

Protection for Persons in Care Act

Policy Manual



Policy: **Protection for Persons in Care Policy Manual**

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Effective Date: September 30, 2013

Approved by: Kevin McNamara
Deputy Minister, Department of Health and Wellness

Signature: *Original signed by Deputy Minister, Department of Health and
Wellness*

Version: *ver. 1*

This manual replaces the Protection for Persons in Care Administrative Manual (2007)

Protection for Persons in Care Policy Manual

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Policy: 1.1 Authorization of the <i>PPCA</i> Policy Manual

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Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness
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Signature:

1.1.1 INTRODUCTION

The *Protection for Persons in Care Act (PPCA)* received Royal Assent on October 18, 2004 and was proclaimed into force October 1, 2007. This *Act* protects patients and residents from abuse or likely abuse in health facilities.

The Minister of Health and Wellness has designated Investigators within the department who are charged with the responsibility to inquire into and investigate allegations of abuse and to issue directives to the administrators of health facilities under the mandate of the Department of Health and Wellness to protect patients and residents from further abuse.

This manual outlines the roles and responsibilities of the Investigators through the following policies and procedures.

1.1.2 AUTHORIZATION

The attached policies contained in the Protection for Persons in Care Policy Manual, effective September 30, 2013, have been authorized by Kevin McNamara, Deputy Minister, Department of Health and Wellness.

Policy: 1.2 Purpose of the <i>Protection for Persons in Care Act</i>	
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1.2.1 PURPOSE

The purpose of the *Protection for Persons in Care Act* is to:

1. Outline the statutory duty of administrators to protect patients and residents against abuse in health facilities;
2. Outline the statutory duty of administrators and service providers to report allegations of abuse or likely abuse against patients and residents of health facilities;
3. Allow the Minister or a delegate to inquire into and investigate allegations of abuse or events which likely could lead to abuse within health facilities; and
4. Prevent further harm to patients and residents of health facilities by allowing the Minister to issue directives to mitigate the risk of abuse occurring or reoccurring in the facility.

In order to consider an allegation of abuse or likely abuse 'founded'; the legal standard of reasonable grounds (see Policy 1.6) must be established that abuse happened or was likely to happen which caused or was likely to cause emotional and/or physical harm to a patient or resident.

1.2.2 POLICY

Department of Health and Wellness Investigators must follow the *Protection for Persons in Care Act* and all of the policies contained in this manual.

Investigators are also responsible to be familiar with Department of Health and Wellness policies and provincial and federal legislation that affects the protection of individuals in health facilities in Nova Scotia.

Policy: 1.3 Authority to Inquire and Investigate	
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1.3.1 PURPOSE

Investigators appointed by the Minister of Health and Wellness under *Sections 8 and 15* of the *Protection for Persons in Care Act* have the authority to inquire into and investigate whether patients or residents are being abused or are likely to be abused in health facilities in Nova Scotia.

1.3.2 POLICY

A letter of authorization to inquire and investigate (see Appendix B) must be issued to staff once they are appointed as Investigators. The letter articulates that the person has been assigned to perform the function of an Investigator under the *Protection for Persons in Care Act*.

If requested, designated Investigators must be able to present the authorization letter to concerned parties.

Policy: 1.4 Offences under the <i>Protection for Persons in Care Act</i>	
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1.4.1 POLICY

Good Faith Provision

No action or legal proceeding will be taken against any person who reports and/or investigates under the *Act in good faith* as indicated in section 16 of the *Act*.

Investigators demonstrate 'good faith' by always being prepared to provide a clear rationale for actions taken under this *Act*.

If an Investigator receives information that he or she or another person acting under this *Act* is being accused of not acting in 'good faith'; he or she must report this information to the Manager, Investigation and Compliance immediately along with a full account of any relevant actions taken under the *Act*.

If an Investigator, during the course of an investigation, has reasonable grounds to believe that the following contraventions of the *Act* have occurred; he or she must report them immediately to the Manager of Investigation and Compliance:

1. An administrator has taken adverse employment action against an employee of a health facility because he or she made a report in good faith under the *PPCA*;
2. A patient or resident of a health facility is not receiving appropriate service because that person or a relative of that person has made a report in good faith under the *Act*.

The Manager, Investigation and Compliance will then consult with legal counsel to determine if legal action and/or other measures by the Minister are warranted.

Contravention of the *Act*

Section 17 outlines offences under the *Act* and the possible consequences to a summary conviction. If an Investigator establishes that there are reasonable grounds to substantiate that:

1. Information concerning an allegation of abuse in a health facility was knowingly and intentionally not reported by an administrator or service provider to the Minister; and/or
2. A report of an allegation of abuse was intentionally not made in a timely manner; and/or
3. Information was reported maliciously;

he or she must consult with the Manager of Investigation and Compliance immediately.

If, after initial inquiries, it is determined that action may be warranted; the Manager,

Investigation and Compliance will consult with legal counsel to determine if legal action and/or other measures by the Minister are warranted.

If it is determined that action is warranted; legal counsel, on behalf of the Minister and in consultation with the Manager, Investigation and Compliance and the Investigator; will initiate an application to court.

