

Subject: **WHISTLE-BLOWING PROTECTIONS**

Section: **Human Resources**

Approved By: **Executive Director**

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POLICY

Whistle-blowing encourages and enables employees/family members/substitute decision makers/visitors/volunteers/physicians to raise serious concerns within Fairhaven rather than overlooking a problem or “blowing the whistle” outside. Fairhaven encourages the above to report suspected breach of the Home’s policy, procedures or standards, and legislation that applies to the Home.

Reference: Fixing Long Term Care Act, 2021, S. 20, O. Reg 246/22

GUIDELINES

The Fixing Long Term Care Act, 2021 forbids retaliation or threats of retaliation against a person for disclosing anything to an inspector or the Ministry of Health and Long-Term Care Director, or for giving evidence in a proceeding under the FLTCA, 2021 or during a coroner’s inquest. Staff members, officers, and directors cannot discourage these disclosures. Employees are often the first to realize that there is something seriously wrong within Fairhaven. However, they may not express their concerns as they feel that speaking up would be disloyal to their co-workers. Our first priority is to be advocates for the residents.

PROCEDURES

Reporting

1. Anyone who is aware of, or suspects any of the following must report it as soon as possible in writing/verbal to their Supervisor/Manager with a copy to the Executive Director (ED) or designate:
 - a) Improper or incompetent treatment or care of a resident; or unlawful conduct that affects or may affect a resident
 - b) Abuse of a resident or staff by anyone, or neglect of a resident by a staff member, visitor, or others including misuse or misappropriation of resident property
 - c) Verbal complaints concerning resident care or operation of Fairhaven
 - d) Breach of Fairhaven’s policies, standards, procedures or by-laws, or breaches of legislation or government policy that applies to Fairhaven, including the FLTCA and its regulations
 - e) Any retaliation against a person for making a report under this policy, or for disclosing anything to an inspector or the MOLTC Director, or for giving evidence in a proceeding under the FLTCA, 2021 or in a coroner’s inquest.

2. If the problem concerns their immediate supervisor, they are to follow the chain of command.
3. All Managers have a responsibility to act on the concerns raised, in accordance with this procedure, immediately.
4. Concerns may be raised verbally or in writing and should give the background, the nature of the malpractice that is alleged; relevant dates where possible, the reasons for the concern and the names of the individuals against whom the allegations are made.

Reporting Requirements

- a) Senior Management must immediately report to the MOHLTC Director where there is a reasonable suspicion that certain conduct or events occurred or may occur.
- b) Staff must immediately report any conduct or events that may lead to a mandatory/immediate report.
- c) It is an offence under the LTCHA to discourage or suppress a section 24(1) report (LTCHA section 24(1)).

Whistle-blowing protection

No person shall retaliate against another person, whether by action or omission, or threaten to do so because,

- (a) anything has been disclosed to an inspector;
- (b) anything has been disclosed to the Director including, without limiting the generality of the foregoing
 1. a report has been made under [section 28](#), or the Director has otherwise been advised of anything mentioned in paragraphs 1 to 5 of [subsection 28 \(1\)](#),
 2. the Director has been advised of a breach of a requirement under this [Act](#), or
 3. the Director has been advised of any other matter concerning the [care](#) of a resident or the operation of a [long-term care](#) home that the person advising believes ought to be reported to the Director;
- (c) anything has been disclosed to any other personnel of the Ministry, or to any other individual or entity that may be provided for in the regulations; or
- (d) evidence has been or may be given in a proceeding, including a proceeding in respect of the enforcement of this [Act](#) or the regulations, or in an inquest under the [Coroners Act](#).

Manner of disclosure, etc.

Disclosure of concerns may be by any method, such as by making a complaint to the Ministry or by calling an action line where one has been established, subject to any exceptions provided for in the regulations.

Interpretation, retaliate

Without in any way restricting the meaning of the word “retaliate”, the following constitute retaliation for the purposes of subsection (1):

1. Dismissing a staff member.
2. Disciplining or suspending a staff member.
3. Imposing a penalty upon any person.
4. Intimidating, coercing or harassing any person.

No retaliation against residents

A resident shall not be discharged from a long-term care home, threatened with discharge, or in any way be subjected to discriminatory treatment because of anything mentioned above, even if the resident or another person acted maliciously or in bad faith, and no family member of a resident, substitute decision-maker of a resident, or person of importance to a resident shall be threatened with the possibility of any of those being done to the resident.

Interpretation, discriminatory treatment

Without in any way restricting the meaning of “discriminatory treatment”, the term includes any change or discontinuation of any service to or care of a resident or the threat of any such change or discontinuation.

May not discourage reporting

None of the following persons shall do anything that discourages, is aimed at discouraging or that has the effect of discouraging a person from reporting issues to:

1. The licensee of a long-term care home or a person who manages a long-term care home
2. If the licensee or the person who manages the home is a corporation, an officer or director of the corporation.
3. In the case of a home approved under Part IX of the Fixing Long Term Care Act, a member of the committee of management for the home or of the board of management for the home.
4. A staff member.

May not encourage failure to report

No person mentioned directly above shall do anything to encourage a person to fail to do anything described in the Whistleblowing section above.

Protection from legal action

No action or other proceeding shall be commenced against any person for doing anything mentioned regarding the provision of whistleblowing protection unless the person acted maliciously or in bad faith.

Complaint to Ontario Labour Relations Board

Where a staff member complains that an employer or person acting on behalf of an employer has contravened this policy, the staff member may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

Inquiry by Board

The Board may inquire into any complaint filed under subsection (1) and [section 96](#) of the [Labour Relations Act, 1995](#), except subsection (5), applies with all necessary modifications as if that section, except subsection (5), is enacted in and forms part of this Act.

Onus of proof

On an inquiry by the Board into a complaint filed under subsection (1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to [subsection 30 \(1\)](#) lies upon the employer or the person acting on behalf of the employer.

Board may substitute penalty

Where, on an inquiry by the Board into a complaint filed under subsection (1), the Board determines that a staff member has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Interpretation

(6) In this section,

“Board” means the Ontario Labour Relations Board; (“Commission”)

“employer”, in relation to a staff member, means,

- (a) where the staff member is an employee of a licensee or a person who works at a long-term care home pursuant to a contract or agreement with a licensee, the licensee, or

- (b) where the staff member works at a long-term care home pursuant to a contract or agreement between the licensee and an employment agency or other third party, the employment agency or third party.

Obstruction — information to inspectors, Director

Every person is guilty of an offence who attempts, by any means, to prevent another person from providing information to an inspector or the Director where the provision of the information is required or permitted by this Act or the regulations.

INVESTIGATION PROCESS

1. The person receiving the report will review, and if warranted, investigate and resolve the subject matter of the report. Where necessary, that person will advise or involve members of Senior Management. Fairhaven expects individuals to cooperate during any investigation
2. Where appropriate, the investigating Manager may decide that the situation be referred to the police.
3. An individual who raises a concern and is not satisfied with the outcome or action proposed may appeal against the decision. An appeal should be made to the Human Resource Manager within five days of the receipt of the outcome letter.

Confidentiality

Fairhaven will accept reports under this policy on a confidential basis. Fairhaven's normal procedure will be to keep all reports confidential to the extent possible, subject to the need to conduct an effective investigation or to take action to comply with the FLTCA or other law. Fairhaven will not tolerate any attempt by a person or group to identify a person who submits a report in good faith or confidential basis.

Staff Orientation and Training

Staff members will receive orientation and annual re-training on the reporting obligations under the FLTCA, Fairhaven's internal procedures for reporting, and the whistle-blowing protections in the FLTCA.