

## WHAT IS AN EXEMPTION?

### COMMUNITY CARE FACILITIES LICENSING PROGRAM

Licensed facilities may request an exemption from meeting the requirements of specific sections of the **Community Care and Assisted Living Act (CCALA), Child Care Licensing Regulation or Residential Care Regulation**. The *Act* and Regulations are the minimum standards to be met to ensure the health and safety of persons in care in licensed community care facilities. The *Community Care and Assisted Living Act (CCALA)* only allows exemptions to be approved if there is **no increased risk to the health and safety of persons in care**. For some sections of the regulations, the Medical Health Officers have delegated their authority to make decisions to either your local Licensing Supervisor or Licensing Officer. Other decisions regarding exemptions are made at the Medical Health Officer (MHO) level.

**The Licensee should inform and consult with persons in care, the agents or personal representatives of persons in care or the spouses, relatives or friends of persons in care regarding the application for an exemption.** Please remember to keep the privacy of persons in care in mind when informing/consulting with the above named parties regarding the application for exemption. This informing or consulting process may be accomplished in a variety of ways. For example:

- Distribution of a facility-wide policy regarding medication self-administration exemption requests to all persons in care/families on admission.
- Meetings with person in care/family councils.
- Facility newsletters or letters/notices distributed to persons in care and the other parties named above.

Licensees should provide the relevant parties with the following information:

- Details on the exemption being requested including why it is necessary and how they have addressed the health and safety of persons in care.
- The *Community Care and Assisted Living Act (CCALA)* and Regulations are minimum standards for health and safety requirements for persons in care set by government.
- The legislation allows Licensees to apply for an exemption to not meet a specific requirement.
- The exemption request can only be approved by the MHO or a delegate, if there is no increased risk to health and safety.
- As a part of the exemption request, the Licensee needs to submit to the MHO/delegate input obtained from persons in care, the agents or personal representatives of persons in care, or the spouses, relatives or friends of persons in care (i.e. What is their response to this exemption request being put forward?)
- Persons in care, the agents or personal representatives of persons in care, or the spouses, relatives or friends of persons in care may submit their response to the application for an exemption, or their letter of support for a request for an exemption to the Licensee, or directly to Licensing.
- Within 30 days after a decision is made under Section 16 to grant an exemption, all exemption approvals are subject to appeal to the Community Care and Assisted Living Board under Section 29(3) of the *Community Care and Assisted Living Act* by the following persons:
  - (a) a person in care or the agent or personal representative of a person in care, or
  - (b) a spouse, relative or friend of a person in care.

There is no right to appeal if the exemption is denied or terms and conditions imposed by the decision-maker.

The Licensee will need to provide detailed evidence in their exemption submission that the above process has been completed.

March 2012

South	Central		North
<b>Victoria</b>	<b>Nanaimo</b>	<b>Courtenay</b>	<b>Campbell River</b>
201 – 771 Vernon Avenue Victoria, BC V8X 5A7 Ph: 250.519.3401 Fax: 250.519.3402	29 – 1925 Bowen Road Nanaimo, BC V9S 1H1 Ph: 250.739.5800 Fax: 250.740.2675	355 – 11 <sup>th</sup> Street Courtenay, BC V9N 1S4 Ph: 250.331.8620 Fax: 250.331.8596	200 – 1100 Island Highway Campbell River, BC V9W 8C6 Ph: 250.850.2110 Fax: 250.850.2455

It may take some time for Licensing staff to process your request for an exemption as they are required to prioritize their workload according to risk; therefore, remember to allow sufficient time for Licensing to process your request. Licensees must remain in compliance with the requirements of the legislation until they receive approval of their exemption request.

All information submitted with an exemption request should be submitted to your Licensing Officer. The Licensee submission will be reviewed and considered by the decision-maker for the exemption. In order to assist Licensing staff in processing your request for exemption in a timely manner, you should include the following information in a comprehensive manner:

- Name and address of facility (including postal code).
- Licence category and maximum capacity.
- Name(s) of Licensee and Manager.
- State the specific section(s) of the Residential Care Regulation, Child Care Licensing Regulation or the *Community Care and Assisted Living Act* that the approval is being requested for and the length of time for which it is required.
- Outline the circumstances for the request.
- Describe how approval of this exemption will ensure no increased risk to health and safety of persons in care. Health and safety issues that may need to be addressed in your submission could include: staffing levels, staff qualifications, programming, physical plant – indoor and outdoor, equipment and furnishings and enhancements to safety practices (e.g. hygiene).
- Describe how the persons in care, the agents or personal representatives of persons in care, or the spouses, relatives or friends of persons in care were informed and consulted with regarding the application for exemption and the exemption process.
- Describe what information the persons in care, the agents or personal representatives of persons in care, or the spouses, relatives or friends of persons in care provided the Licensee when informed and consulted regarding the application for an exemption and the exemption process. A letter of support may be required from each person in care's parent/guardian/representative.
- Describe how the persons in care, the agents or personal representatives of persons in care, or the spouses, relatives or friends of persons in care were informed of their right to appeal to the Community Care and Assisted Living Appeal Board a decision made by the MHO or delegate to grant an exemption to the requirements of the Act and/or Regulations within 30 days of the decision.

In making a decision regarding your exemption request, the decision-maker is required by legislation to be satisfied that there is **no increased risk to the health and safety of persons in care**. The decision-maker needs to consider the following prior to making a decision:

- Licensee's exemption request submission and accompanying documents;
- Any previous exemptions or variances granted to the Licensee;
- History of compliance of the Licensee;
- History of reportable incidents and critical hazards for the facility;
- Number of persons in care affected;
- Reasonableness of the alternate plan to ensure health and safety;
- Length of time for which the exemption is being requested;
- Other similar exemption requests and the decisions;
- Why the current legislation (minimum standards) cannot be met;

- Risk assessment scores for the facility;
- If the request is granted, are there other conditions/terms that should be imposed to ensure health and safety;
- Should the exemption requirement be posted beside the facility licence; and
- Local policies.

If the decision-maker attaches terms or conditions to the exemption without the agreement of the Licensee, the Licensee has the right to reconsideration of the decision under Section 17 of the *Community Care and Assisted Living Act*. To request reconsideration, the decision-maker must receive the Licensee's request for reconsideration within 30 days from the date of the decision. The Licensee would then have the opportunity to appeal the final decision with the Community Care and Assisted Living Appeal Board.

Exemption denials are not subject to reconsideration or appeal by the Licensee.

If you have any further questions, please contact your licensing officer.

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