

## **Conversion of an Existing Unionized Group Home to a Home Sharing Model`**

In an effort to provide more person-centred support to individuals who live in group homes, when a home has three or fewer individuals, an agency may want to consider a home sharing model as an option, using the existing home.

Home sharing is when individuals who have developmental disabilities receive support from a home sharing provider (caregiver) who shares a home and lives with the individuals.

When individuals have decided that they would like to live in an existing group home with a home sharing provider, there are a number of factors which must be considered:

1. definition of home sharing provider
2. ownership of the home and lessee
3. contract with the home sharing provider (caregiver)
4. remuneration of the provider
5. extra supports required and respite
6. licensing requirements
7. notice to group home staff
8. recruitment of home sharing providers
9. legal and collective agreement overview

### **1. The home sharing provider**

In the case of conversion of an existing group home when a collective agreement is in effect, the home sharing provider may be a single person, a couple or a company. The caregiver(s) must not provide care, whether at the home or elsewhere, to more than three individuals with a disability. If the contract is with a couple, then either jointly or singly, they should not provide care to more than three individuals.

If the caregiver is a company, neither the company nor its principal shareholders should provide care to a total of more than three individuals.

## 2. Ownership of the home and lessee

A current group home property may be owned or rented by an agency or owned by the province through BC Housing. A decision will be required regarding rental arrangements.

One option would be for the agency as owner or head tenant to enter into a lease with each individual resident in the home for their room and use of all common facilities including the kitchen, living room, etc. Either a separate lease would be entered into with the family home provider or the provision of housing in the residence would be part of the remuneration set out in the agreement to provide care.

The lease with each individual would be signed by the individual or his or her representative and would be formal, in writing and in compliance with the Residential Tenancy Act.

A second option would be for the agency to lease or sublease the entire residence to the home sharing provider, who in turn would sublet to the individuals with a disability who share the home. This would be similar to any home sharing arrangement and would be the preferable option.

In either case, there must be a written, plain-language lease in place between the individual and the individual's landlord, whether it is the home sharing provider, the agency or BC Housing. The lease must be signed by the individual if he or she has the capacity. If not, it must be signed by the individual's committee, or legal representative or trusted advisor on the individual's behalf.

The lease must at minimum set out the amount of rent payable to the landlord (which is apart from any fees received by the home sharing provider), what facilities the individual is renting as well as confirm that the individual has access to all common areas of the residence and that the rental is for a month-to-month lease, which either party can terminate on one month's notice. The lease must comply with the Residential Tenancy Act to the extent possible.

Individuals receiving support must pay rent in the same way as would any tenant. The rent may be paid through automatic bank deposit deduction using post-dated cheques signed by each individual or administered through the agency if the agency otherwise administers that individual's funds.

### 3. Contract with the home sharing provider (caregiver)

The home sharing provider will be an independent contractor, not an employee, of the agency. The relationship with the agency must be set out in a contract. The contract must be in writing and will set out the terms of the agreement between the home sharing provider and the agency.

At a minimum, the contract will set out the term, the services to be provided to the individual by the contractor, the remuneration, and the responsibilities of the contractor with respect to Worksafe BC, Income Tax, CPP and EI remittances.

The agreement must also identify services to be provided related to primary care of the individual(s) including:

- meals
- laundry
- housekeeping
- necessary assistance with eating, bathing, dressing
- recreation
- transportation as necessary to activities
- other basic necessities of daily living, including administration of medication

Simply providing room and board would be insufficient.

As independent contractors, home sharing providers have care and control of their environment and determine the manner in which they carry out the contract. The role of the agency is limited to determining that a family home provider is providing the services set out in the contract and complying with any necessary regulatory requirements.

An independent contractor is not subject to an agency's collective agreement and is not eligible for any benefits under a collective agreement.

Where an agency enters into a contract with a home sharing provider (an independent contractor) who at the time of entering into the contract was employed by that agency, it is essential that the contractor cease to be an employee, receive a Record of Employment and be removed from the payroll.

#### **4. Remuneration of the home sharing provider**

The contract should clearly specify the monthly financial amount the home sharing provider will receive and any benefits in lieu of remuneration e.g. free food, rent, etc.

The agency should have a thorough understanding of the Canada Revenue Agency(CRA) test for employee versus self-employed contractor (a summary table of factors is appended) and the definition of foster care under the Income Tax Act and CRA rules regarding personal income tax. CRA publication RC4110 (E) Rev. 06 entitled *Employee or Self Employed?* outlines how Revenue Canada determines the status of the caregiver. Paragraph 81 (1) h of the Income Tax Act exempts from income payments made to caregivers under certain conditions. A description of how income tax provisions apply to caregivers can be found in IT Technical news Bulletin No. 31R2 issued May 16, 2006. (Appended)

Determination of worker status under Worksafe BC rules must also be understood in order to determine if the caregiver should apply for 'personal option protection'. In making a determination, Worksafe BC does not use the same test as CRA. It considers the factors of control, ownership of equipment and licenses, terms of work contracts, independent initiative, profit sharing and piece work, employment of others and continuity of work.

