

1995 BILL 215

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Third Session, 23rd Legislature, 44 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 215

## ALBERTA HEALTH CARE ENTITLEMENT AND ACCOUNTABILITY ACT

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MR. SAPERS

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 215*  
*Mr. Sapers*

## **BILL 215**

1995

### **ALBERTA HEALTH CARE ENTITLEMENT AND ACCOUNTABILITY ACT**

*(Assented to , 1995)*

WHEREAS the people of Alberta hold universal, comprehensive health care to be a fundamental right of all people; and

WHEREAS the Legislature of Alberta, affirming that right and recognizing the need to ensure the protection of that right in matters coming within its legislative authority, desires to enact an Alberta Health Care Bill of Rights;

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

#### **PART 1**

#### **HEALTH CARE RIGHTS**

Effect on Act on  
provincial laws

1(1) Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Part.

(2) In this Act, "law of Alberta" means an Act of the Legislature of Alberta enacted before or after the commencement of this Act, any order, rule or regulation made thereunder, and any law in force in Alberta on January 1, 1995 that is subject to be repealed, abolished or altered by the Legislature of Alberta.

**2** It is hereby recognized and declared that in Alberta there exists the right of all Albertans to receive adequate, continuous and personal health care,

- (a) regardless of where they reside in Alberta, and
- (b) regardless of their ability to pay for such services.

**3** Health care shall be provided in accordance with the following principles:

- (a) health care consists of promotive, preventive, curative, rehabilitative and supportive health services;
- (b) health care must be appropriate to the needs of the community;
- (c) the community must be involved in health care planning and evaluation; and
- (d) information regarding the financing and administration of health care facilities must be available to any Albertan.

## PART 2

### ALBERTA HEALTH CARE ADVOCATE

**4** In this Part,

- (a) "agency" means a Provincial agency as defined in section 1 of the *Financial Administration Act* but does not include
  - (i) the board of a university under the *Universities Act*,
  - (ii) the board of a public college under the *Colleges Act*,
  - (iii) the Governors of the Banff Centre for Continuing Education,
  - (iv) the board of a technical institute under the *Technical Institutes Act*;

- (b) "department" means a department as defined in section 1 of the *Financial Administration Act*;
- (c) "Minister" means a member of the Executive Council;
- (d) "Select Standing Committee" means the Select Standing Committee on Legislative Offices.

**Appointment**      **5(1)**    There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Health Care Advocate.

(2)    Subject to section 10, the Lieutenant Governor in Council shall appoint the Health Care Advocate on the recommendation of the Legislative Assembly.

**Restriction as to holding other offices**      **6(1)**    The Health Care Advocate may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Health Care Advocate, or engage in any occupation for reward outside the duties of his office.

(2)    The Health Care Advocate must be a Canadian citizen.

**Term of office**      **7**    Unless his office sooner becomes vacant, a person appointed as Health Care Advocate holds office for 5 years

(a)    from the date of his appointment under section 5, or

(b)    from the date his appointment under section 10 is confirmed under that section,

and continues to hold office after the expiry of his term of office until he is reappointed, his successor is appointed or a period of 6 months has expired, whichever occurs first.

**Resignation**      **8**    The Health Care Advocate may at any time resign his office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

Suspension or  
removal from  
office

9(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Health Care Advocate from his office for disability, neglect of duty, misconduct or bankruptcy.

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may suspend the Health Care Advocate from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

Vacancy in office

10(1) If the Health Care Advocate dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Select Standing Committee, may appoint an Health Care Advocate to fill the vacancy and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next ensuing regular session, the appointment lapses and there shall be deemed to be another vacancy in the office of Health Care Advocate.

Salary

11(1) Provided that money is appropriated to the purpose from the General Revenue Fund by an Act of the Legislature, the Health Care Advocate shall be paid a salary at a rate set by the Select Standing Committee and the Select Standing Committee shall review that salary rate at least once a year.

(2) The Health Care Advocate shall receive similar benefits to those provided to a Deputy Minister.

