

DEPARTMENT OF COMMUNITY SERVICES

Protection for Persons in Care Act

Policy Manual

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Terms Used in this Manual

Abuse – Abuse is 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 patient or a 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.

Action Plan – The plan put forward by the Administrator of the health facility in response to the directives by the Minister. This plan includes timelines for the implementation of the directives.

Administrator – person in charge of a health facility, or person given authority to represent the facility.

Affected Resident – the person who experienced the alleged 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 or outcomes. It is important to note that legally, incapacity cannot be presumed – there must 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 in both the Inquiry and Investigation stages.

Emotional Harm – a psychological impact on a person’s mental state that is evidenced by

changes in behaviour or patterns of behaviour.
Final Investigation Report – final investigation report – including the findings, responses, and additional evidence provided by the affected residents or substitute decision makers (if appropriate), the person implicated, and Administrators – and any directives issued to the health facility.
Founded – means that there is sufficient evidence to establish reasonable grounds that the alleged or likely abuse happened.
<p>Health Facility – as defined in Section 2(a) of the <i>PPCA</i>:</p> <ul style="list-style-type: none"> • A hospital under the <i>Hospital Act</i>; • A residential care facility, nursing home or home for the aged or disabled persons under the <i>Homes for Special Care Act</i>; or • An institution or organization designated as a health facility by the Regulations <p>As defined in Section 4, <i>PPC Regulations</i>: A home that provides supervisory or personal care to one 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 Community Services as a community-based option is designated as a health facility under the <i>Act</i>.</p>
Investigator – an employee of the Department of Community Services appointed pursuant to the <i>Protection of Persons in Care Act</i> to inquire into and investigate allegations of abuse under the jurisdiction of the <i>Act</i> .
Person Implicated – the person who is accused of the alleged or likely abuse.
Preliminary Investigation Report – a summary and analysis of the investigation prior to the outcome of the investigation. This report is circulated to the affected residents or substitute decision makers (if appropriate), the person implicated, and Administrators, providing an opportunity to bring forward additional evidence, clarifications, and responses, which are then considered and incorporated into the final report if appropriate or relevant.
Reasonable Grounds – to have knowledge of facts that, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. Reasonable grounds have to be found at inquiry to move to an investigation and then for an allegation of abuse to be founded after a PPC investigation.
Serious Physical Harm – any physical hurt or injury that interferes in a serious way with the physical integrity, health, or well-being of a person as a result of physical and/or sexual abuse.
Statutory 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 or her own behalf. For the purposes of the <i>Personal Directives Act</i> , 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 – means that there is insufficient evidence to establish reasonable grounds that the alleged or likely abuse happened.

Section 1: Introduction and Authority

Policy 1.1: Authorization of the Protection for Persons in Care Policy Manual

1.1.1 Introduction

The *Protection for Persons in Care Act (PPCA)* was proclaimed into force October 1, 2007. This Act protects residents from abuse or likely abuse in health facilities.

The Minister of Community Services (Minister) has designated Investigators who are charged with the responsibility to inquire into and investigate allegations of abuse and to issue directives to the Administrators of health facilities to protect residents from further abuse.

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

1.1.2 Authorization

I hereby authorize the attached policies contained in the Protection for Persons in Care (PPC) Policy Manual as of August 30, 2013.

Dave Ryan
Acting Deputy Minister
Department of Community Services

Date

Policy 1.2: Purpose of the *Protection for Persons in Care Act*

1.2.1 Purpose

The purpose of the *PPCA* is

1. to create the statutory duty of Administrators and Service Providers to protect residents against abuse in health facilities,
2. to create the statutory duty of Administrators and Service Providers to report allegations of abuse or likely abuse against residents of health facilities,
3. to authorize the Minister to inquire into and investigate allegations of abuse, or events that likely could lead to abuse within health facilities, and
4. to prevent harm to residents of health facilities by allowing the Minister to issue directives to mitigate the risk of abuse occurring or reoccurring in the facility.

1.2.2 Policy

Department of Community Services Investigators must follow the *PPCA* and the PPC Regulations and all of the policies contained in this manual.

Investigators must be familiar with Department of Community Services policies and provincial and federal legislation that may affect the protection of individuals in health facilities in Nova Scotia.

Policy 1.3: Authority to Inquire and Investigate

1.3.1 Purpose

Investigators appointed by the Minister under Sections 8 and 15 of the *PPCA* have the authority to inquire into and investigate allegations of abuse in health facilities in Nova Scotia.

