Taboo Subjects in Care Facilities “GIFTING”

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Friesen Conference
May 27-28, 2013
Gifting in Care Facilities

- What is the law?
- Role of the PGT
- What have we seen?
- Recommendations
The Law:

Community Care and Assisted Living Act
[SBC 2002] CHAPTER 75

Section 18

(1) In this section:

"licensee" includes an officer or director of the licensee and an agent, designate or employee of the licensee;

"personal representative" includes the following:

(a) an executor within the meaning of the Wills Act;
(b) a representative under the Representation Agreement Act;
(c) a trustee of an estate or part of an estate under administration;
(d) an attorney acting under a power of attorney;
(e) a committee under the Patients Property Act.

(2) A licensee must not bring, or cause to be brought, advertise for or in any way encourage the entry into British Columbia of a person under 19 years of age to become a person in care without first obtaining the written approval of the director designated under the Child, Family and Community Service Act.
Community Care and Assisted Living Act
[SBC 2002] CHAPTER 75

(3) A licensee must not do any of the following:

(a) persuade or induce, or attempt to persuade or induce, a person in care to
(i) make or alter a will,
(ii) make a gift,
(iii) provide a benefit for the licensee, the licensee's spouse, relative or friend, or
(iv) conduct the financial affairs of the person in care for the benefit of the
licensee, the licensee's spouse, relative or friend;

(b) require that a person seeking admission to a community care facility, as a
condition of admission, make any payment or donation other than as specified in a
written contract;

(c) act under the authority of a power of attorney or enduring power of attorney
under the *Power of Attorney Act*, granted to the licensee by a person in care;

(d) act as a personal representative of the estate of a person in care or formerly in
care, unless the licensee is a child, parent or spouse of the person in care or
formerly in care;

(e) act as a representative under an agreement made under the *Representation Agreement Act* by a person in care or formerly in care, unless the licensee is a child, parent or spouse of the person in care or formerly in care.
Community Care and Assisted Living Act
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(4) A provision of a will, an alteration of a will, a gift, a provision of a benefit or another measure described in subsection (3) (a) (i) to (iv) is void if

(a) it confers a benefit on the licensee or the licensee's spouse, relative or friend, and

(b) the Public Guardian and Trustee has not given written consent to it.

(5) A power of attorney or enduring power of attorney as described in subsection (3) (c), or a disposition made under either of them, is void unless

(a) the licensee is a child, parent or spouse of the person in care.

(b) [Repealed 2010-6-147.]

(6) For the purposes of subsection (4) (a), a benefit conferred by a will, an alteration of a will, a gift, a provision of a benefit or another measure described in subsection (3)(a) (i) to (iv), is deemed to be conferred at the time the will, alteration, gift or provision is made or the other measure is taken.

NOTE: Parallel provision in sec 4.1 Hospital Act
Definitions

"assisted living residence" means a premises or part of a premises, other than a community care facility, (a) in which housing, hospitality services and at least one but not more than 2 prescribed services are provided by or through the operator to 3 or more adults who are not related by blood or marriage to the operator of the premises, or (b) designated by the Lieutenant Governor in Council to be an assisted living residence;

"community care facility" means a premises or part of a premises (a) in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or (b) designated by the Lieutenant Governor in Council to be a community care facility;

"person in care" means a person who resides in or attends a community care facility for the purpose of receiving care;
Limitations of the Legislation

• The Act only applies to adults in “community care facilities”
  • Does not apply to Assisted Living facilities
  • The Act does not cover facilities under the Mental Health Act
  • Does not apply to service providers in community
• “Gift” is not defined (a box of chocolates for the staff vs. vehicles/jewelry etc.)
• The Act could be interpreted to only apply to gifts/benefits that are a result of persuasion or inducement (which would defeat its purpose)
• The restrictions do not apply to gifts/donations to “foundations” supporting a facility
• Spirit of legislation very dependent on policy and training
Role of the PGT

Under Section 18 CCALA and 4.1 HA:
- When asked to approve a gift we start from the position that the gift/provision of will is invalid unless the recipient (or executor) can demonstrate that the adult was capable of making the gift and that there was no undue influence
- We do not review/approve provisions in a will in “advance” (although we will outline what we consider in making a decision)
- We receive very few of these requests/referrals

Other:
- We will investigate if our client is wanting to make gift
- We may start an investigation/pursue authority where an incapable adult has been induced to make gifts
Tip of the Iceberg?

• What we’ve seen:
  • Vulnerable “capable” adult also at risk of influence/persuasion (maybe more so as still able to execute a gift)
  • Adults in care may wish to gift for a variety of reasons (appreciation, loneliness, fear, sense of powerlessness, desire to feel wanted/needed, anger or resentment against family, etc.)
  • Licensees/staff not aware of legislation or what constitutes a gift
  • Limit on what can be done when the Act does not apply, or when the staff member/volunteer resigns or recovery is too costly
Examples:
- Vehicles purchased for two employees by an adult who received a large inheritance (prior to referral to PGT); staff resigned and no remedy available (facility not under the Act)
- Client (of PGT) influenced to bequeath funds to a staff member (cajoling messages, alterations to Will in several person’s handwriting, etc.); facility under Hospital Act prior to 4.1
- Gifts of personal items and jewelry only requiring manager’s approval (apparently within facility policy)
- Request by facility to PGT to provide client funds to purchase an expensive watch as a gift
- Staff member receives funds to set up a business; promises to remove client from facility and care for him in her home
Recommendations

• Amend the CCAALA to include Assisted Living for Section 18
• Clarify that all gifts (maybe over a certain amount/value) to require PGT approval
• Extend gifting restrictions in all care facilities
• Consider legislation that would restrict gifting in community care giving situations
• Enhanced and consistent policy/training/practice relating to accepting gifts
• Criteria for striking care giver registration?
Thank You!

QUESTIONS?