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COFFEE TALK



A Health Industry Seminar Series

Hot Topics in Long Term Care

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Agenda

Hot Topics in Long Term Care → Consent and Capacity

- 1) Admission to Long Term Care Home
- 2) Substitute Decision Making
- 3) Advance Directives/Regulated documents



Consent and Capacity - Sources of Law

- Legislation
 - consent based
 - personal autonomy
 - right to refuse
 - *Health Care Consent Act*
 - *Substitute Decisions Act*
 - *Personal Health Information Protection Act*
 - *Regulated Health Professions Act*
 - *Long Term Care Homes Act*
- Common Law
- Professional Standards



Long-Term Care Homes Act, 2007

- LTCHA and Ontario Regulation 79/10 will be in force July 1, 2010 with some exceptions (i.e. admission to secure units)
- Consent and Capacity Issues
 - Admission to LTC
 - Plans of Care
 - Secure Units and Restraints
 - Regulated documents – consent directives, resident charges for goods and services



(1) Admission to Long-Term Care

- Decision made by capable person, or where an evaluator has made a finding of incapacity, SDM
- Consent or refuse admission to care facility, includes ability to withdraw consent
- The SDM is required to make decisions in accordance with principles under HCCA



Admission to LTC

- Requirements regarding admission established by LTCHA and Regulation
- 2-stage process – Eligibility + Admission
- Responsibility of placement co-ordinator (CCAC)
 - Must provide certain information to applicant throughout process



Eligibility

- May apply for determination that eligible for LTC admission
- Determination of eligibility based on assessments, specific criteria identified in Regulation
- If eligible, must provide information
- If ineligible, suggest alternatives/referrals and provide notice → may appeal to HSARB



Admission to LTC

- Authorization for admission
 - If eligible, person may apply for admission and may be placed on waiting list for up to 5 LTC homes (previously this was 3)
 - Categorization for wait lists set out in Regulation
 - Exception to maximum → Crisis Admission (Category 1)



Crisis Category 1 – Regulation

- New criteria:
 - Occupies bed in hospital, requires ALC and requires an immediate admission to LTC **AND**
 - Hospital is experiencing severe capacity pressures **AND**
 - LHIN in which hospital is located has, after consulting with the hospital and placement coordinator, verified these pressures in writing and set out the time period for which the verification applies



Authorization for Admission

- Approval by licensee:
 - LTC home must give or withhold approval for admission
 - Specific process set out in Regulation
 - Response within 5 business days
 - Provide notice (approve, withhold), request further information
 - If withhold approval, must provide detailed explanation and written notice to the applicant, Director and placement co-ordinator



Authorization for Admission

- LTC home must give approval unless:
 - Home lacks physical facilities necessary to meet care requirements
 - Home lacks nursing expertise necessary to meet care requirements
 - Circumstances provided for in regulation exist as grounds for withholding
- Cannot impose separate requirements on residents (i.e. completion of a consent or directive)



Admission

- Applicant can only be authorized for admission if:
 - Assessment/re-assessment has occurred in past 3 months
 - Eligible for long-term care admission
 - Approval by LTC home (licensee)
 - Person provides consent to being admitted to the home



Roles and Responsibilities

- Hospital
 - PHA requires discharge of patient who is “no longer in need of treatment in the hospital”
 - Common law obligations to individuals
 - Broader obligations to the public regarding access to hospital care
- CCAC
 - Co-ordinates LTC admission, home and community services
 - “Placement co-ordinator” under LTCHA



Roles and Responsibilities

- Long-Term Care Home
 - Accept or reject admission
 - Cannot refuse admission except in limited circumstances
- Applicant/SDM
 - Need for consent/need to make decisions in accordance with principles



Consent to Admission

- Elements of consent for admission to LTC home now codified in LTCHA (s. 46):
 - Must relate to the admission
 - Must be informed
 - Must be given voluntarily
 - Must not be obtained through fraud/
misrepresentation



Admission – Informed Consent

- To be informed, person must receive:
 - Information that reasonable person in same circumstances would require regarding:
 - What the admission entails
 - Expected advantages and disadvantages
 - Alternatives to admission
 - Likely consequences of not being admitted
 - Responses to all requests for additional information
- SDM may apply on person's behalf



Crisis Admission

- Admission may be authorized under s. 47 of HCCA without consent where:
 - Incapable individual requires immediate admission as a result of a crisis
 - It is not reasonably possible to obtain immediate consent or refusal on incapable person's behalf
- New amendment - where authorized, consent or refusal must be obtained from SDM promptly after the person's admission



