

1973 Bill 77

Second Session, 17th Legislature, 22 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 77

The Mental Health Amendment Act, 1973

THE MINISTER OF HEALTH AND SOCIAL DEVELOPMENT

First Reading

Second Reading

Third Reading

Printed by QUEEN'S PRINTER for the Province of Alberta, EDMONTON

BILL 77

1973

THE MENTAL HEALTH AMENDMENT ACT, 1973

(Assented to _____, 1973)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Mental Health Act, 1972 is hereby amended.*

2. *Section 1, clause (g) is amended by striking out the words "for the observation, examination, care, treatment, control and detention of persons suffering from mental disorder".*

3. *The following section is added after section 23:*

23.1 Nothing in this Part abrogates or restricts the authority conferred on a board by *The Alberta Hospitals Act* or any other Act.

4. *Section 26 is struck out and the following is substituted therefor:*

26. (1) A conveyance and examination certificate is sufficient authority

- (a) for any person to convey the person named therein to a facility within 72 hours of the time it is issued and to detain that person while he is being so conveyed until the time he arrives at the facility, and
- (b) for any physician to prescribe treatment for or to treat the person named therein while he is being so conveyed and until the time he arrives at the facility.

(2) Where a person is conveyed to a facility pursuant to a conveyance and examination certificate, the conveyance and examination certificate is sufficient authority

- (a) for one or more therapists or physicians who are members of the staff of the facility to observe and examine the person named therein,
- (b) to provide such treatment as in the opinion of the physician or therapist may be essential for the well-being of the person named therein, and

Explanatory Notes

1. This Bill will amend chapter 118 of the Statutes of Alberta, 1972.

2. Section 1 (g) presently reads:

1. In this Act

(g) "facility" means a place or part of a place designated by the regulations as a facility for the observation, examination, care, treatment, control and detention of persons suffering from mental disorder;

The definition is rewritten as a result of changes to be made in section 60 which will allow for the designation of hospitals as facilities for limited purposes only. See the amendment to section 60 of the Act in this Bill.

3. The new section 23.1 is intended to ensure that the authority of approved hospital boards under other Acts remains unaffected.

4. Section 26 presently reads:

26. (1) A conveyance and examination certificate is sufficient authority for any person to convey the person named therein to a facility within 72 hours of the time it is issued.

(2) Where a person is conveyed to a facility pursuant to a conveyance and examination certificate, the conveyance and examination certificate is sufficient authority

(a) for one or more therapists or physicians to examine the person named therein, and

(b) to detain the person named therein for a period of 24 hours from the time he arrives at the facility.

(c) to care for, detain and control the person named therein,
for a period of 24 hours from the time that person arrives at the facility.

5. Section 29 is amended by adding the following subsection after subsection (1):

(1.1) In any case where at least one of the examinations conducted under subsection (1) does not take place at the facility to which the person examined is intended to be admitted as a formal patient, that person shall not be admitted as a formal patient at that facility unless at least one of the admission certificates is issued by a member of the staff of that facility.

6. Section 30 is struck out and the following is substituted therefor:

30. (1) Two admission certificates are sufficient authority to observe, examine, care for, treat, control and detain the person named therein, in a facility, for a period of one month from the date the second admission certificate is issued.

(2) Where the person named in two admission certificates is not in a facility, the certificates are sufficient authority

- (a) for any person to convey the person named therein to a facility within 72 hours of the time the second admission certificate was issued and to detain that person while he is being so conveyed until he arrives at the facility, and
- (b) for any physician to prescribe treatment for or to treat the person named therein while he is being so conveyed and for a period of 24 hours from the time he arrives at the facility.

7. Section 31 is amended

(a) by adding the following subsection after subsection (1):

(1.1) At least one of the persons who issues a renewal certificate under this section shall be a member of the staff of the facility where the examination was made.

(b) by striking out subsection (2) and by substituting the following:

(2) Two renewal certificates are sufficient authority to observe, examine, care for, treat, control and detain the person named therein

5. Section 29 relates to examinations leading to admission of a formal patient in a facility.

6. Section 30 presently reads:

30. (1) Two admission certificates are sufficient authority to detain and treat the person named therein, in a facility, for a period of one month from the date the second admission certificate is issued.

(2) Where the person named in two admission certificates is not in a facility, the certificates are sufficient authority to convey the person named therein to a facility within 72 hours of the time the second admission certificate was issued.

7. Section 31 deals with the issue of renewal certificates which authorize a continuation in the facility of a patient for further limited periods. Section 31 (2) presently reads:

(2) Two renewal certificates are sufficient authority to detain and treat the person named therein as follows:

(a) in the case of the first two renewal certificates, for a period of not more than two additional months;

(b) in the case of the second two renewal certificates, for a period of not more than six additional months;

(c) in the case of each two subsequent renewal certificates, for a period of not more than six additional months.

The rewording in the new clauses (a) and (b) is intended to prevent a misinterpretation that the present clause (c) refers to only two subsequent cases where renewal certificates are issued.

- (a) in the first case where two renewal certificates are issued, for a period of not more than two additional months;
- (b) in the second case and each subsequent case where two renewal certificates are issued, for a period of not more than six additional months.

8. Section 37 is amended by striking out subsection (1) and by substituting the following:

37. (1) A certificate of incapacity lasts until it is cancelled

- (a) by an order issued pursuant to section 37.1, or
- (b) by a review panel or, on appeal, by the Supreme Court.

