse.

- Encourage staff to share experiences, advice, and concerns about day-to-day facility procedures and the specific needs of residents.

- Ensure that the facility has a clear and comprehensive 'Exit Strategy,' to guarantee that residents will have access to adequate continuing care, should they develop needs that cannot be accommodated on site.

Phase Two: Selecting, Training & Supervising Employees/Volunteers

Competent, well-trained staff can help to ensure that the organization is run smoothly and in accordance with the health and safety needs of residents, staff, and volunteers. They will understand and follow laid-down procedures and practices, and will be aware of issues likely to affect health and safety performance, including Elder Abuse. Therefore, an effective selection procedure for new staff (and for promotions or transfers) is vital if the organization is to be run efficiently since competent staff can make one of the most positive and immediate contributions to the overall culture of the facility.

Following the guidelines outlined below can help Retirement Communities and Long-Term Care facilities to lessen the risks.

Selection of Candidates

- Establish a formal recruitment and screening process.

- Prepare detailed descriptions outlining each position's responsibilities and performance expectations.

- Conduct personal interviews to ensure that prospective employees' motivations are in line with the goals and standards of the organization.

- Inform candidates that there is a formal screening program in place, including reference checks, and a Police Records Check which includes the vulnerable sector screening component.

- Have candidates fill out a detailed Application Form.

- Follow up interviews by conducting reference checks (take notes and keep records).

- Undertake a Canada-wide Police Records Check on all prospective candidates.

- Remember: Volunteers must be subjected to the same screening process.

Orientation & Training

Orientation and training enables employees, trainees/students, and volunteers to perform their duties effectively and within the guidelines determined by the Retirement Community or Long-Term Care facility. The organization's Policies and Procedures should drive the orientation process, while individual position descriptions should form the basis of ongoing training, thus ensuring the individual's competency to fulfill the role and assume new responsibilities over time.

Orientation sessions for employees, trainees/students, and volunteers are best held before they begin working. Whenever possible, orientation should include the distribution of a printed Policies and Procedures Manual. Points to cover include:

- An introduction to the organization

- A thorough review of policies and procedures

- An outline of duties and expectations (including an introduction to related program tasks and job descriptions, both to bolster staff cohesion and to facilitate some measure of task rotation)

- An overview of the facility, and a tour including: the location of administrative offices and human resources, resident accommodations, any applicable medical facilities/resources, supplies, restrooms, exits, etc.

Training can only be truly effective if it is implemented consistently, and universally. Staff at all levels should be given consistent access to refresher materials, participate in discussion forums, and undergo regular supervision and evaluation.

- A review of fire, emergency/evacuation, and medical quarantine/infection control procedures (if applicable) and a detailed overview of the individual's responsibilities in the event of an incident

- Detailed instruction about general procedures and physical contact, as well as information about abuse (a printed document should be distributed)

- Instruction on the use of available equipment (motorized beds, wheelchairs, lifting assists, etc.)

- An outline of record-keeping policies, along with the established procedure for disclosing or reporting allegations of abuse

- A discussion of special issues particular to the organization – for example resident confidentiality, care plans, health and safety, risk management, infection control, food hygiene etc.

- Note: The retention of training records is extremely important. The use of training review forms is recommended. These forms, which are signed by both the trainer and staff member or volunteer, can be used as documentary evidence of what training has been delivered, and that the person receiving the training has understood all of the learning objectives.

Supervision & Evaluation

Appropriate and well-designed supervision and evaluation processes can benefit everyone who works in the care of the elderly and the vulnerable. This process ensures:

- A standard level of practice
- An opportunity for new employees/volunteers to reflect on what they have learned so that they can improve their skills
- Protection for all participants from unsafe practices
- Protection for employees/volunteers against false allegations of wrong doing.

Ideally, all staff and volunteers should participate in regular interim performance appraisals (as required). It is important that these appraisals are documented and securely kept, both to ensure that the trajectory of individual performance can be properly observed, and to monitor responses to concerns or incidents that have been previously discussed.

Developing a Formal Internal Protocol for Abuse Prevention

A Formal Internal Protocol for Abuse Prevention should be accessible to staff and residents (in print form) at all times, and reference to this document should be a central component of all induction training, performance appraisals, and staff refresher meetings. It should include:

- The organization's overall statement of intent, including reference to any organizational policies regarding instances of abuse (e.g. 'zero tolerance' policies, etc.)
- Industry-accepted definitions and relevant examples of Elder Abuse
- A detailed overview of individual and collective responsibility with regard to the prevention, detection, and reporting of abuse
- A formal outline of company policy regarding the handling of abuse allegations
- Clear, detailed instructions regarding the reporting of abuse (in compliance with all applicable federal and provincial regulations) to be utilized by all staff in the event of an incident or allegation.

