



STANDARD OF PRACTICE FOR SOCIAL WORKERS COMMUNICATING POST EVALUATION, A FINDING OF INCAPACITY WITH RESPECT TO ADMISSION TO CARE FACILITIES OR PERSONAL ASSISTANCE SERVICES

***Review note:** This resource – which was originally part of the second edition of the Code of Ethics and Standards of Practice – was updated in September 2023 as a standalone practice resource and revised solely to reflect the College’s shift in terminology, from “member” to “registrant”.*

***Terminology update:** Throughout the OCSWSSW’s website and documents, the term “member” and “registrant” are used interchangeably and synonymously as equivalent to the term “member” as used in the Social Work and Social Service Work Act, 1998, and the Regulations.*



Preamble

The following standard of practice for communicating a finding of incapacity with respect to admission to a care facility or personal assistance service has been prepared in the context of the development of standards of professional practice and conduct for the Ontario College of Social Workers and Social Service Workers. This standard of practice is intended to be specific to the social work profession in the province of Ontario.

Registered social workers who evaluate a person and communicate a finding of incapacity with respect to admission to a care facility or personal assistance service are governed by the standards of practice of the social work profession prescribed by the College.

It is recognized that there are variations in the approaches of individual social workers to the evaluation of client capacity to consent to admission to a care facility or a personal assistance service. Also, social workers will vary their methods in response to the demands of each particular situation. College registrants who hold a certificate of registration for social work will adhere to this standard of practice of the social work profession prescribed by the College.

Communication of a finding of incapacity

1.01 The College registrant who makes the determination of incapacity will:

- (a) Inform the client that a substitute decision-maker will be asked to assist the client and to make final decisions on his or her behalf. The client's right to receive this information should be respected whether or not it is believed he or she is capable of comprehending it. In informing the client regarding the substitute decision-maker, the registrant will exercise professional judgment and have regard to the particular needs of the client.
- (b) If the client disagrees with the need for a substitute decision-maker or disagrees with the involvement of the present substitute, advise the client of his or her options. The registrant will assist the client if he or she expresses the wish to exercise the options. These options include applying to the Consent and Capacity Board for review of the finding of incapacity and/or finding another substitute of the same or more senior rank.
- (c) Help the incapable client participate as far as possible with the substitute decision-maker in planning for himself or herself.

1.02 The registrant who conducted the evaluation must complete documentation of the finding of incapacity.

MAY 2000

The following excerpts from the *Health Care Consent Act, 1996* are current to August 28, 2012. The following regulation (O.Reg. 104/96) is current to August 28, 2012. They are provided for the purpose of background information for Ontario College of Social Workers and Social Service Workers registrants. For current and comprehensive information, please refer to the official statute and regulations for the authoritative text.

HEALTH CARE CONSENT ACT, 1996

Section 2. (1) “In
this Act,

“Board” means the Consent and Capacity Board;”

“care facility” means,

- (a) a long-term care home as defined in the *Long-Term Care Homes Act, 2007*, or
- (b) a facility prescribed by the regulations as a care facility;”

“evaluator” means, in the circumstances prescribed by the regulations,

- (a) a member of the College of Audiologists and Speech-Language Pathologists of Ontario,
- (b) a member of the College of Dietitians of Ontario,
- (c) a member of the College of Nurses of Ontario,
- (d) a member of the College of Occupational Therapists of Ontario,
- (e) a member of the College of Physicians and Surgeons of Ontario,
- (f) a member of the College of Physiotherapists of Ontario,
- (g) a member of the College of Psychologists of Ontario, or
- (h) a member of a category of persons prescribed by the regulations as evaluators;”

“incapable” means mentally incapable, and “incapacity” has a corresponding meaning;”

“personal assistance service” means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service;”

“recipient” means a person who is to be provided with one or more personal assistance services,

- (a) in a long-term care home as defined in the *Long-Term Care Homes Act, 2007*,
- (b) in a place prescribed by the regulations in the circumstances prescribed by the regulations,
- (c) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or
- (d) by a provider prescribed by the regulations in the circumstances prescribed by the regulations;”

Section 4. (1)

“A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

Section 4. (2)

"A person is presumed to be capable with respect to treatment, admission to a care facility and personal assistance services."



Section 4. (3)

"A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable with respect to the treatment, the admission or the personal assistance service, as the case may be."

Section 40.(1)

"If a person's consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission, consent may be given or refused on the person's behalf by his or her substitute decision-maker in accordance with this Act."

Section 43. (1)

"Before giving or refusing consent on an incapable person's behalf to his or her admission to a care facility, a substitute decision-maker is entitled to receive all the information required in order to make the decision."

Section 43. (2)

"Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*."

Section 50. (1)

"A person may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to his or her admission to a care facility."

Section 57.(1)

"If a recipient is found by an evaluator to be incapable with respect to a personal assistance service, a decision concerning the service may be made on the recipient's behalf by his or her substitute decision-maker in accordance with this Act."

Section 60. (1)

"Before making a decision on an incapable recipient's behalf concerning a personal assistance service, a substitute decision-maker is entitled to receive all the information required in order to make the decision."

Section 60. (2)

"Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*."

Section 65.(1)

"A recipient may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to a personal assistance service."

ONTARIO REGULATION 104/96

made under the *Health Care Consent Act*,

1996 Amended to O. Reg.

517/10

EVALUATORS

1. (1) Social workers are evaluators for the purposes of subsection 2 (1) of the Act. O. Reg. 517/10, s. 1.

(2) In this section,

“social worker” means a member of the Ontario College of Social Workers and Social Service Workers who holds a certificate of registration for social work. O. Reg. 517/10, s. 1.

2. Social workers and persons described in clauses (a) to (g) of the definition of “evaluator” in subsection 2 (1) of the Act may act as evaluators in the following circumstances:

1. For the purpose of determining whether a person is capable with respect to his or her admission to a care facility.
2. For the purpose of determining whether a person is capable with respect to a personal assistance service. O. Reg. 517/10, s. 1.