1.3.2 Policy

A letter of authorization to inquire and investigate must be issued to staff once they are appointed as Investigators.

If requested, Investigators must present government identification on entering a health facility.

Policy 1.4: Offences under the Protection for Persons in Care Act

1.4.1 Policy

Contravention of the Act

An Investigator must consult with the Manager of Licensing and Protection for Persons in Care (the Manager) if there are reasonable grounds to believe that

1. the Administrator of a health facility has failed to report an allegation of abuse that has come to the knowledge of the Administrator, or
2. a Service Provider who has a reasonable basis to believe that a resident has been or is likely to be abused has failed to promptly report that information, or
3. information was not reported in good faith.

After consultation, the Manager will consult with legal counsel to determine if any legal action or other measures by the Minister are warranted under Section 17 of the *PPCA*.

Good Faith Provision

Section 16 of the *PPCA* states that no action or legal proceeding will be taken against any person who investigates under the *PPCA* in good faith. Investigators are required to follow the principles of administrative fairness when investigating allegations of abuse.

See PPC Operational Procedures:

- 002 Conducting an initial inquiry
- 003 Conducting an investigation

Policy 1.5: Administrative Fairness

1.5.1 Purpose

Generally, decisions made by government may be challenged in court if there are concerns that

1. procedural fairness principles (an individual's right to be heard and to be judged impartially) were not followed, or
2. there are questions of reasonableness or correctness of any procedures or decisions administered, or
3. authorities have exceeded their jurisdiction or mandate.

1.5.2 Policy

Investigators must follow the principles of administrative fairness and inform the Manager of any possible conflicts of interest. Standard procedures are followed by Investigators to ensure that everyone is treated in the same way:

Opportunity to Be Heard

1. Consider all submissions and information from relevant parties gathered throughout the investigative process.
2. Provide the person implicated, affected residents or substitute decision makers (see Policy 1.7), and Administrators with the preliminary investigation report, which summarizes the allegation, the investigative process, and the evidence for review and comment.

Acting without Bias

1. Ensure that any findings and directives have clear reasoning that is linked to facts and evidence.
2. Consider information relevant to the allegation.
3. Use the standard of *reasonable grounds* to make decisions in the investigative process.

Fair and Standard Procedures

1. Meet the legal standard of reasonable grounds at the Inquiry and Investigation stages.
2. Notify the affected resident or his or her substitute decision maker, the person implicated, and the Administrator of the decision to proceed with an investigation.

Policy 1.6: Reasonable Grounds

1.6.1 Policy

Investigators must use the legal standard of *reasonable grounds* to determine

1. whether there is enough evidence to move forward from an inquiry to an investigation, and
2. whether an allegation of abuse is founded or not founded.

“Reasonable grounds” is defined as follows:

To have knowledge of facts that, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing.

Policy 1.7: Accommodating the Resident's Wishes

1.7.1 Purpose

The *PPCA* directs Investigators to consider any wishes expressed by the affected resident, or the Statutory Decision Maker (SDM), at any time prior to the completion of the investigative report.

1.7.2 Policy

When interviewing residents, Investigators must ask them if they have any wishes about potential outcomes of the investigation.

Investigators must consult with the Manager if they are unsure as to what decision would be in the resident's best interests.

The duty to carry out an investigation overrides an expressed wish by the resident or SDM for an investigation not to proceed.

See Operational Procedures:

- 003 Conducting an investigation
- 011 Preparing preliminary report
- 004 Preparing Final Investigative report

Policy 1.8: Considering the Mental Capacity of Residents When Providing Notification of Investigation and Reports

1.8.1 Policy

Before providing notification of the PPC investigation or reports to residents, Investigators must consult with the Administrator to determine if there are any issues with the mental capacity of the individual:

1. **The Resident Is Mentally Capable** – In the case of individuals who have their full mental capacity, all notifications and reports must be provided directly to the resident.
2. **The Resident Is Mentally Incapacitated** – If there is *evidence* that the 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 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 resident *most likely does not* have the mental capacity to understand and appreciate the notifications or reports, they must be provided directly to the resident unless it is determined that this will cause the resident further harm.