Admission to Secure Unit (not yet in force)

- Only authorized where:
 - Significant risk that person or another person would suffer serious bodily harm
 - Alternatives considered but not effective
 - Reasonable in light of physical and mental condition and personal history
 - Physician, RN(EC) has recommended admission to secure unit
 - Individual or SDM has consented to admission



Notice and Advice requirements

- Where admitted to secure unit under substitute consent:
 - Entitled to notice setting out reasons, right to appeal to CCB to determine if SDM complied with act, right to counsel
 - Entitled to rights advice/assistance
- SDM shall only consent to secure unit if essential to prevent serious bodily harm to the person or allows greater freedom or enjoyment



2) Substitute Decision Making

- Consequential amendment to the HCCA:
 - If person is found by evaluator to be incapable:
 - Consent for admission to LTC may be given or refused by SDM
 - Obligation on person responsible for authorizing admissions to take reasonable steps to ensure admission is not authorized unless SDM has given consent in accordance with the HCCA



Capacity to Consent to Admission – HCCA

- “Evaluators” determine capacity with respect to admission to LTC
- Specific health professionals – including SLPs, nurses, OTs, MDs, PTs, SWs, psychologists
- 2-pronged test for capacity
 - Ability to understand information relevant to decision **and**
 - Ability to appreciate the reasonably foreseeable consequences of decision or lack of decision



Determining the SDM

- Hierarchy of decision makers
- SDM must be capable with respect to the decision
- Available (i.e. able to communicate within reasonable time)
- Willing to act as SDM
- PGT is SDM of last resort

Principles for giving or refusing consent

- SDM is entitled to have all of the information that person would have in order to make decision
- *A.M. v. Benes* → Evaluator must inform the SDM of his or her obligations in giving or refusing consent to admission under the HCCA

Principles for giving or refusing consent to admission - HCCA

- SDM must act in accordance with the person's:
 - Prior capable wishes, if known, or
 - Best interests
 - Values and beliefs
 - Quality of life (i.e. improvement or prevent deterioration)
 - Balance risk and benefits
 - Less restrictive alternatives



Common Challenges

- SDMs who disagree
- Individuals with transient capacity
- Decisions not relating to property, personal care, treatment, etc.
 - e.g. Decision-making/consent to resident sexual activity?
- Capacity of SDM



(3) Advance Directives

- HCCA speaks in terms of “wishes”
 - Capable person may express wishes with respect to treatment, admission to LTC or a PAS
 - Commonly referred to as “advance directives” (aka living will, consent directive, personal directive, treatment directive, proxy directive, level of care document)
- May also be expressed in a Power of Attorney for Personal Care → Instructions to POA



Principles for “Wishes”

- Can be expressed in any form (writing, orally, gestures, etc.)
- Later wishes expressed by a capable person prevail over earlier wishes, regardless of form
- Wishes \neq consent, which must be given at the time the treatment is proposed



Implications for Health Care Providers

- Can only influence provider directly in emergency situation where:
 - Resident is incapable, and
 - SDM is unavailable to provide consent
- Can't provide emergency treatment if reason to believe it is contrary to wishes



Considerations for LTC

- Wishes should be explored with residents at reasonable opportunity
- Advance directives should be reviewed with resident and revised where:
 - Significant change in his/her condition
 - Indication from resident that there is a change in his/her wishes
 - Changes in plan of care (s. 29 Regulation)



Use of Forms/Regulated Documents

- Some facilities develop own forms
 - Wishes identified should be clear and specific
 - Cannot require resident to use a form
 - Cannot require resident to have advance directive at all
- New concept of “regulated documents” under s. 80 of LTCHA



“Regulated Documents”

- Documents that are presented for signature by resident/SDM by the LTC home, including:
 - Agreement with resident regarding charges
 - Any document containing a consent or directive regarding “treatment”, “course of treatment”, or “plan of treatment”
- Document must comply with requirements of regulation and compliance must be certified by a lawyer



Regulated Documents

- Must be given a copy
- Documents relating to consent or directives:
 - Must meet requirements under HCCA (informed consent)
 - Cannot contain provisions regarding charges
 - Must state that consent may be withdrawn or revoked
 - Must set out that cannot refuse admission or discharge where document not signed, agreement voided or consent or directive regarding treatment has been given, not given, withdrawn or revoked



Considerations for LTC

- Process for appropriate communication around directives
 - Identification
 - Reviewing and updating to ensure reflect current wishes
 - Communication with care team
 - Communication with resident/SDM (i.e. oral, changes)
 - Meeting requirements for “Required Documents”



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Questions?

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