Suggested Action Plans & Considerations Regarding
Essential Visitors to Group Homes

Sector Pandemic Planning Initiative (SPPI)

June 3, 2020

Topic:

Recommended Actions and Key Considerations When Considering Expanding Essential Visitors to Include Family Based on Ethical or Legal Considerations

Overview:

With phase one of the province's reopening, more businesses are now open to the public such as street-side retail and construction companies. It must be noted at this time that the Ontario government has not extended this lifting of restrictions to group homes or other congregate living settings.

On April 23, the province released its COVID-19 Action Plan for Vulnerable People. It includes a number of guidelines and restrictions for group homes (defined as a high-risk setting), including:

"**Tighter visitor restrictions in all high-risk settings**
- Limiting non-essential visitors to limit exposure"

Essential Visitors are people outside of the group living environment, who can provide supports that are deemed to be critically essential to maintaining, or rescuing the safety, health and/or psycho-social well-being of the person supported.

In this document, **ethical and legal frameworks are offered** to examine visitation while at the same time, heeding the province's guidelines to set limits in order to protect the health and welfare of people supported. The ethical framework was provided by Professor James Sikkema of McMaster University. The legal framework was provided by PooranLaw. **Health and Safety considerations** were provided by Jeanette MacLean, the Senior Consultant, Health and Safety for Community Living Toronto. Members of the Research and Education working group, in particular, Shirley McMillan, a Clinical Nurse Specialist at Surrey Place, and Pamela Singleton Palmer, Director of Quality and Innovation for Aptus Treatment Centre, offer **action plans for 3 approaches** agencies may be considering regarding visitation at group homes.

Guiding Principles:

The situation with COVID-19 continues to evolve.

Individuals with developmental and/or intellectual disabilities and their families must always be treated ethically, fairly, and respectfully. This is a top priority during the COVID-19 pandemic.

It is acknowledged that all individuals and their families and caregivers have made extreme sacrifices and have experienced hardships due to the pandemic.

Key Considerations:

Individuals and their families may face unique challenges during this current pandemic, including but not limited to:

- Physical vulnerability to the virus if older [note: people who have developmental disabilities often have accelerated age-related frailty, e.g., by age 50, experiencing frailty associated in the general population with age 80 (H-CARDD, 2016)] and/or have underlying health conditions such as heart or lung disease and/or compromised immune systems
- May experience higher rates of virus spread as a result of the personal care needed and/or living in shared settings, such as a group home
- Experience greater challenges as a result of physical distancing and this creates social isolation and disruption of important support networks
- Family members may experience increased levels of anxiety and concern regarding: how their loved one is managing in these new circumstances and/or not being able to physically see their loved ones on a regular basis

Health and Safety:

The guidance outlined in this action plan follows the recommendations issued by Public Health Ontario and directives from the Chief Medical Officer of Health. Each day we gain a better understanding of the epidemiology of the virus and the spectrum of illness that it causes. As such, employers are constantly assessing and reassessing, guided by the Precautionary Principle, to understand the most appropriate measures to take given the circumstances.

Employers in the Developmental Services Sector are required to follow best practices and standards for the protection of the people supported and frontline support staff consistent with health and safety laws and regulations. The Ministry of Health provides evidence-based practices that, at a minimum, provide a framework for employers in developing their internal processes to protect the health and safety of those living and working in group homes and congregate living settings.

When a worker is present in a home, it becomes a workplace. As such, recent restrictions imposed by provincial and federal governments in response to the COVID-19 pandemic limited any person from entering a home to only essential staff and service providers. As we continue to progress through the phases of reopening, and as new evidence emerges, safety measures will need to be evaluated to ensure they are aligned with the recommendations from health officials. The decision to allow essential visitors is multifaceted and therefore requires careful consideration and evaluation of the scientific evidence, the associated risks, and the derived benefits.

ETHICAL FRAMEWORK

Background: Supported Decision-Making

Whenever someone's capacity for decision-making is diminished to some degree, the responsibility of care ethically requires one to act in the individual's best interest. The best interests of an individual who has an intellectual and/or developmental disability should be arrived at in conjunction with that individual to the maximum extent possible.