Policy: 1.5 Administrative Fairness	
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Signature:	

1.5.1 POLICY

Investigators must follow the principles of administrative fairness, by demonstrating the following throughout *PPCA* inquiries and investigations:

Opportunity to Be Heard

1. Consider all submissions and information from relevant parties gathered in the Inquiry, Investigation stages and responses to the preliminary investigation report;
2. Create every opportunity through the interview process to directly hear from all relevant parties;
3. Present a preliminary investigation report which summarizes the allegation; process of the investigation and the evidence gathered for response from implicated persons; affected patients or residents; and/or substitute decision makers (see Policy 1.8); and administrators;

Acting without Bias

1. Ensure that any findings and directives have clear reasoning that is linked to facts and evidence and are made in good faith;
2. Only gather and take into account relevant information to the allegation;
3. Act fairly and without bias;
4. Inform the Manager of Investigation and Compliance of any possible conflicts of interest.

Fair and Standard Procedures

1. Ensure that the legal standard of reasonable grounds (see Policy 1.6) is met at the Inquiry and Investigation stages;
2. Notify the affected patient or resident, and/or his or her substitute decision maker (see Policy 1.8), the implicated person and the administrator of the decision to proceed with an investigation;
3. Provide a final investigation report with the findings, a summary of the evidence (including additional evidence brought forward in response to the preliminary investigation report); and directives from the Minister to the health facility (if applicable). The report is distributed to the implicated person, affected patient or resident, and/or his or her substitute decision maker (see Policy 1.8) and the administrator;

4. Ensure that a full record of the Inquiry and Investigation have been put on the case files;
5. Keep all information confidential and share and store documents according to the relevant legislation and Government of Nova Scotia and Department of Health and Wellness policies;
6. Comply with the *Protection for Persons in Care Act* and all policies and procedures contained in this manual.

Policy: 1.6 Reasonable Grounds and Determining Abuse

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1.6.1 POLICY

In order to move from inquiry to investigation; *and* to determine a finding of abuse under the *PPCA*; Investigators must have **reasonable grounds** that abuse happened or there are circumstances which likely would lead to abuse.

Investigators must use the legal standard of 'reasonable grounds' to determine:

- If there is enough information to move forward from an inquiry to an investigation; and
- When concluding if an allegation of abuse is founded or not at the end of an investigation.

Further Considerations When Determining Abuse

Abuse is defined in Section 3, *Protection for Persons in Care Regulations*. Abuse can be either an act or an omission and the resulting harm or likely harm to the person who experiences that action (or omission).

Physical and Emotional Harm

For the purposes of *PPCA* inquiries and investigations, the following definitions will be used in determining the outcome of the action of abuse; or the resulting harm that it causes or likely to cause, to the affected patient(s) or resident(s):

- **Physical Harm-** Any physical hurt or injury which interferes with the physical integrity, health or well-being of a patient or resident.
- **Emotional Harm-** A psychological impact on a person's mental state that is evidenced by changes in behavior or patterns of behavior.

Likely Abuse

The *Protection for Persons in Care Act* has a preventative focus. The purpose of the *Act* is to investigate allegations of abuse; not only to determine if abuse happened, but also to identify the events leading up to the abuse in order to prevent abuse from re-occurring in the future.

It is important that Investigators understand that 'likely abuse' must be determined either:

- *Before* an act of abuse occurs- a complainant has identified events that may lead to abuse and the physical or emotional harm of patients or residents; or
- *After* an act of abuse occurs- a complainant has identified that the action has occurred; however; the patient or resident does not seem to have experienced physical or

emotional harm, but in most cases, harm would have been the result of the same action.

Policy: 1.7 Accommodating the Patient's and/or Resident's Wishes

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1.7.1 POLICY

Section 10 of the *Protection for Persons in Care Act* directs Investigators to incorporate affected patients' or residents' wishes when developing the investigation report. When interviewing patients or residents, Investigators must ask them (regardless of their mental capacity) if they have any wishes in relation to:

- Their involvement in the investigation;
- Potential outcomes of the investigation.

Investigators must ensure that the preliminary investigation report letter is sent to the affected patient or resident and/or his or her substitute decision maker (as appropriate- see Policy 1.8). This letter asks the affected patient or resident or the substitute decision maker to submit any wishes for consideration that they have in relation to the outcome(s) of the investigation.

Investigators must consider the following when determining if he or she can accommodate a patient or resident's wishes:

- If there is evidence that a patient or resident has diminished *mental capacity* to *reasonably* express his or her wishes about the *PPCA* investigation and outcomes;
- If the wishes of the patient or resident are outside of the scope of the *PPCA* investigation;
- If there are safety concerns for other patients or residents in the health facility which may override the ability to accommodate an individual patient's or resident's wishes.

Investigators must accommodate all *reasonable* wishes of patients and residents throughout the course of an investigation. If the expressed wishes are not reasonable; the Investigator must communicate the rationale for not accommodating the patient's or resident's wishes to the individual directly or his or her substitute decision maker or guardian (if there is evidence that the patient/resident is or is most likely mentally incapacitated).

If the Investigator has any question as to whether a patient's or resident's expressed wishes can be accommodated, he or she must discuss with the Manager, Investigation and Compliance.

Determining Best Interests

If there is evidence that the patient or resident does not have the mental capacity to express their wishes in relation to the investigation and the report and he or she does not have a substitute decision maker or guardian to speak for him or her; the Investigator must consult with the administrator to determine what would be in the patient's or resident's best interests in relation to any planned actions happening throughout the investigation or reporting process that may affect the patient or resident.

Investigators must consult with the Manager, Investigation and Compliance if they are unsure as to what decision would be in the patient's or resident's best interests.