Oath of office

**12(1)** Before entering on his duties, the Health Care Advocate shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with section 21(2) or section 24(3) and (4), divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

Office of the  
Health Care  
Advocate

**13** Provided that money is appropriated to the purpose from the General Revenue Fund by an Act of the Legislature, there shall be a department of the public service of Alberta called the Office of the Health Care Advocate consisting of the Health Care Advocate and the employees appointed pursuant to the *Public Service Act* to assist the Health Care Advocate in the efficient carrying out of his functions under this Act.

Functions and  
duties

**14(1)** It is the function and duty of the Health Care Advocate to

- (a) monitor compliance with this Act,
- (b) report to the Legislative Assembly and the people of Alberta on compliance with this Act,
- (c) investigate complaints respecting compliance with this Act,
- (d) continuously evaluate health care policies, the provision of health care services and the health of the people of Alberta, and
- (e) solicit the views of the public with respect to health care in the Province.

(2) The Health Care Advocate may make an investigation either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be a matter which falls within subsection (1).

(3) Without limiting subsection (1), any committee of the Legislative Assembly may at any time refer to the Health Care

Advocate, for investigation and report by him, any petition that is before that committee for consideration or any matter to which the petition relates and, in that case, the Health Care Advocate shall,

(a) subject to any special directions of the committee, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the committee that he thinks fit,

but nothing in section 16, 22 or 23 applies in respect of any investigation or report made under this subsection.

(4) Without limiting subsection (1), a Minister may at any time by order refer any matter to the Health Care Advocate for investigation and report by him and, in that case, the Health Care Advocate may

(a) subject to any special directions of the Minister, investigate the matter so referred to him so far as it is within his jurisdiction, and

(b) make any report to the Minister that he thinks fit,

but nothing in section 16, 22 or 23 applies in respect of any investigation or report made under this subsection.

(5) An order made by a Minister under subsection (4) shall be published forthwith in The Alberta Gazette.

Complaint to  
Health Care  
Advocate

**15(1)** Any person who has reasonable grounds for believing that a person or agency has contravened this Act may make a complaint with the Health Care Advocate.

(2) Every complaint to the Health Care Advocate shall be made in writing.

(3) Notwithstanding any Act, when a letter written by

(a) any person in custody on a charge or after conviction of any offence, or

(b) a patient of

- (i) any health care facility,
- (ii) a place established under section 49(a) or (b) of the Mental Health Act,

is addressed to the Health Care Advocate, it shall be immediately forwarded, unopened, to the Health Care Advocate by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

**16(1)** The Health Care Advocate may, in his discretion, refuse to investigate or cease to investigate any complaint

- (a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Health Care Advocate, or
- (b) if in his opinion,
  - (i) the subject matter of the complaint is trivial,
  - (ii) the complaint is frivolous or vexatious or is not made in good faith, or

(2) When the Health Care Advocate decides not to investigate or to cease to investigate a complaint, he shall inform the complainant of his decision and he may, if he thinks fit, state his reasons for his decision.

Notice of  
investigation

**17(1)** Before investigating any matter under this Act, the Health Care Advocate shall inform the deputy minister of the department or the administrative head of the agency affected, as the case may be, of his intention to make the investigation.

(2) The Health Care Advocate may, in his discretion, at any time during or after an investigation consult any Minister who is concerned in the matter of the investigation.

(3) On the request of any Minister in relation to an investigation or in any case where an investigation relates to a recommendation made to a Minister, the Health Care Advocate shall consult that Minister after making the investigation and



before forming a final opinion on any of the matters referred to in section 22(1) or (2).

(4) If, during or after an investigation, the Health Care Advocate is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or agency, he shall refer the matter to the deputy minister of the department or the administrative head of the agency, as the case may be.

Conduct at  
investigation

18(1) Every investigation by the Health Care Advocate under this Act shall be conducted in private.

(2) The Health Care Advocate may hear or obtain information from any persons he thinks fit and he may make inquiries he thinks fit.

(3) Subject to section 29(3), it is not necessary for the Health Care Advocate to hold any hearing.

(4) Subject to this Act and any rules made under section 30, the Health Care Advocate shall establish a procedure regarding the conduct of investigations.