Supported decision-making seeks to respect autonomy to the maximum degree possible and is guided by the following principles and values:

1) Relationships and Communication:

i) what relationships does the individual have, who plays what role for what purpose? a) primary caregiver, b) family member(s), c) physician, d) friends, e) partner, etc.;
ii) what kinds of communication are most effective to promote understanding and appreciation;
iii) how does the individual prefer to communicate their capabilities? (e.g., how they prefer to express that they understand something or what they want, think or feel)

2) Consulting the Individual: to the extent the adequate communication of such is possible, to determine:

i) desires and goals
ii) personality and character traits
iii) individual values and beliefs
iv) family and ethnic values, beliefs, traditions, practices
v) what degree of understanding and appreciation is now apparent and what potential there is for greater understanding and appreciation in the future

What has been learned (re: the prior five points) will contribute to a person's welfare now and in the future.

3) Collaboration = Co-Deliberation, Co-Operation, and Co-Decision:

While continually reassessing capacities, determine the degree and kind of support needed for i) communication, ii) understanding, iii) appreciation, iv) formulating (desires, beliefs, goals, etc.), v) expression (of desires, beliefs, goals, etc.).

Relevance for the Question of Essential Visitors:

A) How are visitation rights viewed outside of developmental services?

Outside of developmental services (DS), visitation is typically viewed within a healthcare context and as a benefit conferred on a patient by others before or after a procedure deemed necessary to promote or restore the health of the patient. The benefit conferred by visitation can be supplementary, but not necessary, to promote the health of the patient. For example, a visit to a

patient may help calm pre-procedure anxiety or boost morale to aid in post-procedure recovery, but these are not viewed as essential.

However, if the physical well-being of the patient could be reasonably and foreseeably threatened by visitation (for example, when communicable diseases or viral infections are prevalent in the community), then visitation, because unessential, is suspended. Visitation could be deemed essential if the patient has reduced capacity and a family member must be consulted for a care decision.

B) Is the situation re: visitation the same in the DS sector?

In a word: no.

Individuals with intellectual and/or developmental disabilities may have capabilities that fall below the cognitive, emotional, or physical threshold of the general population on a day-to-day basis in any setting. Furthermore, intellectual and/or developmental disabilities exist along a spectrum. Consequently, unhealthy or harmful behaviours to self or others may be a factor, as well as difficulties in understanding, appreciating and communicating information without support, in addition to difficulties in expressing desires and decisions clearly and coherently. As a result, people who have intellectual and/or developmental disabilities are more likely to be in need of external supports to:

- promote the development of capabilities to the extent possible
- protect them from harm to self or others
- support them in decision-making
- promote their sense of self-determination, self-esteem and self-actualization.

The degree of support is inversely proportional to their capabilities: greater capabilities = less support; and lesser capabilities = greater support.

It is important to note that **support for someone who has a developmental and/or intellectual disability may not fall on any one individual but distributed across a care network**. Individuals in a person's care network may **play one or many essential roles** in: providing the support necessary to avoid harm, maintaining a base-level of physical functioning, and promoting holistic well-being in the form of protecting and promoting rights, decision-making abilities, and self-esteem and actualization.

Visitation, during the COVID-19 pandemic, for people who have developmental and/or intellectual disabilities should not, therefore, be viewed in the same way as visitation for the general population. Visitation from individuals within the care network of a supported person may be essential for their health and well-being.

Identifying an Essential Visitor (as part of the essential support network):

In line with the ethical argument just presented, an essential visitor to a group home or other setting, for someone who has an intellectual and/or developmental disability, could be defined as someone whose lack of visiting might cause:

- A person's inability to function as a self because the visitor plays an integral role in supporting the person's autonomy.
- A person's inability to function to their cognitive and emotional capabilities
- A person to engage in or be at increased risk to engage in harmful and unhealthy behaviours in relation to themselves or others
- An incorrect medical treatment or decision to be made because the visitor is an integral member of the person's care decision-making team

III: Recommendation

Identify who composes an essential support network for each supported person. For the reasons outlined above, this network is likely not limited to direct care staff, maintenance, and healthcare professionals only. Taking all necessary precautions against the contraction or transmission of COVID-19 and engaging in necessary communication and coordination with the essential support network, each individual within the network should be permitted visitation to the extent necessary for the adequate, holistic care of the supported individual. This applies even if public health officials have officially suspended all 'non-essential' visitation because these visitors can be defined as essential.