Policy: 1.8 Considering the Mental Capacity of Patients and Residents

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Signature:

1.8.1 POLICY

Before providing notification of the *PPCA* investigation and/or reports to patients or residents; Investigators must consult with the administrator to determine if there are any issues with the mental capacity of the individual:

1. **The Mentally Capable Patient or Resident-** In the case of individuals who have their full mental capacity; all notifications and reports must be provided directly to the patient or resident.
2. **The Mentally Incapacitated Patient or Resident-** If there is *evidence* that the patient or resident does not have the mental capacity to understand and appreciate the information in the notification or reports, the Investigator must ensure that the substitute decision maker, guardian or attorney (in the case of alleged financial abuse) receives all notifications and reports.
3. **The Mental Capacity Status of the Patient or Resident is Unclear-** It is important to note that under the *Canadian Charter of Rights and Freedoms*, the mental capacity of all individuals must be presumed. Even if the patient or resident *most likely does not* have the mental capacity to understand and appreciate the notifications or reports, they must be provided directly to him or her; unless it is determined that this will cause the patient or resident further harm.

The Investigator must determine the best way for the patient or resident to receive notification in order to provide the best opportunity for them to understand and appreciate the information.

If the Investigator; in consultation with the administrator, determines that providing notification to the individual (by any method); *would cause him or her further harm*, notification will *only* be provided to the guardian, substitute decision maker or attorney (in the case of alleged financial abuse) as per *Section 8(4)* of the *PPCA*. (The only exception to this is if the substitute decision maker, guardian or attorney is the implicated person; in this case, the Investigator will consult with legal counsel via the Manager, Investigation & Compliance.)

Policy: 2.1 Inquiry	
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Signature:	
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2.1.1 POLICY

To move from inquiry to investigation, as determined by Section 8(2) of the *Act*, investigators must collect all relevant and necessary information needed to establish reasonable grounds that:

1. Abuse happened or there are circumstances which likely would lead to abuse; and/or
2. Patients or residents experienced or would likely experience physical and/or emotional harm.

2.1.2 PROCEDURES

When conducting an inquiry into an allegation of abuse under the PPCA, Investigators must do the following:

1. Contact the complainant to gather additional information related to the allegation and check the reliability and validity of the intake information. Investigators must consider the following when determining if intake information is reliable and valid:
 - The availability of first-hand information;
 - The age of the information;
 - The overall credibility of the information;
 - The relationship and/or history of the complainant to the patient or resident and the health facility;
 - Relevant past history, e.g. past referrals under the *PPCA*.
2. Contact the administrator or designate of the health facility to confirm as per *Section 4(1)* what immediate action(s) have been taken to ensure the safety of the patient or resident. If the allegation reported by the complainant is outside of the scope of PPCA, the administrator may not be contacted.
3. Inform the complainant and collateral sources of the following:
 - Only relevant parties will be notified if an investigation is warranted;
 - The limitations to anonymity, e.g. the complainant or collateral source may be called to be formally interviewed if further information about the incident is needed;
 - The process, limitations and potential outcomes of *PPCA* investigations;

- That a standard of reasonable grounds must be met to move from an Inquiry to an Investigation and for a finding of abuse or likely abuse under the *Protection for Persons in Care Act* (see Policy 1.6).

Once the Investigator has concluded that he or she has collected enough evidence at inquiry to substantiate:

1. Reasonable grounds to move to an investigation (see Policy 1.6); *or*
2. That there are *not* reasonable grounds to move forward to an investigation;

The Investigator shall:

1. Document all relevant evidence collected at inquiry in the case notes and record a summary of the rationale for the determination of reasonable grounds to proceed to investigation or not;
2. Consult with the Manager, Investigation and Compliance to discuss his or her findings of whether there are reasonable grounds to move to an investigation or not;
3. Proceed to investigation if reasonable grounds are established. If there are no reasonable grounds the Investigator must close the case;
4. Consider whether a referral to other services may be warranted; e.g. Adult Protection, the police (see Policy 3.6), and/or professional regulatory bodies (see Policy 3.5).

2.1.3 TIME STANDARD

Investigators assigned to *Protection for Persons in Care* office duties must respond to the complainant within 1 business day of receiving the intake.

Policy: 2.2 Inquiring into Patient/Resident-to-Patient/Resident Abuse

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Signature:

2.2.1 POLICY

The *Protection for Persons in Care Act Regulations* set out parameters in relation to patient/resident-to-patient/resident abuse in *Section 3(1)(e) and (2)*. When considering if there are reasonable grounds to establish that abuse (or likely abuse) occurred between patients and/or residents at inquiry; Investigators must demonstrate that they have considered:

- the mental capacity of the implicated patient or resident;
- if the affected patient or resident experienced serious physical harm;
- if the allegation is sexual abuse; that the sexual contact between patients and/or residents was non-consensual.

If, based on the initial intake information *or at any point in the inquiry*, the Investigator concludes that the implicated patient or resident's mental capacity is *not* in question; the inquiry will proceed as with any other *PPCA* inquiry.

If during the inquiry, the Investigator concludes that the implicated patient or resident's mental capacity *is* in question; he or she must consult with the administrator of the health facility or appropriate individual to determine:

- a. If there is evidence on the implicated patient's or resident's file that he or she is mentally incapacitated;
- b. If there have been questions or signs about the implicated patient's or resident's mental capacity previous to or as a result of the incident that prompted the *PPCA* referral.

If the Investigator finds that there is evidence to support that the implicated patient or resident has displayed behaviours; decision-making; or has a medical condition which most likely has had an effect on his or her mental capacity; the Investigator must request that the facility arranges for a mental capacity assessment; if this has not already been completed.