Evidence at  
investigation

19(1) Subject to this section and section 20, the Health Care Advocate may require any person who, in his opinion, is able to give any information relating to any matter being investigated by him

(a) to furnish the information to him, and

(b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of a department or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

(2) When the Health Care Advocate requires the production of a document, paper or thing under subsection (1), he may

require it to be produced at a place designated by him and may require that it be left in his possession for the purposes of his investigation but, on the request of the deputy minister of the department or the administrative head of the agency, the Health Care Advocate shall return the document, paper or thing to the department or agency as quickly as possible, but not later than 48 hours after the receipt of the request, subject to his right to again require its production in accordance with this section.

(3) The Health Care Advocate may summon before him and examine on oath

- (a) any person who is an officer or employee or member of any department or agency and who in the Health Care Advocate's opinion is able to give any information mentioned in subsection (1),
- (b) any complainant, and
- (c) any other person who in the Health Care Advocate's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Subject to subsection (5), a person who is bound by an Act to maintain secrecy in relation to, or not to disclose, any matter is not required to

- (a) supply any information to or answer any question put by the Health Care Advocate in relation to that matter, or
- (b) produce to the Health Care Advocate any document, paper or thing relating to it,

if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of a complainant, any person to whom subsection (4) applies may be required by the Health Care Advocate to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with the requirement.

(6) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

(7) Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Health Care Advocate is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Health Care Advocate shall be given against any person.

(8) No person is liable to prosecution for an offence against any Act by reason of his compliance with any requirement of the Health Care Advocate under this section.

Disclosures  
restricted

20(1) The rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Health Care Advocate.

(2) Nothing in this Act authorizes the Health Care Advocate to require any person to produce a pre-sentence report or to furnish any information contained in or relating to a pre-sentence report.

Maintenance of  
secrecy

21(1) The Health Care Advocate and every person holding an office or appointment under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Health Care Advocate may disclose in any report made by him under this Act any matters that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

Procedure after  
investigation

22(1) This section applies when, after making an investigation under this Act, the Health Care Advocate is of the opinion that the decision, recommendation, act or omission that was the

subject matter of the investigation

- (a) appears to have been contrary to law,
  - (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
  - (c) was based wholly or partly on a mistake of law or fact, or
  - (d) was wrong.
- (2) This section also applies when the Health Care Advocate is of the opinion

- (a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised
  - (i) for an improper purpose,
  - (ii) on irrelevant grounds, or
  - (iii) on the taking into account of irrelevant considerations,

or

- (b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.
- (3) If, when this section applies, the Health Care Advocate is of the opinion

- (a) that the matter should be referred to the appropriate authority for further consideration,
- (b) that the omission should be rectified,
- (c) that the decision should be cancelled or varied,
- (d) that any practice on which the decision, recommendation,

act or omission was based should be altered,

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Health Care Advocate shall report his opinion and his reasons for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Health Care Advocate to be adequate and appropriate, the Health Care Advocate, in his discretion after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make any report to the Legislature on the matter that he thinks fit.

(5) The Health Care Advocate shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

Results of  
investigation to  
complainant

23(1) If the Health Care Advocate makes a recommendation under section 22(3) and no action that seems to the Health Care Advocate to be adequate and appropriate is taken on the recommendation within a reasonable time, the Health Care Advocate shall inform the complainant of his recommendation and make whatever comments on the matter he thinks fit.

(2) The Health Care Advocate shall in any case inform the complainant, in the manner and at the time he thinks proper, of the result of the investigation.

Other inquiries

24(1) No report or recommendation of the Health Care Advocate and no investigation or other proceeding under this Act leading to a report or recommendation of the Health Care

Advocate shall be made the subject of

- (a) an inquiry under the *Public Inquiries Act*, or
  - (b) an inquiry, investigation, review or hearing by any person or body pursuant to any other Act.
- (2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by
- (a) the Legislative Assembly,
  - (b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly,
  - (c) a commissioner under the *Public Inquiries Act*, if a resolution of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act, or
  - (d) any other person or body appointed by a resolution of the Legislative Assembly,

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

- (3) Notwithstanding section 21 or any oath taken under section 10 or 11 but subject to subsection (4),
- (a) the Health Care Advocate or a former Health Care Advocate, or
  - (b) any person who holds or formerly held an office or appointment under the Health Care Advocate or a former Health Care Advocate,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his knowledge in the course of the administration of this Act.