LEGAL FRAMEWORK

Currently, the Ontario Regulation 177/20 (an emergency order applicable to Congregate Care Settings) provides:

> **9.** Every congregate care setting service agency shall follow any guidance, advice or recommendations from the Ministry of Health or the Chief Medical Officer of Health respecting coronavirus (COVID-19) that applies to congregate care setting service agencies to which this Order applies.

On May 28, 2020, the Ministry of Health released a new guidance document titled *COVID-19 Guidance: Congregate Living for Vulnerable Populations*. This new guidance replaces all previous guidance related to congregate care settings and provides recommendations and guidance related to, among other things, visitors to congregate living facilities, which includes developmental services residences. This document provides that

> *"In order to reduce the risk of COVID-19 transmission, only staff and essential visitors who have no symptoms associated with COVID-19 and pass screening, should be permitted in the congregate living setting… An operational definition of an essential visitor should be developed and defined in the policy. This may include a person performing essential support services, such as health care services, a parent/guardian, a person visiting a very ill or palliative resident, or a maintenance worker.*

Therefore, while the restriction on non-essential visitors is legally binding, there is some leeway on how "essential visitors" is defined for each organization.

The Ministry of Children, Community and Social Services has provided further operational direction in this respect and states that:

> *"An essential visitor is generally a person (including a contractor) who performs essential services to support the ongoing operation of a service agency or is a person considered necessary by a service agency to maintain the health, wellness and safety, or any applicable legal rights, of a resident.*
>
> *Who is considered an essential visitor and the way in which the visit is exercised (e.g. in-person, virtual) may change depending on whether there is an active outbreak, the nature of the congregate living setting, the individuals served, as well as advice provided by the local public health unit.*
>
> *Agency employers should take careful consideration as to when and whether an in-person visitor is truly vital to maintain the health, wellness and safety of a resident. This should include whether the support or care provided by the visitor can be reasonably, safely, and fully assumed by agency staff.*
>
> *For residents under the age of 18, employers should take all measures to ensure ongoing visitation rights are maintained in compliance with requirements under the Child, Youth and Family Services Act, 2017. Consideration should be given to using virtual visits.*

Based on the above directive, it is clear that a blanket "no visitation under any circumstances" policy is not required by law and organizations in the DS sector should carefully craft policies in this respect to balance the legal and ethical considerations at play, including the legal rights, health, wellness and safety of a resident.

Key Legal Considerations

1. <u>Human Rights Versus Occupational Health and Safety</u>

In considering the question of permitting visitors to group homes in the DS sector, the duty to accommodate under the Ontario *Human Rights Code* should be properly weighed against workplace health and safety requirements.

The *Human Rights Code* ensures the right of individuals with disabilities to equal treatment when it comes to housing ("the occupancy of accommodation"), free of discrimination.[1] **This legislation also imposes a duty to accommodate the needs of persons with a disability so that they may exercise their rights, up to the point of undue hardship.[2] In the current**

[1] *Human Rights Code* R.S.O. 1990, c. H.19, section 2(1).
[2] *Ibid,* section 17.

context, undue hardship on the part of a DS agency may implicate health and safety requirements.

The *Occupational Health and Safety Act* confers upon an employee the right to refuse unsafe work if he or she has reason to believe that "the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself."[3] The prevalence of COVID-19 may well be considered a danger in the workplace under this provision.