If the implicated patient or resident was found to be mentally incapacitated; the Investigator would continue with an inquiry to determine whether there has been a pattern of physically aggressive behaviours demonstrated by the implicated patient or resident, whether or not the affected patient or resident experienced serious physical harm as a result of the incident, and whether there is an appropriate care plan to manage the behaviours.

- a. If the affected patient or resident experienced serious physical harm as a result of the actions of the mentally incapacitated implicated patient or resident; the definition of abuse would be met and the Investigator would proceed with determining reasonable grounds.

- b. If the affected patient or resident has not experienced serious physical harm; however, the implicated patient or resident has a history of physical aggression *and* the facility is actively working on a care plan for the implicated patient or resident to address the physically aggressive behaviours; the inquiry will remain open until a satisfactory plan to manage the behaviors is put in place. In such cases where the health facility does not have an appropriate care plan to manage those behaviours *and* there is no indication that they are putting a plan in place; the Investigator may proceed with an investigation.

*For the purpose of PPC, serious physical harm is defined as any physical hurt or injury which interferes in a *substantial way* with the physical integrity, health or well-being of a person as a result of physical and/or sexual abuse.

If there is no evidence or question about the mental capacity of the affected patient or resident in relation to an allegation of non-consensual sexual contact, activity, or behavior between patients or residents; the inquiry will proceed as with any other *PPCA* inquiry.

If there is evidence to support that the affected patient or resident was mentally incapacitated to consent or if the Investigator is unsure as to the mental capacity of the affected patient or resident to consent to sexual activity with another patient or resident; the Investigator must determine:

- If the patients or residents have a history of consensual sexual contact or activity (which pre-dates the mental incapacity to consent);
- If there are behavioural or physical indicators of non-consensual sexual contact present on or being demonstrated by the affected patient or resident.

If there is a history of consensual sexual contact or activity between the patients or residents and there are no behavioural or physical indicators of non-consensual sexual contact or activity; reasonable grounds would not be present to continue to an investigation.

Policy: 3.1 Investigation

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Signature:

3.1.1 POLICY

If reasonable grounds are established through inquiry, the Investigator must conduct an investigation on behalf of the Minister of Health and Wellness. Investigators must interview relevant parties and analyze evidence to establish whether there are reasonable grounds that an allegation of abuse or likely abuse is founded under the *Protection for Persons in Care Act*.

3.1.2 PROCEDURES

Investigators must:

1. Develop an investigation plan;
2. Send notification letters to the administrator, the implicated person and the affected patient(s) or resident(s) and/or the substitute decision maker (see Policy 1.8) as soon as reasonable grounds are established. The notification letter must include the following information:
 - A notification of the allegation(s) according to the *Act*;
 - A statement confirming that the implicated person will have an opportunity to directly respond to the allegation(s) in an interview with the Investigator;
 - A statement that asserts the right of anyone taking part in an interview to have a support person present (see Policy 3.3);
 - A request that if the person is planning to have legal representation present for the interview, that the *PPCA* office must be notified at least 2 business days in advance.
3. Conduct interviews with the implicated person and the affected patient(s) or resident(s) and collect information from sources which may include, but are not limited to:
 - The administrator or delegate of the health facility;
 - The complainant;
 - Witnesses or collateral sources with direct knowledge of the event or allegation;
 - Health record(s);
 - Treating physician(s) or other health professionals where appropriate.
4. Write the preliminary investigation report. The report must summarize the following:
 - a. An overview of the allegation including subsection of the *Act* under which investigation was conducted.

- b. A summary of the investigation;
 - c. The relevant evidence gathered.
5. Send the preliminary investigation report; providing an opportunity to respond with any additional information or clarification in writing within 30 days of the date of the introduction letter; to the administrator, the implicated person and the affected patient(s) or resident(s) and/or the substitute decision maker (see Policy 1.8);
6. Collect, analyze and summarize all responses to the preliminary investigation report from the affected parties;
7. Conduct a case review in consultation with the Manager of Investigation and Compliance and at least one other Investigator. The Investigator presents a summary of the investigation and evidence in the case review;
8. Formally conclude whether the allegation is founded or unfounded, and develop directives for the health facility (if relevant);
9. Finalize the Investigation Report summarizing the following:
 - a. An overview of the allegation including subsection of the *Act* under which the investigation was conducted.
 - b. A summary of the investigation;
 - c. The relevant evidence gathered; including any relevant additional evidence or clarifications provided in response to the preliminary investigation report;
 - d. The conclusion of whether or not reasonable grounds exist to support that the allegation is founded or unfounded; and
 - e. The directives for the health facility (if relevant).
10. Forward the final investigation report to the appropriate individuals within the Department of Health and Wellness (if relevant);
11. Review the directives in the Investigation Report with the administrator or designate of the health facility. At that time, the Investigator must request that the facility respond with an action plan addressing the directives (including timelines);
12. Disseminate the final investigation report to:
 - a. The implicated person(s);
 - b. The affected patient or resident and/or the guardian, attorney or substitute decision maker(s) (as appropriate) (see Policy 1.8);
 - c. The administrator.
13. Review the proposed action plan submitted by the health facility to determine if it is appropriate. If the Investigator determines that the action plan and timelines are not appropriate, he/she will consult with the Manager of Investigation and Compliance; and request that the administrator revise the action plan;
14. When determined appropriate, approve the action plan provided by the facility and send an approval letter to the administrator or delegate. The approval letter will include a

statement outlining the requirement of the facility to confirm (in writing) once the directives have been implemented;

15. Review the written confirmation from the facility that all of the directives have been implemented according to the agreed upon action plan. If the Investigator does not receive the written confirmation according to the timelines set out in the action plan and/or the directives have not been implemented to a standard that would reflect the satisfaction of the Minister, the Investigator must consult with the Manager, Investigation and Compliance to determine next steps;
16. When satisfied that all of the directives have been implemented, notify the facility in writing that the actions taken to address the directives are satisfactory and that the file will be closed;
17. Close the case file.

