

2020 Bill 17

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 17

MENTAL HEALTH AMENDMENT ACT, 2020

THE MINISTER OF HEALTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 17

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2020

MENTAL HEALTH AMENDMENT ACT, 2020

(Assented to _____, 2020)

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

Amends RSA 2000 cM-13

1 The *Mental Health Act* is amended by this Act.

2 Section 1 is amended

(a) in subsection (1)

(i) by repealing clause (f.1);

**(ii) by repealing clause (g) and substituting the
following:**

(g) “mental disorder” means a substantial disorder of
thought, mood, perception, orientation or memory
that grossly impairs

(i) judgment,

(ii) behaviour,

(iii) capacity to recognize reality, or

(iv) ability to meet the ordinary demands of life,

Explanatory Notes

1 Amends chapter M-13 of the Revised Statutes of Alberta 2000.

2 Section 1 presently reads in part:

1(1) In this Act,

(f.1) “health professional” means a health professional or a member of a class of health professionals as set out in the regulations or designated by a board or a regional health authority under section 9.7(1) or by the Minister under section 49(2);

(g) “mental disorder” means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs

(i) judgment,

(ii) behaviour,

(iii) capacity to recognize reality, or

(iv) ability to meet the ordinary demands of life;

(i) “nearest relative” means, with respect to a formal patient or a person who is subject to a community treatment order,

but does not include a disorder in which the resulting impairment is persistent and is caused solely by an acquired or congenital irreversible brain injury;

(iii) by adding the following after clause (i):

- (i.1) “nurse practitioner” means a regulated member of the College and Association of Registered Nurses of Alberta under the *Health Professions Act* who is on the regulated members register in the nurse practitioner register category;

(iv) by adding the following after clause (n):

- (n.1) “qualified health professional” means a physician or nurse practitioner or a person who is registered under section 33(1)(a) of the *Health Professions Act* as a member of a health profession or of a category within a health profession designated by the regulations for the purposes of all or part of this Act;

(v) by adding the following after clause (p):

- (p.1) “secure location” means a location designated as a secure location under section 13.1;
- (p.2) “treatment” means anything that is done for a therapeutic, preventive or other health-related purpose, including the implementation of a treatment plan described in section 9.01.

(b) by repealing subsection (2) and substituting the following:

- (2)** A qualified health professional or an individual may carry out one or more of the powers, duties, functions and responsibilities of a psychiatrist, physician or qualified health professional respecting a community treatment order when authorized to do so in a declaration under section 49(2).

(i) *the adult person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph being preferred to the other of those relatives regardless of gender:*

(A) *spouse or adult interdependent partner;*

(B) *son or daughter;*

(C) *father or mother;*

(D) *brother or sister;*

(E) *grandfather or grandmother;*

(F) *grandson or granddaughter;*

(G) *uncle or aunt;*

(H) *nephew or niece,*

or

(ii) *any adult person the board designates in writing to act as the nearest relative if there is no nearest relative within any description in subclause (i) or if, in the opinion of the board, the nearest relative determined under subclause (i) would not act or is not acting in the best interest of the formal patient or the person who is subject to a community treatment order;*

(n) *“Public Guardian” means a person appointed as a Public Guardian pursuant to section 107 of the Adult Guardianship and Trusteeship Act;*

(p) *“review panel” means a review panel established pursuant to section 34.*

(2) *A health professional may carry out the duties, functions and responsibilities of a physician or a psychiatrist respecting a community treatment order when authorized to do so in accordance with a regulation made under section 53(1)(h) or a designation under section 9.7(1) or 49(2).*

3 Section 2 is repealed and the following is substituted:

Admission certificate

2 When a qualified health professional examines a person and is of the opinion that the person

- (a) is suffering from mental disorder,
- (b) has the potential to benefit from treatment for the mental disorder,
- (c) is, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and
- (d) is unsuitable for admission to a facility other than as a formal patient,

the qualified health professional may, not later than 24 hours after the examination, issue an admission certificate in the prescribed form with respect to the person.