However, if essential visitors follow the directions developed by the MOHLTC (screening, masking, social distancing, handwashing etc.) then health and safety risks are arguably mitigated, and the point of undue hardship not reached. **In other words, a blanket prohibition on family members visiting people with developmental and/ or intellectual disabilities may go farther than necessary to provide a safe work environment.**

2. Tenant's Right to Reasonable Enjoyment of Home

Any restrictions upon visitors should also be considered in light of obligations that an agency may have under the *Residential Tenancies Act*. For instance, a landlord is not permitted to interfere with "reasonable enjoyment of the rental unit or the residential complex."[4]The Landlord and Tenant Board has interpreted the tenant's right to reasonable enjoyment to include a right to have guests without the permission of the landlord.[5]

As a residential tenant is under no obligation to inform the landlord about guests, nor seek permission to entertain same, **a policy that prevents family members from visiting a group home covered by the *Residential Tenancies Act* is arguably an unjustifiable restriction on the tenant's right to reasonable enjoyment of the property. The particular circumstances of the property and care situation will need to be considered when determining whether such a restriction is "reasonable".**

3. The Exercise of Legal Capacity

People with a developmental and/or intellectual disability are more likely to need external supports in order to fully exercise their decision-making rights, i.e., legal capacity. **They often rely on other people to support their decision-making with respect to health care, daily living and financial matters. This support is *essential* to maintaining autonomy, freedom and dignity, rather than resorting to a substitute decision-making model that minimizes or silences the voice of the person with a disability.**

Agencies should consider domestic and international human rights obligations respecting decision-making rights. For instance, Article 12 of the UN *Convention on the Rights of Persons*

[3]*Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, section 43(3).
[4]*Residential Tenancies Act, 2006*, S.O. 2006, c. 17, section 22.
[5]TST-32749-12 (Re), 2012 CanLII 74704 (ON LTB), <http://canlii.ca/t/fv0l4>, retrieved on 2020-05-20, at para. 19.

with Disabilities recognizes the right to legal capacity, without discrimination, and to provide supports, accommodations and safeguards that are necessary for people to exercise that right.[6]

Permitting decision-making supporters (often family and close friends) to be included in the definition of "essential visitors" in the DS sector may facilitate the exercise of legal capacity for those with intellectual/developmental disabilities.

RECOMMENDATIONS

Approach #1 – To maintain stringent restrictions on essential visitors
Agencies may choose to keep restrictions on essential visitors as is (e.g., direct staff, maintenance and medical professionals only). As outlined in this action plan, this does come with legal and ethical considerations. If this is being done out of an abundance of caution, particularly where an agency has had outbreaks, then a clear message should be shared with family members and guardians to outline the strong justification for this approach. The following is an example from Reena:

> Reena is continuing to work closely with local health care authorities, including an infection control specialist and all levels of government, following best practices and providing guidance on our own policies and procedures.
>
> As a result, enhanced screening aimed at reducing the exposure to COVID, was enforced throughout Reena residences, as it was in many other long-term locations throughout the province.
>
> That means that **Reena is still limiting non-essential visits such as family members**. As difficult as this still may be, we are taking every action possible in order to protect your family member. Just to clarify, essential visitors are Direct Support Professionals, medical professionals and maintenance crews only.
>
> The COVID-19 Action Plan for Vulnerable People will be Ontario's and Reena's guideline on how to move slowly and securely to ensure the health and safety of our individuals, their families and the staff who care for them.
>
> As various businesses are opening up to new business models, specific guidelines and parameters are announced. Such as ensuring physical distancing, the use of personal protective equipment, etc. These measures must be met before any business can re-open.
>
> At this point, Reena policies **have not changed** with respect to visiting your loved ones at our Group Homes, or returning them to their Group Home, if you took them home with you.

[6] *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3, GA Res 61/106 (entered into force 3 May 2008, ratified by Canada 11 March 2010).

Approach #2 – To include family/friends as essential visitors on as-needed basis
An agency may decide to include family members as essential visitors but only when there is an essential need, e.g., should the mental and/or physical health of a person supported be at risk.

Examples of guidelines for identifying the need for a visit (within Approach #2):

1. There is an immediate decline in the individual and it has been determined that the individual is at risk of harm to self or others.
2. Group home support staff have exhausted all avenues of supporting the individual in coping with the situation (e.g., isolation)with access to family members through phone calls and other technology resources and self-harming behaviours or aggression to others is continuing and/or increasing. Consultation with all appropriate members of the multidisciplinary team have exhausted all strategies to assist the individual and a further decline has been witnessed. All usual modes of dealing with behaviours and changes in physical and mental health have not made a difference with the individual. The individual is now at risk of mental and/or physical health deterioration now and/or in the future.