The Investigator must determine the best way for the resident to receive notification in order to provide the best opportunity for him or her 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 further harm to that person*, notification will be provided *only* 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 person implicated; in this case, the Investigator will consult with legal counsel via the Manager)

Section 2: Inquiry

Policy 2.1: PPC Inquiry

2.1.1 Policy

Investigators must conduct thorough inquiries into all allegations of abuse. To move from inquiry to investigation, Investigators must collect all relevant and necessary information needed to satisfy that the allegations fall within the *PPCA* and the PPC Regulations.

Investigators must establish at inquiry what steps the Administrator or Service Provider has taken to ensure the safety of the resident and must consider whether more steps are necessary if the safety of the resident is in question.

See PPC Operational Procedures:

- 001 Receiving PPC referral
- 002 Conducting an initial inquiry

2.1.2 Time Standard

Investigators assigned to PPC inquiry must respond to the referral within one business day of receiving the intake.

See PPC Operational procedures:

- 002 Conducting an inquiry

Policy 2.2: Inquiring into Resident-to-Resident Abuse

2.2.1 Policy

When determining if there are reasonable grounds to establish that abuse (or likely abuse) occurred between residents, Investigators must consider

1. whether the affected resident experienced serious physical harm, and
2. if the allegation is sexual abuse, whether the sexual contact between residents was non-consensual.

Possible Actions

If the affected resident did not experience serious physical harm as a result of the incident and the facility has an established case plan to manage the behaviours of the implicated resident, the case will close at inquiry.

If the affected resident experienced serious physical harm as a result of the actions of the implicated resident, the definition of abuse would be met and the Investigator would proceed with determining reasonable grounds.

If there is no evidence or question about the mental capacity of the affected resident in relation to an allegation of non-consensual sexual contact, activity, or behaviour between residents, the inquiry will proceed as a normal PPC inquiry.

If there is evidence that the affected resident unable to consent to the sexual contact, the definition of abuse would be met, and the Investigator would proceed with determining reasonable grounds.

Section 3: Investigation

Policy 3.1: PPC Investigation

3.1.1 Policy

Investigators must interview relevant parties and analyze evidence to establish whether there are reasonable grounds to conclude that an allegation of abuse or likely abuse is founded under the *PPCA*.

3.1.2 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 preparing the Preliminary Investigation Report** – All interviews, collection of evidence, and summarizing the evidence must be completed within 60 business days after initiating the investigation.
3. **Responding to the Preliminary Investigation Report** – Investigators will inform Administrators, the person implicated, residents, and substitute decision makers (as appropriate) that they have 20 business days to respond to the report.
4. **Finalizing the Investigation Report** – A written final investigation report must be completed and forwarded to the affected parties and the directives reviewed with the health facility within 20 business days of receiving responses to the Preliminary Investigation Report.
5. **Submitting the Action Plan** – 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.
6. **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 time frame, he or she will advise the Manager that the timeline will not be met and will document in the case notes the rationale for being unable to meet the timeline.

See PPC Operational Procedure:

- 003 Conducting an investigation

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

3.2.1 Purpose

The *PPCA* gives Investigators authority to gain entry to a health facility and to access any information they believe relevant to the investigation. This includes any personal information under the *Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Act*, or any other records or reports.

Administrators are required to provide all reasonable assistance to the Investigators throughout the course of their investigation.

3.2.2 Policy

PPC Investigators may access whatever information relates to the matter being investigated. They may require any person to give information about a matter being investigated, except for information that is subject to solicitor/client privilege.

Once an investigation has commenced, Investigators take every reasonable step to enable them to determine whether abuse occurred or might occur, and to mitigate future risk.

Policy 3.3: Support Persons in the PPC Interview

3.3.1 Policy

Affected residents, the person implicated, Administrators, and witnesses have the right to bring support persons to any interviews conducted as part of the PPC investigation.

Investigators must inform the person who would like to have a support person present for the interview that the role of the support person is limited to attendance and that the support person will not actively participate in the interview process.

Investigators may request notice if legal representation will be present at the interview.

The support person

- must not be a co-worker or friend who has firsthand knowledge that relates to the PPC investigation, and
- must 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

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 be considered only when corroborating direct evidence supporting the alleged or likely abuse.