4 Section 3 is amended by striking out “physician” and substituting “qualified health professional”.

5 Section 5(1) is repealed and the following is substituted:

Examination of person detained

5(1) When a person

3 Section 2 presently reads:

2 When a physician examines a person and is of the opinion that the person is

- (a) suffering from mental disorder,*
- (b) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, and*
- (c) unsuitable for admission to a facility other than as a formal patient,*

the physician may, not later than 24 hours after the examination, issue an admission certificate in the prescribed form with respect to the person.

4 Section 3 presently reads:

3 If a person has been detained under the Criminal Code (Canada) or the Youth Criminal Justice Act (Canada) as unfit to stand trial, not criminally responsible on account of mental disorder or not guilty by reason of insanity and the person's detention under the Criminal Code (Canada) or the Youth Criminal Justice Act (Canada) is about to expire, a physician is authorized to examine the person and assess the person's mental condition and may, if the prerequisites for the issuance of an admission certificate set out in section 2 are met, issue an admission certificate in the prescribed form with respect to the person.

5 Section 5(1) presently reads:

5(1) When a person is conveyed to a facility under section 10, 12 or 24 or detained in a facility pursuant to one admission certificate, the board shall ensure that the person is examined as soon as possible by a physician on the staff of the facility.

- (a) is conveyed to a facility or secure location under section 10 or 12 or to a facility under section 24, or
- (b) is detained in a facility pursuant to one admission certificate,

the board of the facility or the operator of the secure location shall ensure that the person is examined as soon as possible by a qualified health professional.

6 Section 6 is amended

(a) in clause (b) by striking out “physician” and substituting “qualified health professional”;

(b) by repealing clause (d) and substituting the following:

- (d) the facts on which the qualified health professional formed the qualified health professional’s opinion that the person
 - (i) is suffering from mental disorder,
 - (ii) has the potential to benefit from treatment for the mental disorder,
 - (iii) is, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and
 - (iv) is unsuitable for admission to a facility other than as a formal patient,

distinguishing the facts observed by the qualified health professional from the facts communicated to the qualified health professional by others,

(c) in clause (e)

- (i) by striking out “name of the facility” and substituting “name of the place”;**
- (ii) by striking out “or” and substituting “and”.**

6 Section 6 presently reads in part:

6 An admission certificate shall show

(b) the name and address of the physician issuing it,

(d) the facts on which the physician formed the physician's opinion that the person is

(i) suffering from mental disorder,

(ii) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, and

(iii) unsuitable for admission to a facility other than as a formal patient,

distinguishing the facts observed by the physician from the facts communicated to the physician by others,

(e) the name of the facility where the person was examined or, if the person is not in a facility, the name and address of the facility to which the person is to be conveyed, and

7 Section 7(2) is repealed and the following is substituted:

- (2) No person shall be detained as a formal patient at a facility unless
- (a) at least one of the admission certificates is issued by a physician, and
 - (b) at least one of the admission certificates is issued by a member of the staff of the facility.

8 Section 8 is amended

- (a) **by repealing subsection (1) and substituting the following:**

Renewal certificates

8(1) The period of detention of a formal patient may be extended when 2 qualified health professionals, after a separate examination by each of them, are of the opinion that the formal patient

- (a) is suffering from mental disorder,
- (b) has the potential to benefit from treatment for the mental disorder,
- (c) is, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and
- (d) is unsuitable for admission to a facility other than as a formal patient,

and each issues a renewal certificate in the prescribed form within 24 hours after the examination.

- (b) **in subsection (2) by striking out “physicians” and substituting “qualified health professionals”.**

7 Section 7(2) presently reads:

(2) No person shall be detained as a formal patient at a facility unless at least one of the admission certificates is issued by a member of the staff of that facility.

8 Section 8 presently reads in part:

8(1) The period of detention of a formal patient may be extended when 2 physicians, after a separate examination by each of them, are of the opinion that the formal patient is

- (a) suffering from mental disorder,*
- (b) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, and*
- (c) unsuitable to continue at a facility other than as a formal patient,*

and each issues a renewal certificate in the prescribed form within 24 hours after the examination.

