



## EXEMPTIONS TO SECTION 48(1) AND 78(3)(a) RESIDENTIAL CARE COMMUNITY CARE FACILITIES LICENSING PROGRAM

A Licensee of a licensed Long Term Care (LTC) facility may have situations when they have been requested to admit an adult incapable of consenting to admission and/or who does not have a representative. In these cases, the Licensee may request an exemption to Section 48(1) and/or 78(3)(a) of the Residential Care Regulation (RCR) and receive approval of their request prior to admission of the person in care.

The *Community Care and Assisted Living Act (CCALA)* only allows exemptions to be approved by the Medical Health Officer (MHO) if there is no increased risk to the health and safety of persons in care. For some sections of the regulations, the MHO's have delegated their authority to make decisions to either your local Licensing Supervisor or Licensing Officer.

Licensed LTC facilities may request an exemption from meeting the requirements of Section 48(1) and/or 78(3)(a) of the Residential Care Regulation if the following conditions are present:

- The adult person in care proposed for admission is:
  - Not capable of being advised of conditions laid out in Section 48(1) of the RCR and has no parent or representative, and/or
  - Not capable of giving consent under Section 78(3)(a) of the RCR and has no parent or representative, but who does have a plan for admission to a residential care facility following Island Health Guideline 10.2.3G "Guideline for Facilitating a Client's Admission to Residential Care when the Client is Incapable of Consenting to Personal Care Choices".
- The definition of "parent or representative" under the RCR "means a person who (b) in the case of an adult, has authority (i) under the *Health Care (Consent) and Care Facility Admission Act* or the *Patients Property Act* or, (ii) under an agreement under the *Representation Agreement Act* to make health or personal care decision on behalf of the adult, but nothing in this regulation confers upon the person any greater authority to make health or personal care decisions than the person has under those *Acts* or an agreement under the *Representation Agreement Act*."

### Applying for an exemption to Section 48(1) and/or 78(3)(a) of the Residential Care Regulation:

To apply for an exemption to Section 48(1) and/or 78(3)(a) of the RCR for an adult person in care proposed for admission to a licensed LTC facility, a Licensee or delegate must:

- Complete the applicable parts on the "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form;
- Forward the "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form to the Director of Island Health Residential Services, or delegate, to complete the "Support from VIHA Residential Services" field on the form and return it to the Licensee or delegate;
- Attach the corresponding Fax Cover Page to the completed request form; and
- Fax the completed "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form for the local Licensing office.

### Process of approval

Licensing staff will review requests for exemption to Section 48(1) and 78(3)(a) of the RCR within two working days of receipt of the fax and indicate their decision regarding the request on the faxed form. Licensing staff may:

- Approve the request,
- Approve the request with voluntary conditions,
- Recommend that the MHO approve the request with imposed conditions (subject to reconsideration under the *Community Care and Assisted Living Act*), or
- Recommend that the MHO deny the request.

If Licensing staff have approved the Licensee's request with or without voluntary conditions, Licensing staff will fax the completed "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form with their decision to the Licensee.

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If the Licensee's request has been approved with conditions imposed by the MHO, a letter regarding the imposed conditions and the Licensee's right to reconsideration under the *Community Care and Assisted Living Act* will be faxed along with the completed "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form to the Licensee\*.

If the Licensee's request for exemption has been denied by the MHO, a letter setting out the reasons for the denial of the exemption request will be faxed along with the completed "Request for Exemption to Sections 48(1) and 78(3)(a) of the Residential Care Regulation (RCR)" form to the Licensee.

If the Licensee's request for exemption has been denied, the Licensee or delegate, is responsible for communicating to the Director of Residential Services, or delegate, that the exemption request has been denied and provide them with the rationale for the decision.

\*Under Section 17 of the *Community Care and Assisted Living Act*, the Licensee will have 30 days from the date of the approval of the exemption to request reconsideration of the decision to attach terms and conditions to the exemption. Please contact your Licensing Officer to obtain information on the reconsideration process.