- (4) The Health Care Advocate or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

- (a) shall not answer any question or be compelled to answer any question, and
- (b) shall not produce or be compelled to produce any document, paper or thing,

when the Health Care Advocate or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Health Care Advocate or any person who holds or formerly held an office or appointment under the Health Care Advocate or a former Health Care Advocate is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summoned that witness shall forthwith give notice of that fact to the Health Care Advocate that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

Proceedings not  
subject to review

25 No proceedings of the Health Care Advocate shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Health Care Advocate shall be challenged, reviewed, quashed or called in question in any court.

Proceedings  
privileged

26(1) No proceedings lie against the Health Care Advocate or against any person holding an office or appointment under the Health Care Advocate for any thing he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

(2) Neither the Health Care Advocate nor any person holding an office or appointment under the Health Care Advocate shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Health Care Advocate under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act* any report made by the Health Care Advocate under this Act shall be deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast shall be deemed to be privileged.

Entry of premises

27(1) For the purposes of this Act, the Health Care Advocate may at any time enter on any premises occupied by any department or agency and inspect the premises and, subject to sections 19 and 20, carry out in those premises any investigation that is within his jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Health Care Advocate shall notify the deputy minister of the department or, as the case may require, the administrative head of the agency that occupies the premises of his intention to do so.

Delegation of power

28(1) With the prior approval of the Select Standing Committee, the Health Care Advocate may, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) A delegation may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Health Care Advocate.

(4) A delegation may be made subject to any restrictions and conditions the Health Care Advocate thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Health Care Advocate by whom it was made ceasing to hold office, continues to have effect as if made by his successor.



(6) Any person purporting to exercise any power of the Health Care Advocate by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power.

Annual report

29(1) The Health Care Advocate shall in each year make a report to the Legislature on the exercise of his functions under this Act, and in particular, the report shall show

- (a) the number of complaints received by the Advocate,
- (b) the number of complaints the Advocate refused to investigate, and
- (c) the number of complaints investigated and a summary of the disposition of those complaints.

(2) The Health Care Advocate may, from time to time, in the public interest or in the interests of any person or department or agency publish reports relating

- (a) generally to the exercise of his functions under this Act, or
- (b) to any particular case investigated by him,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Health Care Advocate shall not, in a report made under this section, express any opinion or make any comment that is adverse to

- (a) any department or any officer or employee of a department,
- (b) any agency or any member or employee of an agency, or
- (c) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Health Care Advocate has given that department, agency, officer, member, employee, person or group of persons an opportunity to

know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

**Rules for guidance** 30 The Legislative Assembly may,

- (a) of its own volition, or
- (b) on the recommendation of the Select Standing Committee,

make rules for the guidance of the Health Care Advocate in the exercise of his functions and duties.

**Storage of and access to files**

31(1) The Health Care Advocate may place any file relating to a complaint made to or an investigation made by the Health Care Advocate in the Provincial Archives of Alberta at any time after 2 years have elapsed from the date on which the file was closed.

(2) After 6 years have elapsed from the date on which it is closed

- (a) a file relating to a complaint for which the Health Care Advocate declined to accept jurisdiction may be destroyed, and
- (b) any other file made by the Health Care Advocate relating to a complaint or investigation under this Act may, after it is microfilmed, be destroyed and the microfilm stored in the Provincial Archives.

(3) No person, other than the Health Care Advocate and the staff of the Office of the Health Care Advocate, shall have access to the information contained in a file or a microfilm of a file stored in the Provincial Archives under this section.

**Offences and penalties**

32 Any person who,

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Health Care Advocate or any other person in the exercise of his powers under this Act,

- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Health Care Advocate or any other person under this Act, or
- (c) wilfully makes a false statement to or misleads or attempts to mislead the Health Care Advocate or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable to a fine of not more than \$1000 and in default of payment to imprisonment for a term not exceeding 3 months.

Other laws

**33** The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

- (a) any remedy or right of appeal or objection is provided for any person, or
- (b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

**34** No payment shall be made out of the General Revenue Fund to defray any expense necessary for the implementation of this Act without the authority of an appropriation made by the Legislature for such purpose.

**35** This Act comes into force on Proclamation.