(2) At least one of the physicians who issue renewal certificates under this section shall be a member of the staff of the facility at which the formal patient is detained and at least one of the certificates shall be issued by a psychiatrist.

9 The following is added after section 8:

Review, provision of admission certificates, renewal certificates

8.1 As soon as possible after an admission certificate or a renewal certificate is completed in respect of a detained person or formal patient, the board shall ensure that the admission certificate or renewal certificate is

- (a) reviewed to ensure completeness,
- (b) issued, and
- (c) provided to the detained person or formal patient.

10 Section 9 is amended

(a) in clause (b) by striking out “physician” and substituting “qualified health professional”;

(b) by repealing clause (d) and substituting the following:

- (d) the facts on which the qualified health professional formed the qualified health professional’s opinion that the person
 - (i) is suffering from mental disorder,
 - (ii) has the potential to benefit from treatment for the mental disorder,
 - (iii) is, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and
 - (iv) is unsuitable for admission to a facility other than as a formal patient,

distinguishing the facts observed by the qualified health professional from the facts communicated to the qualified health professional by others,

9 Review, provision of admission certificates, renewal certificates.

10 Section 9 presently reads in part:

9 A renewal certificate shall show

(b) the name and address of the physician issuing it,

(d) the facts on which the physician formed the physician's opinion that the person is

(i) suffering from mental disorder,

(ii) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, and

(iii) unsuitable to continue at a facility other than as a formal patient,

distinguishing the facts observed by the physician from the facts communicated to the physician by others,

11 The following is added after section 9:

Treatment plan

9.01(1) Not later than one month after the issuance of a 2nd admission certificate, the board shall ensure that a formal patient is provided with a written, individualized treatment plan.

- (2)** A treatment plan must
- (a) set out the type of treatment expected to be provided to the formal patient,
 - (b) set out the criteria on which release of the formal patient would be granted,
 - (c) set out the criteria on which privileges, including leaves of absence, would be granted, and
 - (d) have the form and content, if any, specified in the regulations.

12 Section 9.1 is amended

- (a) in subsection (1)**
- (i) by striking out “physicians” wherever it occurs and substituting “qualified health professionals”;**
 - (ii) in clause (a) by striking out “a” after “suffering from”;**
 - (iii) in clause (b)**
 - (A) in subclause (iii) by striking out “the person or others or to suffer substantial mental or physical deterioration or serious physical impairment” and substituting “others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder,”;**
 - (B) by adding the following after subclause (iii):**
 - (iv) a review panel has ordered a board to issue the community treatment order under section 41,

11 Treatment plan.

12 Section 9.1 presently reads in part:

9.1(1) Two physicians, one of whom must be a psychiatrist, may, in accordance with the regulations, issue a community treatment order with respect to a person if

- (a) in the opinion of the 2 physicians, the person is suffering from a mental disorder,*
- (b) one or more of the following apply:*
 - (i) within the immediately preceding 3-year period the person has on 2 or more occasions, or for a total of at least 30 days,*
 - (A) been a formal patient in a facility,*
 - (B) been in an approved hospital or been lawfully detained in a custodial institution where there is evidence satisfactory to the 2 physicians that, while there, the person would have met the criteria set out in section 2(a) and (b) at that time or those times, or*

- (iv) **in clause (c) by striking out** “likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment” **and substituting** “, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder,”;
 - (v) **in clause (e) by striking out** “physician” **and substituting** “qualified health professional”;
 - (vi) **in clause (f)(ii)(A) by adding** “negative effects to the person, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, or” **after** “likelihood of”;
- (b) **in subsection (2)(b), (d) and (h) by striking out** “physicians” **and substituting** “qualified health professionals”.