#### **5. Extra supports required: respite**

Respite is to be arranged by the home sharing provider. The agency should ensure the contract provides sufficient remuneration to provide for this. The home sharing provider may purchase respite services from the agency but there is no obligation for the home sharing provider to do so. If the home sharing provider elects to hire employees to provide respite, it should be noted in the contract that the provider is required to comply with standards established by the agency and must comply with the Employment Standards Act, the Workers Compensation Act, the Human Rights Code and the Freedom of Information and Protection of Privacy Act.

#### **6. Licensing requirements**

A current group home will be licensed, naming a person in charge. When converting to home sharing, that licence will no longer be valid. Although homes for two individuals do not require licensing, if three people live in the home, a new, separate licence will be required, although licensing may occasionally waive this requirement in exceptional

circumstances. This will require an evaluation of the property and the home sharing provider, who will be the new person in charge. The application for the license should be by the home sharing provider, although the agency and CLBC may assist.

## **7. Notice to group home staff**

Determination of when to give notice to staff currently working in the home will depend on an employer's estimated time frame for completing the transformation of resources above and recruiting the home sharing provider, and whether notice under Section 54 of the Labour Code will have to be provided.

As stated earlier, if no employee is laid off as a result of the change, the employer has the right to contract immediately and directly with a home sharing provider.

While it is often most beneficial to all concerned to transfer employees to vacant positions within the agency, this may not always be possible. When a layoff is the only alternative, the collective agreement outlines the process. Agencies should consult their CSSEA representative before issuing lay off notices to ensure they correctly understand the layoff procedures.

The agency may open the application to provide home sharing services to existing employees working in the former group home.. However, employees should be made aware that selection will be based on a suitable match and the choice of individuals living in the home and their families. When an employee is told that he or she has been selected as the home sharing provider, the employee will need to resign their employment from the agency. In addition, the agency should be aware that, depending on the number of its employees affected, it may be required to provide 60 days notice and meet with the union to discuss and develop a plan in accordance with Section 54 of the Labour Code.

## **8. Recruitment**

The following provides a 'check list' of recruitment expectations for agencies to follow:

1. Conduct a pre-screening interview to clarify the individual's values, expectations, commitment, etc.
2. Confirm that a criminal record check has been completed on every adult in the home. (The caregiver pays the cost)
3. Obtain a medical clearance note
4. Conduct a prior contact check with MCFD

5. Obtain three references, one of which is an employment reference
6. Conduct a home study, which includes a series of three to five visits to the home and meeting everyone who lives in the home
7. Conduct a safety check of the home
8. Obtain proof of First Aid Training and driver's abstract
9. Obtain a signed confidentiality agreement
10. Obtain a Consent to Release of information
11. Develop a matching and transition plan for individuals moving into the home.

## 9. Legal and collective agreement overview

**Although CLBC has defined expectations of agencies that provide home sharing, when converting a group home where a collective agreement is in place, there are additional legal and collective agreement issues involved and of which you should be aware.** The following is a brief overview.

Article 28.06 of the Collective Agreement between CSSEA and the CSSBA prohibits contracting out of bargaining unit work if it would lead to the layoff of a bargaining unit employee.

If no bargaining unit employee is laid off, then the collective agreement is not violated.

In the collective agreement there is a Memorandum of Understanding among the province, CSSEA and the CSSBA (the "Continuity of Service Agreement") which requires that any contracting out (or "contracting" as it is called in the Agreement) must be to someone who is party to the CSSEA/CSSBA collective agreement or who agrees to so become on the contracting out.

"Contracting" in the Continuity of Service Agreement excludes family home (home sharing) providers.

This provision of the Continuity of Service Agreement reflects the requirement of Section 6 of the Community Services Labour Relations Act (the "CSLRA") which says that a collective agreement must not contain a provision that directly or indirectly limits the province, CLBC or an agency from entering into a contract with a family home provider.

A "family home provider" is defined in the CSLRA as a person who:

- a) in a residence owned or rented and occupied by a person, is the primary care provider to that person; and
- b) as a care provider, does not provide care to more than 3 persons at any one time.”

The Continuity of Service Agreement adopts this definition. It should be noted that CLBC currently uses the term “home sharing provider” in place of “family home provider” but the meaning is the same.

The following discussion addresses the issues involved in d) contracting out to a family home (home sharing) provider.

**It is important to stress that the contract with the home sharing provider must be a genuine arms length agreement with an independent contractor. If it is not, the home sharing provider will be found to be an employee of the agency and the collective agreement will apply.**