

GUIDELINES FOR AGENCIES

Home sharing / live-in support (herein known as home sharing) is when an individual who has a developmental disability shares a home with someone who offers support. The home is the primary residence of both the individual being supported and of the person offering the support. The home may be rented by either party or both or owned by either party. The home sharing provider may be an individual, a couple, or a family. The home sharing provider will be an independent contractor with the agency, not an employee.

The following are general guidelines of agencies that provide home sharing. Information provided on legislation, policy, and contracting is for the reader's information and should not be considered legal advice. Agencies providing home sharing are advised to obtain independent advice from those regulatory bodies.

RECRUITMENT

The following is a check list of recruitment expectations:

1. pre-screening interview to clarify the individual's value base
2. require a criminal record check on every person over the age of 19 in the home (the potential provider pays the cost)
3. obtain a medical clearance note from the prospective home sharing provider
4. obtain 3 references, 1 of which is an employment reference
5. conduct a home study: a series of 3-5 visits to the home, meeting everyone who lives in the home (a sample of home study documentation is available from CLBC)
6. conduct a safety check of the home
7. obtain proof of first aid and driver's abstract
8. obtain a signed confidentiality agreement
9. obtain a release of information
10. develop a matching and transition plan

One possible source of people who wish to be home sharing providers is staff members who are currently employed by the agency. The agency should develop policies regarding continued employment with the agency while under contract as a home sharing provider. (Many agencies require that the employee terminate their employment before a home sharing contract is signed.) The policy should clearly delineate the role expectations.

CONTRACTING WITH THE HOME SHARING PROVIDER

An independent contractor is not subject to the collective agreement. As a contractor, the provider has care and control of their environment and is not subject to supervision in the same way as an employee. Neither will the contractor be eligible for any statutory benefits from the agency. A written contract must be in place between the agency and the provider. The agency is advised to vet the contract through a lawyer.

It is important for the agency to understand the criteria used by applicable regulatory bodies to determine if the provider is an employee or independent contractor. Regardless of the contract in place, if the agency is seen to have an employment relationship with the provider, the agency may be liable for any statutory benefits and unpaid assessments. Complicating matters is that the regulatory bodies have different criteria for determining the relationship between the agency and the employee or contractor.

For example, employment status directly affects a person's entitlement to Employment Insurance (EI) benefits. It can also have an impact on how a worker is treated under other legislations such as the *Canada Pension Plan*, the *Employment Insurance Act*, the *Income Tax Act*, the provincial *Workers Compensation Act*, and *Employment Standards Act*.

The agency should have a thorough understanding of the Canada Revenue Agency (CRA) test for employee vs. self employed contractor (a summary table of factors is appended), 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 the income tax applies 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 should also be understood. In making the 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.

Agencies are required to contact WorkSafe BC and CRA directly to ensure they have access to the most up to date information. An additional resource for agencies who are members of CSSEA is the Self-Help Series booklet *Employee or Independent Contractor?*

The following is a check list of expectations CLBC has of its agency contractors who provide home sharing services:

1. A written contract must be in place between the agency and the provider.
2. The contract specifies:
 - a. the term of the agreement, termination process, and monthly remuneration
 - b. the provider's status as an independent contractor. For example:
"TERMS OF THE INDEPENDENT CONTRACTOR
The Contractor is responsible for the payment of all income taxes, employment insurance payments, pension plan payments, and any other payments that may be required by statute. The Contractor shall indemnify and save harmless the Society from any loss, legal expense, claims or suits for remittances alleged to be required to be paid by the Society to any government body or agency under any statute or regulation."
 - c. the contractor has been advised by the service provider to seek independent legal advice with regard to the nature and contents of the contract
 - d. the contractor's responsibilities to the individual(s) supported and those regarding legislated requirements (WCB, CPP, insurance etc.)
 - e. responsibility for liability and property and content insurance, costs for damages or retrofit.
 - f. requirements to adhere to provincial *Standards for Home Sharing* etc.
 - g. procedure for recruiting relief or hourly workers.
 - h. any requirements specific to the individual being supported.
3. The provider may already be registered with WorkSafe BC as an independent contractor and may have Personal Optional Protection.
 - a. If the provider is registered with WorkSafe BC, the agency must obtain a clearance letter from WorkSafe BC
 - b. If the provider has not registered with WorkSafe BC, the agency should include the provider's gross contract amount in "assessable payroll" for WorkSafe BC purposes.

Samples of contracts can be provided by CLBC. However, as stated previously, these should not be used without due diligence by the agency and independent legal advice.

LIABILITY INSURANCE

The agency contract with CLBC includes coverage through the Government Master Insurance Plan (GMIP) for harm or damage caused by inadvertent actions of employees acting in good faith. GMIP coverage can be extended to home sharing providers who provide services on behalf of the agency with funding through that

contract. Doing so is an administrative process involving adding language to the contract with the provider and providing them with copies of the GMIP policy. The agency may have additional liability insurance and wish to include home sharing providers in that insurance.

RESPITE / RELIEF AND EXTRA SUPPORTS

Respite is defined as “a service that gives a break to families”. Since home sharing providers are not families, the term “relief” is used to describe a break for home sharing providers.

Relief and extra supports may be paid on an hourly basis or based on a 24 hour period. If the relief is provided in the relief provider’s home, it **may** be considered by CRA as “foster care”. If the relief is outside of the relief provider’s home, it is considered employable income.

The agency must determine if it will provide relief and extra support staff or if the home sharing provider will hire their own staff as part of their contract.

Implications are as follows:

1. When relief funds are included in the provider’s contract, use of relief tends to be less, adding to potential burnout.
2. If the home sharing provider hires staff for relief, the requirements for recruitment and the duties of an employer need to be clear to the provider and detailed in their contract with the agency.
3. A monitoring mechanism for use of relief should be developed by the agency.
4. If the agency hires employees to provide relief or hourly supports, they must be treated as any other agency employee.
5. If the agency chooses to contract with an independent contractor to provide relief, then the agency must address the requirements of independent contractors and ensure that the contractor is aware that the income is quite likely to be taxable and in some situations, GST may be applicable.

TRAINING

The contract should include a requirement of home sharing providers that they ensure their first aid certification is current and that they participate in training offered to home sharing providers by the agency.

MONITORING

Agencies providing home sharing are required to develop a method of monitoring each home on a regular basis. Accredited agencies are required to follow the standards of the accrediting body. The agency may develop its own tools or use those developed by CLBC to monitor its directly contracted home sharing providers. CLBC tools are consistent with accreditation standards of both CARF and COA.

CLBC uses the *Health and Safety Checklist for Home Sharing* to provide an in-depth analysis of important health and safety features of the home. It can be used in conjunction with other documents or can be used as a stand-alone review. It assesses important health and safety features in the following areas:

- health care planning
- individual care and support
- safety and security
- home atmosphere

The CLBC *Monitoring Tool for Home Sharing* can also be used by agencies. This document allows the monitor to determine whether the home sharing provider is meeting expectations in each area or whether improvement is required. For each domain, the following format is used:

standard

- service outcome expectation and various indicators for review
- assessment (meets expectation or needs improvement)
- key findings (narrative)
- action plan to address improvements needed (if required)