

Sexual Expression in Long-Term Care

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.

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

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