For the purposes of the PPC Investigation, the following terms will be considered:

1. **Direct Evidence of Abuse** – relevant personal first-hand observations or documents such as
 - independent eyewitness observations
 - a resident disclosure of abuse or likely abuse
 - a person implicated’s admission of abuse or likely abuse
 - photographs, audio, or video recordings of abuse or events that would likely have led to abuse
 - medical assessments or documentation of physical injuries
2. **Indirect Evidence of Abuse** – may include
 - suspicious injuries or evidence that suggests physical or sexual abuse has occurred
 - physical injuries or illness that suggests abuse or inadequate care or supervision

Collecting Photographic and Video Evidence

As part of the investigation, Investigators may take photographs of the environment and of physical tools or equipment involved in the incident of alleged abuse.

The Investigator must inform the health facility Administrator that he or she will be taking photographs or videos of the facility.

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

Policy 3.5: Referral to Regulatory Bodies

3.5.1 Policy

Investigators must consult with the Manager if they have reasonable grounds to believe that a Service Provider or Administrator, who is governed by a professional body

1. knowingly and purposefully did not report an allegation of abuse of a resident in a timely manner, or
2. abused a resident.

When making the referral to the regulatory body, the Investigator should draw attention to the duty of the regulatory body under Section 12 (2) (b) of the *PPCA* to

1. investigate the matter to determine whether a professional status review or disciplinary proceedings should be commenced against the person, and
2. 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.

See PPC Operational Procedure:

- 008 Referring to professional licensing body

Policy 3.6: Referral to Police

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*.

If an Investigator makes a report to the police, he or she must inform the Manager.

See PPC Operational Procedure:

- 007 Referring to police

Policy 3.7: Writing Directives for *PPCA* Findings

3.7.1 Policy

When an investigation is concluded, Investigators may identify risk indicators arising from the PPC investigation that pose concern for the safety and well-being of residents, even if

1. the factors are unrelated to the specific allegation that prompted the PPC referral
2. the allegation is founded or unfounded after a PPC investigation

As a means of mitigating risk, the Investigator, in consultation with the Manager, may consider a referral to Licensing, Services for Persons with Disabilities Program, Regulatory Body, and Police services.

See PPC Operational Procedure:

- 005 Establishing a Facility Action Plan

Section 4: Documentation and Sharing Information

Policy 4.1: Case File Documentation

4.1.1 Policy

A good documentation process provides protection for affected residents, the person implicated, witnesses, staff members and administration of health facilities, the PPC Office, and the Minister.

All information gathered during a PPC investigation is subject to the *Freedom of Information and Protection of Privacy Act* and shall be maintained in accordance with *Government Records Act*, Departmental records policies.

Investigators who make a mistake in documentation should be sure the original record is intact. Any corrections must be signed by the Investigator. All documentation related to the Inquiry/Investigation must be maintained in the PPC case file.

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 Community Services Retention Schedules (“Standards for Operational Records Retention Schedule” - STOR) and forwarded to Records Management Services as required.

STOR – Licensing Services - 65000

Records documenting investigations of complaints against licensed facilities to ensure they meet legislative requirements. This includes investigation of complaints against licensed day care, residential child-caring, and homes for special care facilities.

65000-50 – Licensing Investigation Case Files

Active – SO (Conditional Trigger) + 2 years

Semi Active (at Records Centre) – 5 years

Disposition – Destroy

Policy 4.2: Sharing and Protecting the Personal Information of Residents

4.2.1 Purpose

All provincial government bodies must comply with the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Under *FOIPOP*, individuals have the right to access records in the custody or under the control of a public body; and they have the right of protection of the privacy of personal information in the custody of a public body.

4.2.2 Policy

I. Sharing and Collecting Personal Information

Investigators must follow the following principles for the collection and distribution of an individual's personal health information:

1. **Identifying Purpose** – Investigators must have a clear reason to collect any personal 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 resident and limit the collection accordingly.
3. **Safeguards** – Case files must be kept in locked storage cabinets at all times when not in use. Investigators are responsible for their individual files while the files are still considered open.
4. **Individual Access** – If a resident or his or her substitute decision maker requests information about the case file, the Investigator will inform the Manager immediately. The Investigator will inform the resident or the substitute decision maker (if relevant) of the process under *FOIPOP*.

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 resident and/or person implicated with an individual who has been verified to be a *legally authorized* substitute decision maker or a guardian.

III. Sharing Investigation Information with the Medical Examiner, MLA, 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 Manager in a timely manner.

The Manager may consult with the Director of Licensing Services and legal counsel to determine how to proceed and who needs to be informed of the request for information.