3.1.3 TIME STANDARDS

The following time standards are to be followed:

1. Beginning an Investigation- all investigations must be initiated within 5 business days after determining that there are reasonable grounds to move to an investigation.
2. Writing and disseminating the Preliminary Investigation Report- all interviews, collection of evidence and summarizing the evidence must be completed within 60 business days after initiating the investigation. Investigators will inform administrators, implicated persons, patients, residents and substitute decision makers (as appropriate) that they have 20 business days to respond to the report;
3. Finalizing the Investigation Report- A written final investigation report must be completed and disseminated to the affected parties and the directives reviewed with the health facility within 20 business days of receiving responses to the preliminary investigation report. The administrator or delegate of the health facility has 10 business days from the date of the final report to submit an action plan and timelines to address the Minister's directives;
4. Approving the Action Plan- the Investigator has 10 business days from receiving the action plan from the facility to approve the submitted action plan or request a revised plan to be submitted if the Investigator determines that the action plan and timelines are not appropriate.

If the Investigator is not able to complete the investigation within the timeframe, he or she shall advise the Manager, Investigation and Compliance that the timeline will not be met and the rationale for being unable to meet the timeline and document in the case notes.

Policy: 3.2 Gaining Entry and Accessing Information from the Health Facility

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Signature:

3.2.1 POLICY

According to Section 9 of the *Act* Investigators have the authority to gain entry into a health facility and access any information which they believe is relevant to the investigation. This includes any personal health information under the *Personal Health Information Act*; personal information under the *Freedom of Information and Protection of Privacy Act*; or any other records or reports.

All Investigators must have their letters of authorization to Inquire and Investigate (see Appendix B) and a copy of the *Protection for Persons in Care Act* with them when visiting health facilities and conducting interviews.

The Investigator must present the letter to anyone preventing him or her from entering the health facility; accessing information; or refusing reasonable assistance while conducting the investigation.

Administrators are required to provide all reasonable assistance to the Investigators throughout the course of their investigation. If the administrator is unwilling to comply with the request for entry or information, the Investigator must consult with the Manager, Investigation and Compliance. If the Manager, Investigation and Compliance determines that the Investigator has taken every reasonable measure to work with the administrator to enter the facility and/or release the requested information; he or she will consult with legal counsel to make a decision about whether to pursue a warrant from a justice of the peace to compel the administrator to provide access to the facility and/or the information.

Policy: 3.3 Support Persons in the PPCA Interview

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3.3.1 POLICY

Affected patients and residents, implicated persons, administrators and/or witnesses have the right to bring support persons to any interviews conducted as part of the PPCA investigation.

Investigators must inform any person who requests having a support person present for the interview that the role of the support person is limited to attendance at the interview to support the interviewee (he or she will not actively participate in the interview process); *unless the person is providing legal support.*

PPCA Investigators must be given at least 2 business days' notice if legal representation will be present at the interview.

Support is primarily provided through:

- Union representation
- Guardians authorized by the *Incompetent Persons Act*
- Substitute decision makers authorized by the *Personal Directives Act*
- Attorneys (in the case of alleged financial abuse)
- Lawyers

The support person must:

- Not be a co-worker or friend who has firsthand knowledge which relates to the PPCA investigation; and
- Agree to maintain the confidentiality of all information discussed during the interview by signing a confidentiality agreement.

Policy 3.4 Collecting and Analyzing Evidence in an Investigation

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3.4.1 POLICY

When collecting evidence during an investigation, Investigators must primarily concentrate on direct evidence. Indirect evidence, e.g. third hand information; would only be considered when corroborating direct evidence supporting the alleged abuse or likely abuse.

For the purposes of the PPCA Investigation; the following terms will be considered:

1. Direct Evidence of Abuse- Relevant personal first-hand observations or documents such as (but not limited to):
 - Objective eyewitness observations;
 - A patient or resident disclosure of abuse or likely abuse;
 - An implicated person's admission of abuse or likely abuse;
 - Photographs, audio or video recordings of abuse or events which would have likely led to abuse;
 - Medical assessments or documentation of physical and/or behavioural indicators of abuse.
2. Indirect Evidence of Abuse- Indirect evidence, or circumstantial evidence, may include:
 - Suspicious injuries and/or evidence suggesting physical and/or sexual abuse has occurred;
 - Untreated physical injuries or illness that suggests abuse or withholding medical care;
 - Preventable injuries suggesting inadequate care or supervision;
 - Signs the service provider lacks adequate knowledge or skill (which could have led to the alleged incident of abuse or likely abuse).

Collecting Photographic and Video Evidence

Investigators *may* take photographs of the *physical* environment and/or physical tools or equipment involved in the incident of alleged abuse as part of the investigation. The Investigator must inform the health facility administrator (or designate) that he or she will be taking photographs or videos of the facility.

The Investigator would only take photos and videos of the patient or resident if appropriate and reasonable to do so. The patient or resident must give his or her consent or the Investigator has the consent of the substitute decision maker.

