

Sexual Expression in Long-Term Care

For Residents

Many resident rights support the right to sexual expression and include, but are not limited to:

- Privacy
- Confidentiality
- Dignity and respect
- Self-determination
- Visitors
- Freedom from abuse

Long-term care facilities should understand your rights and support you in your choices, including your right to sexual expression.

You are central to decisions about you and any form of intimacy and sexual expression. Saying yes to any sexual activity must always consider your ability to make your own decisions and your safety and autonomy.

Are You Able To Make Your Own Decisions?

As it relates to sexual expression, you should be afforded the same rights to privacy, respect and freedom to sexual expression as if you were living in the community. Sexually related situations must be looked at for every person on a case-by-case basis. To support you in your right to sexual expression, it is important to know:

- It is not the responsibility of a long-term care facility, your representative or a single staff member to solely determine whether you should or should not be sexually expressive, and
- If your capacity seems diminished, people and professionals involved in your care should collectively assess your level of capacity to determine benefits or potential risks associated with any sexual act.

What If You Do Not Have The Ability To Make Decisions?

Any time a facility has reason to suspect an individual does not wish to engage in sexual activity or may not be able to consent, steps must be taken to look into any situation. While it is your right to participate in consensual sexual activity, a facility is required to protect you and others from non-consensual sexual relations.

Sexual contact is generally non-consensual if you:

- Appear to want the contact to occur but lack the cognitive ability to consent,
- Do not want the contact to occur, or
- Are sedated, temporarily unconscious, or are in a coma, for example.

When Is It Abuse?

Non-consensual sexual activity is considered abuse regardless of the existence of a pre-existing or current sexual relationship. When suspected abuse is reported, whether by you, facility staff, or others, the facility must complete an investigation and report alleged sexual abuse to the proper entities.

How Can You Be Supported In The Right To Sexual Expression?

Engaging in conversations, encouraging training for facility staff, understanding facility policy, and promoting attitudes of awareness and acceptance can help everyone be better prepared in approaching situations regarding your right to sexual intimacy and expression.

Resources

Scan the QR code for a list of resources, not all-inclusive, that may be utilized to help create thoughtful, person-centered discussion, policy, and response to sexual expression.



Contact the Office of the State Long-Term Care Ombudsman

Toll Free: 866-236-1430

Email Address: sltco@hhs.iowa.gov

Mailing Address: 321 E 12th St., Des Moines, IA 50319

Sexual Expression in Long-Term Care

For Facilities

The Iowa Office of the State Long-Term Care Ombudsman (OSLTCO) plays an integral role in advocating for the rights of individuals living in long-term care, including nursing facilities, assisted living programs and residential care facilities. Freedom of sexual expression has proven a sensitive and sometimes controversial topic, particularly when cognitive capacity is in question.

Under federal law, those in long-term care are afforded multiple rights, many of which are relevant to sexual expression and include, but are not limited to, the rights to privacy, confidentiality, dignity and respect, self-determination, visitors, and freedom from abuse. The OSLTCO supports every person in developing maximum self-reliance and independence regarding consensual sexual activity and strives to preserve these rights by promoting attitudes of awareness and acceptance.

Consensual Sexual Expression

Anyone in a long-term care facility who maintains cognitive capacity to consent should be afforded the same rights to privacy, respect, and freedom to sexual expression as they would if they were living in the community.

Determinations of capacity to consent depend on the context of the issue, and one determination does not necessarily apply to all decisions made by an individual.

Capacity on its most basic level means that a person has the ability to understand potential consequences and choose a course of action for a given situation. Decisions of capacity to consent to sexual activity must balance considerations of safety and autonomy, and capacity determinations must be consistent with State law, if applicable.

Facility policies, procedures and protocols should identify when, how, and by whom determinations of capacity to consent to sexual contact will be made and where this documentation will be recorded. Because cognitive functioning may change, a facility should continue to monitor and re-evaluate capacity to consent over time, as needed, based on an individual's physical, mental and psychosocial needs.

Non-Consensual Sexual Contact

Generally, sexual contact is non-consensual if an individual either appears to want the contact to occur, but lacks the cognitive ability to consent, or does not want the contact to occur. Other examples of non-consensual sexual contact may include, but are not limited to, situations where a person is sedated, is temporarily unconscious, or is in a coma.

A facility is required to protect individuals from non-consensual sexual relations. Any time a facility has reason to suspect that a person does not wish to engage in sexual activity or may not have the capacity to consent to such relations, an investigation must be conducted.

Sexual Abuse

Any investigation of an allegation of sexual abuse must start with a determination of whether sexual activity was consensual on the part of the person(s). Apparent consent to engage in sexual activity is not valid if it is obtained from someone lacking the capacity to consent, or if consent is obtained through intimidation, coercion or fear, whether it is expressed by the person or suspected by staff. Any forced, coerced or extorted sexual activity with a person who resides in long-term care, regardless of the existence of a pre-existing or current sexual relationship, is considered to be sexual abuse.

Creating Policy To Support Sexual Expression

Facilities can support the right to freedom of sexual expression for individuals in long-term care facilities by being proactive and developing formal policy to include definitions, an interdisciplinary approach, processes, assessments and education for those who live in long-term care, their representatives, and facility staff.

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Federal Regulations

- [Appendix PP of the State Operations Manual \(SOM\) F551 Resident Representative, F561 Self-determination, F600 Freedom from Abuse, Neglect and Exploitation, F609 Reporting of Alleged Violations, F610 Response to Alleged Violations](#)

State Regulations

- Iowa Code 235B: [Dependent Adult Abuse Services-Information Registry](#)
- Iowa Code 235E: [Dependent Adult Abuse in Facilities and Programs](#)

Sexual Expression Policy Examples

- [Hebrew Home at Riverdale Resident Sexual Expression Policy](#)

Advocacy

- [Advocating for a Resident's Right to Intimacy and Sexual Expression](#)

Reports

- [Capacity for Sexual Consent in Dementia in Long-Term Care](#)
- [Ethics and Intimate Sexual Activity in Long-Term Care](#)
- [Assessment for Older Adults with Diminished Capacity: Handbook for Psychologists](#)

Additional Contacts

- State Regulatory Department: [Iowa Department of Inspections, Appeals and Licensing](#)
- Trade Associations:
 - [Iowa Health Care Association / Iowa Center for Assisted Living](#)
 - [LeadingAge Iowa](#)
- Private Legal Counsel