Action Steps**:**

1. An agency could use the Ethical Framework's "Identifying an Essential Visitor" (see page 5), to determine the appropriate family members or contacts who would be an essential visitor should a behavioural or medical concern arise for any residents.

2. Based on this approach, an agency does not allow visits except on an as-needed basis. If a need for a visit arises (e.g., medical care consultation, to reduce self-harming behaviour, etc.), then a visit is scheduled.

3. A clear plan should be created as to what the outcome of the visit is to be and the purpose of the visit. A call with the team and the family member or carer via phone should occur prior to the appointment. The family member or carer needs to have a clear understanding through whatever communication method is appropriate, as to who is coming, how long the visit will last, rules as it relates to PPE and physical distancing (including no touching), etc. If there is refusal to agree to the rules provided, then the visit may not occur. Equally, the person supported also needs to understand the purpose and any limits on the visit. For example, social stories could be used to explain why there may not be hugs or gifts given during this visitor. In cases, an agency may decide that it is best for a staff to support the visit, to ensure that the agency's safety guidelines are maintained, for example, if no contact is allowed.

The visits should be predetermined as to the length of time and a schedule created as to when the next visit will be arranged. Considerations should be made for supports that need to be put in place to support the success of the visit. The supports should be reevaluated if the visit is not successful.

4. All visitors need to sign in. Should an outbreak occur, this will facilitate contact tracing.

5. Visitor protocols should be put in place to ensure the safety of the family member or carer who is entering the living space as well as the safety of those living and working in the home:

- **Screening**/checking will be completed to ensure the visitor entering the house is free of infection with no symptoms or fever present (along with all other symptoms published by Public Health).
- Appropriate **PPE** will be made available to the visitor with assistance as to how and where to don and doff the equipment.
    - The person who is being visited will also be supported to don appropriate PPE for the visit, if tolerated.
- A clear message should be conveyed to all parties that **physical distancing** (maintaining 6 feet's distance) during the visit is required. Hence, there is to be no physical interaction.
    - If there is a concern that the person supported could not manage to maintain distance, then establish additional precautions for the visitor, for example, that they wear full PPE. Other measures could include having a barrier between the people involved in the visit.
- Each agency must **determine if it is advisable to allow for the bringing of gifts** or other items being exchanged. If it is permitted, then try to establish guidelines, for example, that it must be an easy-to-clean item. Disinfectant wipes could then be available to wipe down the gift before it is given.

6. There needs to be a designated, preferably isolated, area for the visit to take place in the home that is separate from others and is fully disinfected prior to and immediately following the visit.

7. Checks will be undertaken by staff to ensure compliance with all health and safety measures during the visit.

Approach #3 – To view family members as essential visitors based on urgent need and/or quality of life

Examples of guidelines for identifying the need for a visit (within Approach #3):

In addition to the needs for a visit identified in Approach #2, Approach #3 also sees quality of life as a need.

Action Steps**:**

An agency could use the Ethical Framework's "Identifying an Essential Visitor" (see page 5), to determine the appropriate family members or other contacts.

An agency should establish strict guidelines for all visitors (e.g., action steps 3-6 of Approach #2) to ensure safety precautions are in place.

The agency should establish a schedule of visit opportunities, which includes time for cleaning of the visit area.

The agency should communicate their approach to families so they can understand the importance of visitation while also respecting the need for guidelines and limits on the number of visits. Visits concerning a person in crisis will be prioritized.

Disclaimer

This guidance document provides basic information and is not intended to replace the advice and recommendations of medical as it relates to diagnosis or treatment.

Legal input and feedback included in this policy were provided by PooranLaw lawyers as members/consultants of the Sector Pandemic Plan Initiative's Governance working group. However, the legal input and feedback included in this policy should not be construed as legal advice. Each agency's circumstances and legal rights may vary and there will also be nuances within each agency. The goal of the legal input and feedback included in this policy is to help present options and highlight risks and other considerations. Agencies may wish to seek legal advice once they have selected the options that meet the needs of their organization.