



June 16th, 2021

Honourable Christine Elliott
Minister of Health
Ministry of Health
5th Floor
777 Bay St.
Toronto, ON M7A 2J3

Email: christine.elliott@pc.ola.org

Dear Honorable Christine Elliott:

Re: Family Managed Home Care

We are writing to you with concerns about the pressure families are feeling to apply for guardianship to receive services from Family Managed Home Care (FMHC). This program supports families across Ontario by giving them more flexibility over their child's home care needs. As you know, the FMHC Program allows eligible clients, or their substitute decision makers (SDMs), to receive funding to purchase home care services or employ care providers directly. The FMHC program is extremely beneficial, providing families, who are running into barriers accessing traditional services, more control and flexibility over who works in their home with the family member for whom it is intended. It also provides opportunities for families to hire supports that will work for families' unique circumstances. Clients or substitute decision makers are responsible for managing their care providers and reporting to the Home and Community Care Support Services. The flexibility, choice and control this program offers families has proven to be a valuable resource.

In section B29 and in the definition of SDM within the FMHC contract states that by the time a child turns 19 in order to continue with FMHC the parent(s) must be either the Guardian of Property appointed under Part 1 of the *Substitute Decisions Act, 1992* if the adult child is incapable of managing property, or the attorney under the Powers of Attorney Act or exercising a Continuing Power of Attorney for Property under Part 1 of the *Substitute Decisions Act*. The need for these requirements is understandable if the Client is a parent or older sibling *et cetera*, but not when the Client is a child who has been cared for by his family all his life.

If an adult child does not have the capacity to manage his property and a family wants to continue with FMHC, guardianship is the only option according to the LHIN's FMHC policy. However, many families have raised serious concerns about feeling pressured by the LHIN to apply for guardianship, especially when the transition from child to adult services is arduous



and stressful and families do not require guardianship or power of attorney for ODSP and Passport funding provided by MCCSS, within a different ministry of the provincial government.

These adult children are Clients of both the Ministry of Health and MCCSS. Many of them receive ODSP, Passport, and FMHC funding. Yet the requirements for how the parent becomes the SDM is different for both Ministries and even within Ministries. Even within the Ministry of Health, there are different requirements for a parent to become an SDM for their child's property and their child's personal care. For the latter, guardianship of personal care is NOT required by the Ministry of Health for parents according to the *Health Care Consent Act, 1996*.

Families are stating that they don't have the time to fully understand the long-term consequences of guardianship before their child turns 19 and are therefore hesitant to proceed with guardianship. Yet without this legal paperwork they will be denied further access to the FMHC program. If the adult child requires in-home care, they must switch back to traditional services after the child's 19th birthday. This is a devastating consequence for families who have experienced inconsistent, sporadic, and unreliable care from agencies in the past and under FMHC have finally been able to develop long term relationships with caregivers who are providing the necessary supports the adult child requires and peace of mind for family members.

The Ontario Disability Coalition believes the FMHC guardianship requirement is discriminatory and an unnecessary barrier, as this requirement is placed only on individuals with intellectual disabilities and their families to access these necessary in-home healthcare services.

We have been hearing from Pooran Law that Guardianship should only be used as a last resort¹, as it results in a **Loss of Rights** and puts our children at risk of **Misuse of Power**.

I share these quotes from Pooranlaw.com¹:

• **Loss of Rights:** *A person under guardianship or with powers of attorney may, in fact, be capable of making issue-specific decisions with respect to property or personal care. However, once guardianship is in place, it may remove the right of the person to not only make the decision, but to express any will or preference with respect to the decision itself. Instead, SDMs may make decisions independently on the person's behalf. In addition, the process of a capacity assessment may be stigmatizing to individuals, as they may be labelled as "legally incapable," and left with no option but to surrender decision-making authority to a guardian or attorney.*

¹ <https://pooranlaw.com/media/Guardianship-as-a-Last-Resort-PooranLaw-February-2021.pdf>



• **Misuse of powers:** *Once SDMs are appointed, there is usually minimal monitoring or oversight of the decisions they make on behalf of a person, even if those decisions result in the misuse of powers or even abuse. Moreover, SDM powers may be misused without intent simply due to a lack of understanding of the law, given its complexity, and the roles of SDMs. These decisions could be made over the lifetime of a person, with no accountability or recourse for the individuals involved.*

Other national and provincial organizations also warn against rushing into guardianship, such as [Community Living Ontario](#)², and [IRIS](#)³. Given these concerns, we are asking that the Ministry of Health: (1) recognize parents as the most valuable and trusted member of their young adult's care team capable of managing the obligations of the FMHC program; (2) halt the guardianship requirement so families are not rushed into taking away the rights of their vulnerable children just as they enter adulthood; and (3) consider adopting a similar (or the same) process as what MCCSS uses to identify SDMs for ODSP and Passport funding when it is for the same Client and same SDM.

We ask that you enable these Clients and their families to transition to adulthood and adult services seamlessly and without discrimination. We welcome the opportunity to meet with you to discuss this issue as soon as possible as more and more families are being affected by this issue.

Yours truly,

A handwritten signature in blue ink that reads 'Sherry Caldwell'.

Sherry Caldwell
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A handwritten signature in blue ink that reads 'Carla O'Neil'.

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CC: Attorney General, Honourable Minister Todd Smith MCCSS, Laura Summers Director MCCSS, Rupert Gordon Assistant Deputy Minister, MCCSS

² <https://communitylivingontario.ca/wp-content/uploads/2017/08/Coalition-on-Alternatives-to-Guardianship-Final-Brief-to-LCO-on-Interim-Report-March-14-2016.pdf>

³ https://irisinstitute.ca/priority_area/right-to-legal-capacity/