9. The following section is added after section 37:

37.1 (1) Where, after separate examinations by each of them,

- (a) a therapist and a physician, or
- (b) two physicians,

are of the opinion that a person who is the subject of a certificate of incapacity is capable of managing his affairs, they may issue an order cancelling the certificate of incapacity.

(2) The order cancelling the certificate of incapacity shall show

- (a) the names of
 - (i) the therapist and the physician, or
 - (ii) the two physicians, who issued it,
- (b) the date that each examination was made,
- (c) the facts on which the therapist (where appropriate) and each physician formed his opinion that the person concerned was capable of managing his affairs, distinguishing the facts observed by him from the facts communicated to him by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing it.

(3) Immediately after an order cancelling a certificate of incapacity is issued, the physician who signed the order shall

- (a) notify or cause to be notified, the Public Trustee, and

8. Section 37 presently reads:

37. (1) A certificate of incapacity lasts until it is cancelled by a review panel or on appeal, by a judge of the Supreme Court.

(2) A certificate of incapacity is deemed to be cancelled where a committee is appointed by the court under The Mentally Incapacitated Persons Act, to replace the Public Trustee.

(3) Where a formal patient is discharged from a facility, the discharge does not cancel, nor in any manner affect, a certificate of incapacity.

See section 9 of this Bill.

9. The new section 37.1 will allow for the cancellation of a certificate of incapacity by using the same procedure as was followed in issuing it.

- (b) mail or cause to be mailed to
 - (i) the Public Trustee, the order, and
 - (ii) the nearest relative of the person concerned, a copy of the order.

10. Section 40, subsection (4) is amended by adding after the words "Except as permitted by the chairman" the words "and except where the report is published by the applicant or his representative".

11. Section 45, subsection (1) is amended by striking out the words "facility director" and by substituting the word "board".

12. Section 47 is amended

- (a) as to subsection (1) by striking out the words "a therapist or a physician" and by substituting the words "the board",
- (b) by striking out subsection (2) and by substituting the following:

(2) Where a formal patient has been discharged and refuses or is unwilling to leave the facility, the board or a representative of the board may require that the removal of the former patient be effected by

- (a) any person who is liable for the payment of expenses incurred with respect to the former patient pursuant to section 58, subsection (1), or
- (b) the Minister of Health and Social Development.

(3) The board may by registered mail notify the person responsible for the removal of the former patient to remove the former patient within 10 days from the receipt of the notice.

(4) Where the notice is given under subsection (3), a copy of the notice shall be given by mail to the Director.

(5) Where the notice under subsection (3) is given to a person referred to in subsection (2), clause (a) and that person fails to comply with the notice, that person is guilty of an offence and liable on summary conviction to a fine of not more than \$50 and in default of payment to imprisonment for a term not exceeding 10 days.

10. Section 40 (4) presently reads:

(4) Except as permitted by the chairman, no person shall publish any report of a hearing, investigation or deliberation by a review panel or the names of any persons concerned therewith.

11. Corrects a drafting error.

12. Section 47 presently reads:

47. (1) Where a formal patient is discharged from a facility, a therapist or a physician shall, where possible, give notice of the discharge

(a) to the nearest relative, if the person discharged agrees, and

(b) to the referring source,

and where applicable shall state in the notice whether a certificate of incapacity continues to exist with respect to the person.

(2) Where a formal patient has been discharged and refuses or is unwilling to leave the facility the board may, with the consent of the Minister, cause the person to be removed from the facility.

The new provisions replacing subsection (2) are intended to make the removal procedures similar to those applicable to approved hospitals.

13. Section 48, subsection (3) is amended by striking out the words "in accordance with the by-laws of" and by substituting the word "by".

14. Section 60, subsection (2) is amended

(a) by striking out clause (a) and by substituting the following:

(a) designating any place or part of a place as a facility;

(a1) classifying facilities for any purpose;

(b) as to clause (b) by adding the following subclause:

(vi) prescribing the charges that the owner or operator of a facility or any class thereof may make for diagnostic and treatment services and other services provided to patients in that facility who are not entitled to those services at the expense of the Government of Alberta;

(c) by adding the following subsection after subsection (2):

(3) Where the Lieutenant Governor in Council designates any place as a facility, he may by regulation

(a) limit or restrict the purposes under this Act or the regulations for which that place is designated as a facility;

(b) make inapplicable to a facility or any class thereof any of the provisions of this Act.

15. This Act comes into force on the day upon which it is assented to.

13. Section 48 (3) presently reads:

(3) Where a formal patient is no longer a danger to himself or others, he may be discharged in accordance with the by-laws of the board and thereupon the admission certificates or renewal certificates, as the case may be, shall be deemed to be cancelled.

14. Section 60 (2) (a) and (b) presently read:

- (2) The Lieutenant Governor in Council may make regulations
 - (a) designating and classifying facilities, and exempting any facility or class thereof from the application of any provision of the regulations made under clause (b);
 - (b) in respect of facilities or any class thereof,
 - (i) providing for the creation, establishment, construction, alteration, renovation and maintenance thereof,
 - (ii) prescribing the accommodation, equipment, conduct, operations, use and control thereof,
 - (iii) providing for the government, management, conduct, operation, use and control thereof,
 - (iv) providing for the officers and staff and prescribing their qualifications,
 - (v) prescribing the forms, records, books, returns and reports to be made and kept in connection therewith and providing for returns, reports and information to be furnished to the Minister;

See also the note to section 2 of this Bill.