If there has been an investigation into the allegation of abuse by the facility and/or police and photographs and/or videos have been taken of the patient or resident to substantiate the abuse; the Investigator may view this information on site or ask for copies, if appropriate and reasonable. When copies are provided, whether in hardcopy or digital format, the Investigator must record the date when the photo/video was taken and who took the photo/video.

Policy: 3.5 Reporting Requirements to Regulatory Bodies

Effective date: September 30, 2013

Version: 1

Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness

Signature:

3.5.1 POLICY

According to Section 12(1) of the *Act*, referrals may be made to regulatory bodies if the Investigator has reasonable grounds to believe that a service provider, who has a professional designation, has:

- Knowingly and purposefully did not report an allegation of abuse of a patient or resident in a timely manner; and/or
- Abused a patient or resident; and/or
- Contributed to events leading to the likely abuse of a patient or resident; and/or
- Reported information maliciously.

Prior to referral to a regulatory body, the Investigator must consult with the Manager Investigation and Compliance. If it is determined that action may be warranted; the Manager, Investigation and Compliance may consult with legal counsel to ensure that the actions merit a report to a regulatory body under the *PPCA*.

When making the referral to the regulatory body, the Investigator must inform the regulatory body of their duty under *Section 12 (2)(b)* of the *Protection for Persons in Care Act* to:

- Investigate the matter to determine whether a professional status review or disciplinary proceedings should be commenced against the person; and
- Inform the Minister of the conclusions of the investigation; including the reasons for any findings and any results of any professional status reviews or disciplinary proceedings.

3.5.3 PROCEDURES

Once a decision has been made to refer the matter to a regulatory body, the Investigator will forward a letter informing the regulatory body of their duty under *Section 12(2)(b)* of the *PPCA*; and requesting a copy of their conclusions; including the reasons for any findings and any results of any professional status reviews or disciplinary proceedings.

The referral by the Investigator will include:

- The reason for the referral- specific evidence related to the health professional:
 - knowingly and purposefully not reporting an allegation of abuse of a patient or resident in a timely manner;
 - abusing a patient or resident;

- contributing to events leading to the likely abuse of a patient or resident; and/or
- reporting information maliciously under the PPCA;
- A summary of the matter being investigated.

If a regulatory body wants access to further information in relation to this matter held by the Department of Health and Wellness; it must make an application to court to obtain a subpoena or other document (such as a production order) allowing the information to be provided in accordance with clause 27(e) of the *Freedom of Information and Protection of Privacy Act*.

If an Investigator receives a request for further information about the investigation from a regulatory body, he or she must refer immediately to the Manager, Investigations and Compliance. The Manager will consult with legal counsel as needed.

Policy: 3.6 Reporting Requirements to Police

Effective date: September 30, 2013

Version: 1

Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness

Signature:

3.6.1 POLICY

Investigators may come across evidence of criminal activity which may be subject to the *Criminal Code of Canada* at any point during inquiry or investigation of an allegation of abuse under the *PPCA*.

In order to refer a matter to the police, the Investigator must have *reasonable grounds* to believe that:

- Criminal activity has taken place with a patient or resident who *does not have the mental capacity to protect him or herself*;
- Criminal activity has taken place with a patient or resident who *has the mental capacity to protect him or herself, and* he or she consents to a referral to the police;
- Criminal activity has happened which affects; or is likely to affect; a number of patients or residents in a health facility.

If an Investigator makes a report to the police, he or she must inform the Manager, Investigation and Compliance and the administrator of the health facility (if appropriate; for example, if the administrator is implicated in the suspected criminal actions, it may not be appropriate to inform him or her of the report to police).

If the Administrator of the facility informs the Investigator that a report has already been made to the police, the Investigator will request the police file number, and related details; including the detachment where the report was made and the assigned officer's name and contact information. The Investigator will then confirm with the police that the report has been made and follow the procedures outlined below.

If an Investigator has reasonable grounds to believe that any person during the course of an inquiry or an investigation is an imminent danger to himself or herself or to others; the Investigator must call 9-1-1 *immediately*.

3.6.2 PROCEDURES

Investigations with the Police

If a police investigation is initiated at any point during or prior to a *PPCA* investigation, the Investigator must:

1. Contact the investigating officer to determine the parameters of the police investigation; and to discuss possible restrictions on the *PPCA* investigation;

2. Consult with the Manager, Investigation and Compliance to determine if the *PPCA* investigation should continue at the same time as the police investigation;
3. Cooperate with the police as directed and request to have an update when the police investigation is concluded.

Policy: 3.7 Issuing Directives following Investigations
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Effective date: September 30, 2013	Version: 1
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Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness	
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Signature:

3.7.1 POLICY

Administrators of health facilities are required to maintain a reasonable level of safety and to protect patients and residents from abuse or likely abuse. As such, Investigators may identify contributing and/or risk factors for abuse or likely abuse of patients or residents in all investigations (founded or unfounded); even if the factors are unrelated to the specific allegation of abuse that prompted the *PPCA* referral (but were uncovered during the investigation). After the Investigator identifies the risk factors; he or she will develop, in consultation with the Manager, Investigation and Compliance, directives which are meant to mitigate those risk factors.

In *Section 11*, the *Act* allows the Minister of Health and Wellness to give the administrator any directives that he or she considers necessary to protect patients, or residents from abuse upon completion of an investigation.

Policy: 4.1 Case Files

Effective date: September 30, 2013	Version: 1
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Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness
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Signature:

4.1.1 POLICY

PPCA Case File Documentation

All documentation related to the Inquiry/Investigation must be maintained in the PPCA case file. If a mistake in documentation is made, the original record should remain intact. Any corrections must be signed by the Investigator.

