

**Interpreting Section 26(3)  
of the *Community Care and Assisted Living Act***

**Executive Summary of Presentation to  
Home and Community Care Staff and  
Assisted Living Service Providers**

**2006-2007**

Assisted living is a semi-independent form of housing. People live in their own private dwelling units within the assisted living residence and can access the range of hospitality and personal assistance services the registrant [operator of a registered assisted living residence] provides.

Section 26(3) of the *Community Care and Assisted Living Act* has two purposes. First, it makes clear that, to live in the semi-independent environment of an assisted living residence, people must have the ability to make their own decisions. People who cannot make decisions on their own pose too great a risk to themselves, and potentially to others. Therefore, the Act does not allow registrants to house them, unless a spouse will be living with them in the residence. Secondly, section 26(3) makes registrants responsible for ensuring that residents are able to make decisions on their own behalf. "Ability to make decisions on one's own behalf" is interpreted to mean that people must be able to make the range of decisions that will allow them to function safely in the supportive, semi-independent environment of an assisted living residence.

Key areas of function that relate to resident health and safety include:

- initiating activities to the extent necessary to function safely for the periods they are alone in their unit<sup>1</sup>.
- finding their way within the assisted living residence given available cuing.
- recognizing the consequences of decisions or actions and that some actions may result in injury or harm to themselves or others.
- recognizing an emergency and summoning help or following directions
- finding their way back to the residence independently<sup>2</sup>.

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<sup>1</sup> Residents must be able to organize and initiate activities so as to function safely for the periods they are alone in the privacy of their room or suite, as well as to engage in communal activities such as meals. Staff may assist residents with morning and evening routines. A person who can function well in a small residence may not be able to manage in a large residence. In a smaller residence, staff will be able to provide reminders more easily to assist the person to function in their suite and/or to engage in communal activities.

<sup>2</sup> While a resident may be experiencing a memory deficit, if they have an effective strategy to compensate for it, they may retain the ability to return safely to the residence. For example, a person may carry a card with the residence address that can be given to a taxi driver. Others may simply choose not to go out alone.

- participating in regular reviews of their service needs [responding to questions about needs and services offered].
- being able to make a complaint directly or through family and friends.

The operator's role is to watch for behaviors or functional signs, which suggest a person is experiencing cognitive problems that may affect their decision making ability, and report the matter to the person's case manager, where involved, and/or designated contact, who may engage a health professional to investigate the resident's health status.

If the health professional(s) determine there is an underlying condition that is not remediable and the operator [in consultation with the designated contact, resident, their family and case manager, where involved] concludes that the person is no longer able to make the range of decisions that will allow them to function safely in the assisted living residence, then:

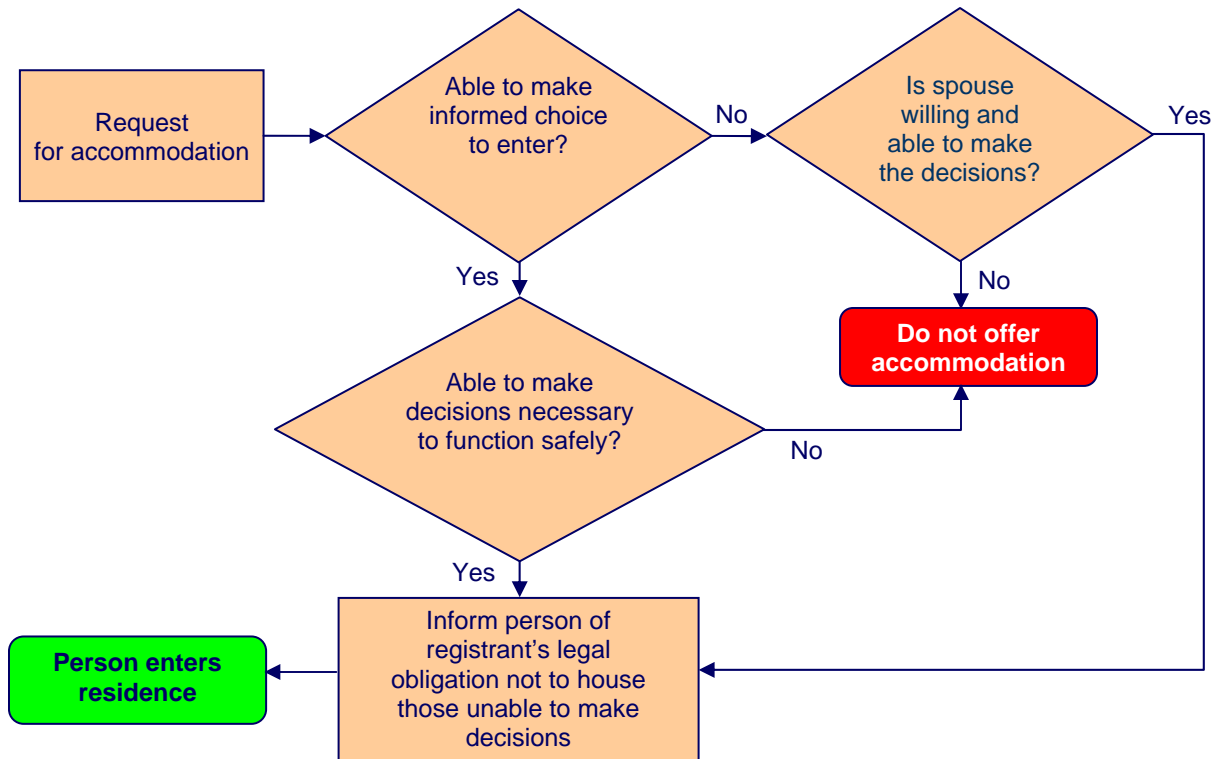
- the party acting on the resident's behalf, with the assistance of the health authority case manager (where involved), seeks alternate accommodation for the resident; and
- the operator develops an exit plan, in conjunction with the resident, their family and case manager (where involved), that sets out the resident's relocation plans, who is responsible for those arrangements and what additional services will be put in place in the intervening period to mitigate any risks the individual is facing and ensure the resident's health and safety is not in jeopardy while awaiting transfer.

The resident is expected to relocate as quickly as possible, given available residential care resources in the community.

The Registrar will investigate any complaints that an operator is housing someone who is unable to make decisions. If the Registrar concludes that the resident is not able to make the decisions necessary to function safely in the assisted living residence, the Registrar will not take action against the operator *provided* the operator has an exit plan in place and is actively monitoring health and safety issues to mitigate risks while the resident is awaiting transfer to an alternate setting, usually to a residential care facility.

## Steps to Complying with Section 26(3)

### AT ENTRY



### ONGOING