Responding to an Allegation of Abuse

Every allegation of abuse should be dealt with quickly and proactively, and the organization should take immediate action and provide rapid support to the alleged victim. It is important to listen, encourage the individual to speak about it, and let him or her know that what happened was not their fault. Responders should also assess the condition of the alleged victim, and ensure that, to the extent that the law allows, the situation is resolved in accordance with their wishes.

THREE THINGS TO DO IMMEDIATELY:

1. Obtain legal advice on reporting requirements.

2. Inform authorities as required.

3. Involve the organization's insurer.

THREE THINGS NOT TO DO:

1. Do not try to resolve any incidents before involving your insurer.

2. Do not take an adversarial approach or issue a statement of denial.

3. Do not allow an extended period of time to lapse.

The most serious risk to an organization is when perpetrators evade preventive measures for a long period of time. This is exacerbated if procedures (including notification to the insurer) are not followed upon the first allegation of any form of inappropriate behaviour. It is important to involve the organization's insurer as soon as possible, no matter how minor the event may first appear. With this in mind, it is important to choose an insurer that can best meet your organization's needs.

Elder Abuse is quickly becoming a significant issue in Canada: one of particular national importance to seniors and to the individuals and organizations that care for them. Its consequences can be widespread, with serious physical, mental, social, and economic implications for the victims, and increasingly high costs borne by businesses, governments, and society at large. Even a single incident can have devastating

effects on an otherwise self-sufficient individual, and several studies have established Elder Abuse as a known independent risk factor for declining health, medical complications, and ultimately, death (Lachs et al., 1996).

> **Many forms of Elder Abuse are acts punishable by law under the Canadian Criminal Code. The reporting of any instance of suspected abuse is mandatory in all Canadian Nursing Homes, Homes for the Aged, or Charitable Homes for the Aged. In Long-Term Care facilities, everyone (with the exception of residents themselves) is required by law to report apparent instances of Elder Abuse to the Ministry of Health and Long-Term Care at 1-866-434-0144.**

Ecclesiastical Insurance: Expertise, Understanding, Resources

Insurance coverage should form the cornerstone of any comprehensive risk management plan. Still, it is important to remember that even the best coverage cannot entirely erase the damage caused by an instance of abuse. In the interest of protecting their reputations, their futures, and most importantly, the health and safety of staff and residents, facility operators should take care to ensure that sufficient preventative measures are in place.

The provision of Abuse Insurance requires a high degree of expertise on the part of the underwriting company. Ecclesiastical has developed that expertise, and is one of only a handful of insurers currently offering Abuse Insurance cover.

As one of the most experienced insurers world-wide in handling abuse claims, we know that insurance can help address the financial repercussions of a claim. We also understand that the suffering of both the victim(s) and their family can be devastating. By providing expert risk management support and non-confrontational and rapid claims response, we have been able to help reduce the number of abuse incidents as well as relieve the degree of suffering when claims do occur.

We are able to provide such support under our insurance product as we will pay for professional counselling services for the alleged victim. We provide these services on a confidential basis and without prejudice, meaning that we do so with no admission of guilt. Ecclesiastical has built a network of expert advisors – psychologists, lawyers and doctors – and has developed internal claims procedures designed specifically to protect the confidentiality of all parties.

Ecclesiastical places great emphasis on risk management and works closely with Retirement Communities and Long-Term Care facilities to institute, implement, and manage appropriate abuse prevention policies and procedures.

Additional Development Resources:

The Government of Canada - National Seniors Council:
http://www.seniorscouncil.gc.ca/

National Clearinghouse on Family Violence:
http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/index.html

The Ontario Network for the Prevention of Elder Abuse:
http://www.onpea.org/

Seniors' Info:
http://www.seniorsinfo.ca/

International Network for the Prevention of Elder Abuse (INPEA):
http://www.inpea.net/

ABOUT ECCLESIASTICAL INSURANCE

Ecclesiastical Insurance Office plc is a specialist commercial insurance company. We are deeply committed to protecting the needs of organizations that enrich the lives of others; to preserving Canada's distinct communities, cultures and history; and to supporting initiatives that help improve the lives of people in need.

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