Case Notes

Each separate recording in the case recordings (running notes) must identify the date of the recording and the author.

Storing Case Files

All files will be classified using approved Department of Health and Wellness Retention Schedules (“Standards for Operational Records Retention Schedule” - STOR) and forwarded to Records Management Services as required.

Policy: 4.2 Sharing and Protecting the Personal Information of Patients and Residents
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Effective date: September 30, 2013	Version: 1
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Approved by: Kevin McNamara, Deputy Minister, Department of Health and Wellness
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Signature:

4.2.1 POLICY

All PPCA investigations must adhere to the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. This legislation articulates that individuals have the right to access records in the custody or under the control of a public body; and the right of protection of the privacy of personal information in the custody or under the control of a public body.

I. Sharing and Collecting Information

Investigators must follow the following principles for the collection and distribution of information when conducting investigations:

1. Identifying Purpose- Investigators must have a clear rationale as to why they need to collect specific information during an investigation.
2. Limiting Use, Disclosure and Retention- When Investigators are collecting information from health professionals or other collateral sources; they must be clear about what information they need about the patient or resident and limit the collection accordingly.
3. Safeguards- Case files shall be kept in locked storage cabinets at all times when not in use. Investigators are responsible for their individual files while they are still considered open.
4. Individual Access- If a patient or resident or his or her substitute decision maker requests information about the case file, the Investigator will inform the Manager, Investigation and Compliance immediately.

It is the responsibility of Investigators to be familiar with and comply with Department of Health and Wellness policies and guidelines in relation to the verbal disclosure of information, privacy breaches, transmission of patient and resident information and the protection of that information.

II. Sharing Investigation Information with Substitute Decision Makers and Family Members

Investigators may share all of the relevant investigation information that they would share with the affected patient or resident and/or implicated person with a *legally authorized* substitute decision maker or a guardian.

Before sharing any information, the Investigator must establish that the health facility has evidence that the patient or resident does not have capacity to participate fully in the *PPCA* investigation and/or express his or her wishes in relation to the investigation.

If a written personal directive or guardianship court order is not on the patient's or resident's file, the Investigator must obtain written proof (e.g. case notes or forms) that the health facility has established the legally authorized substitute decision maker under the *Personal Directives Act* or a guardian under the *Incompetent Persons Act*.

It is important to note that Investigators are *not* to share personal and/or specific information about the investigation with anyone who is not a legally authorized substitute decision maker or guardian.

Investigators must record *what information was shared on what date with whom for what purpose* in the case notes.

III. Sharing Investigation Information with the Medical Examiner, a Member of the Legislative Assembly or Ombudsman's Office

If an Investigator receives an inquiry from the Office of the Medical Examiner, MLA or Ombudsman he or she must document the specific inquiry on the case file and inform the caller that he or she will pass on the request for information to the Manager, Investigation and Compliance in a timely manner (and will give the caller the Manager's name and contact information).

The Manager, Investigation and Compliance will consult with the Director, Monitoring and Evaluation and legal counsel to determine how to proceed and who needs to be informed of the request for information.

Appendix A: Summary of Terms

Action Plan: The plan put forward by the administrator of the health facility as a response to directives by the Minister in the final investigation report. This plan includes timelines for the implementation of the directives.

Abuse: As defined in *Section 3, Protection for Persons in Care Regulations*:

- The use of physical force resulting in pain, discomfort or injury, including slapping, hitting, beating, burning, rough handling, tying up or binding;
- Mistreatment causing emotional harm, including threatening, intimidating, humiliating, harassing, coercing or restricting from appropriate social contact;
- The administration, withholding or prescribing of medication for inappropriate purposes;
- Sexual contact, activity or behaviour between a service provider and a patient or resident;
- Non-consensual sexual contact, activity or behaviour between patients or residents;
- The misappropriation or improper or illegal conversion of money or other valuable possessions;
- Failure to provide adequate nutrition, care medical attention or necessities of life without valid consent.

“Abuse” does not occur:

- in situations in which a service provider carried out their duties in accordance with professional standards and practices and health facility based policies and procedures;
- a resident or patient who has a pattern of behaviour or a range of behaviours that include unwanted physical contact uses physical force against another patient or resident which does not result in serious physical harm, and the service provider has established a case plan to correct these behaviours.

Administrator: A person in charge of a health facility or given authority to represent the facility.

Affected Patient or Resident: The person or persons who experienced the alleged abuse or likely abuse.

Capacity: The mental ability to *understand* information (demonstrated by being able to re-frame and repeat back information consistently) and to *appreciate* the reasonably foreseeable consequences of making specific decisions. In *PPCA* terms, if an individual is found to be mentally incapacitated; he or she is not able to provide credible evidence in the investigation and capably express wishes about the investigation process and/or outcomes. It is important to note that legally, *incapacity cannot be presumed*- there needs to be some sort of assessment of the person’s decision-making abilities.

Collateral Sources: Contacts that are made in person or by phone with people who may have useful or pertinent information concerning the allegation of abuse. Collateral sources may be utilized both in the Inquiry and Investigation stages.

Emotional Harm: A psychological impact on a person’s mental state that is evidenced by changes in behavior or patterns of behavior.

Final Investigation Report: The final report that includes details of the Preliminary Investigation Report, as well as any relevant responses and/or additional evidence

provided by the affected patients/residents or substitute decision makers; implicated persons and administrators, findings and any directives issued to the health facility.

Founded: There is sufficient evidence to demonstrate reasonable grounds that the allegation of abuse or likely abuse happened *and* that physical or emotional harm occurred or was likely to occur as a result of the abuse.

Health Facility: As defined in *Section 2(a)* of the *PPCA* means:

- A hospital under the *Hospital Act*;
- A residential care facility, nursing home or home for the aged or disabled persons under the *Homes for Special Care Act*; or
- An institution or organization designated as a health facility by the regulations
- *Section 4, PPCA Regulations*- A home that provides supervisory or personal care to 1 or more persons and is approved and funded either by the Department of Community Services as a small-option home or by the Department of Health and Wellness as a community-based option is designated as a health facility under the *Act*.

Implicated Person(s): The person or persons who are accused of bringing about the alleged abuse or likely abuse by their actions.

Investigator: An employee of the Department of Health and Wellness appointed pursuant to the *Protection of Persons in Care Act* to inquire into and investigate allegations of abuse under the jurisdiction of the *Act*.

Physical Harm: Any physical hurt or injury which interferes with the physical integrity, health or well-being of a patient or resident.

Preliminary Investigation Report: A summary of the investigation prior to issuing directives from the Minister and determining whether the allegation of abuse is founded. It is disseminated to the affected patients/residents or substitute decision makers (if appropriate); implicated persons and administrators providing an opportunity to bring forward any new additional evidence, clarifications and responses which are then considered and incorporated into the final report if appropriate/relevant.

Reasonable Grounds: *To have knowledge of facts, which; although not amounting to direct knowledge; would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing*¹. Reasonable grounds have to be found at inquiry to move into an investigation *and* then for an allegation of abuse to be founded after a *PPCA* investigation.

Substitute Decision Maker (SDM): A person who has the legal authority to make personal care decisions for a person who does not have the mental capacity to make these decisions on his/her own behalf. Under the *Personal Directives Act*, an SDM may be a delegate (authorized through a written personal directive) or a statutory decision maker for health care decisions (when no directive exists and an SDM is chosen from a hierarchy).

Unfounded: There is insufficient evidence to demonstrate reasonable grounds that the allegation of abuse or likely abuse happened *and* that physical or emotional harm occurred or was likely to occur as a result of the alleged abuse.

¹ As retrieved from <http://www.lectlaw.com/def2/q015.htm> on July 25, 2011

Appendix B - Letter of Authorization from the Minister (Template)



APPOINTMENT *PROTECTION FOR PERSONS IN CARE ACT*

Pursuant to *Sections 8(2) and 15* of the *Protection for Persons in Care Act*, I, the Honourable MINISTER'S NAME, Minister of Health and Wellness, hereby designate INVESTIGATOR of the Department of Health and Wellness, to act as my delegate for the powers and duties imposed on me by this *Act*.

These duties and powers include: inquiring into and investigating allegations of abuse or likely abuse in health facilities; and providing directives to health facilities to protect patients and residents from abuse.

Dated at Halifax, Nova Scotia, the DAY of MONTH, YEAR.

Minister of Health and Wellness
Province of Nova Scotia

Appendix C: Intake Form



PROTECTION FOR PERSONS IN CARE INTAKE FORM

Date and time:	
Call received by: <input type="checkbox"/> CCRA <input type="checkbox"/> Care Coordinator <input type="checkbox"/> Other:	
Is the patient/resident in a health facility under the PPCA? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> Unknown	
Name of facility:	
Is the patient / resident 16 years of age or older?	<input type="checkbox"/> Yes <input type="checkbox"/> No**
*If there is a report of abuse of a vulnerable adult 16 years of age or older in the community, the CCRA/Care Coordinator must call Adult Protection.	
**If CCRA/Care Coordinator receives information about the possible abuse of a child, he or she must phone Child Welfare Emergency Services.	

COMPLAINANT INFORMATION

Name:	Phone #:	Cell #:
Relationship to patient/resident:		
Is the complainant a current <input type="checkbox"/> or former <input type="checkbox"/> staff member of the health facility?		
Does the complainant wish to be identified to patient/resident? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Does the complainant wish to be identified to facility? <input type="checkbox"/> Yes <input type="checkbox"/> No		

AFFECTED PATIENT/RESIDENT INFORMATION

Name:	
Is the patient/resident safe now?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Is the patient/resident aware of this allegation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Does the facility know of this allegation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

NATURE OF COMPLAINT

<p><i>PPCA Regulations Section 3(1):</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> A. Use of physical force <input type="checkbox"/> B. Mistreatment causing emotional harm <input type="checkbox"/> C. Administration, withholding or prescribing of medication for inappropriate purposes <input type="checkbox"/> D. Sexual contact, activity or behaviour between a service provider and a patient or resident <input type="checkbox"/> E. Non-consensual sexual contact, activity or behaviour between patients or residents <input type="checkbox"/> F. Misappropriation or improper or illegal conversion of money or other valuable possessions <input type="checkbox"/> G. Failure to provide adequate nutrition, care, medical attention, necessities of life <p>Comments:</p> <p>Time and Date of Incident:</p>
--

Form faxed to DHW DCS Date and Time of Fax: _____

Name/ Position: _____ Signature: _____

FOR DHA CARE COORDINATORS ONLY (Weekends/Holidays):

Administrator/designate spoken to:	Phone #:
Did the facility put a safety plan in place? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
Did you advise the facility of their duty to ensure patient/resident and staff safety? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Were you required to contact 911? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Additional Comments:	