- (C) *both been a formal patient in a facility and been in an approved hospital or lawfully detained in a custodial institution in the circumstances described in paragraph (B);*
- (ii) *the person has within the immediately preceding 3-year period been subject to a community treatment order;*
- (iii) *in the opinion of the 2 physicians, the person has, while living in the community, exhibited a pattern of recurrent or repetitive behaviour that indicates that the person is likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,*
- (c) *the 2 physicians, after separate examinations of the person by each of them within the immediately preceding 72 hours, are both of the opinion that the person is likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,*
- (d) *the treatment or care the person requires exists in the community, is available to the person and will be provided to the person,*
- (e) *in the opinion of each physician, the person is able to comply with the treatment or care requirements set out in the community treatment order, and*
- (f) *either*
 - (i) *consent to the issuing of the community treatment order has been obtained,*
 - (A) *if the person is competent, from the person, or*
 - (B) *if the person is not competent, in accordance with section 28(1),*

or

13 Section 9.3 is amended by adding the following after subsection (3):

(4) Despite subsection (3), for the purposes of this section, section 9.1(1)(c) is to be read as if “72 hours” were struck out and “7 days” were substituted.

14 Section 9.4 is amended by striking out “psychiatrist” and substituting “qualified health professional”.

15 Section 9.6 is amended

- (a) in subsections (1) and (2) by striking out “psychiatrist” wherever it occurs and substituting “qualified health professional”;**
- (b) in subsection (4) by striking out “physicians” and substituting “qualified health professionals”.**

(ii) *consent to the issuing of the community treatment order has not been obtained but in the opinion of the issuing physicians*

(A) *the person has, while living in the community, exhibited a history of not obtaining or continuing with treatment or care that is necessary to prevent the likelihood of harm to others, and*

(B) *a community treatment order is reasonable in the circumstances and would be less restrictive than retaining the person as a formal patient.*

(2) *A community treatment order must*

(b) *identify the issuing physicians,*

(d) *set out the facts on which the issuing physicians formed the opinions referred to in subsection (1),*

13 Section 9.3(3) presently reads:

(3) The requirements of section 9.1 apply, with the necessary changes, to the renewal of a community treatment order.

14 Section 9.4 presently reads:

9.4 A community treatment order may be amended by a psychiatrist in accordance with the regulations.

15 Section 9.6 presently reads in part:

9.6(1) If a psychiatrist has reasonable grounds to believe that a person who is subject to a community treatment order has failed to comply with the community treatment order, the psychiatrist may issue an order in the prescribed form to a peace officer that authorizes the peace officer

- (a) to apprehend the person who is named in the order and to convey the person to a facility named in the order for an examination,*
- (b) to take reasonable measures, including the entering of premises and the use of physical restraint, to apprehend the person who is named in the order and to take the person into custody for the purpose of conveying the person to the facility, and*
- (c) while the person is being conveyed, to care for, observe, detain and control the person.*

(2) An order shall not be issued under subsection (1) unless the psychiatrist is satisfied that efforts that are reasonable in the circumstances have been made to

- (a) inform the person that the person has failed to comply with the community treatment order,*
- (b) inform the person of the possibility that the psychiatrist may issue an order for apprehension and assessment of the person if the person continues to fail to comply with the community treatment order, and of the possible consequences of that assessment, and*
- (c) provide reasonable assistance to the person to comply with the community treatment order.*

(4) If a person who is subject to a community treatment order is conveyed to a facility under the authority of an order under this section or section 10 or 12, as soon as practicable, but in any case within 72 hours after the person's arrival at the facility, an examination of the person must be conducted by 2 physicians, one of whom must be a psychiatrist, to determine whether

- (a) the community treatment order should be cancelled and the person should be released without being subject to a community treatment order,*
- (b) the community treatment order should be continued with any necessary amendments, or*
- (c) the community treatment order should be cancelled and admission certificates issued in accordance with sections 2 and 6.*

16 Section 9.7 is repealed.

17 Section 10 is amended

(a) by repealing subsection (1)(b) and substituting the following:

(b) within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder,

(b) by repealing subsection (2)(a)(i) and substituting the following:

(i) within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment,
or

(c) in subsections (5)(b) and (6) by adding “or secure location” after “facility”.

16 Section 9.7 presently reads:

9.7(1) Notwithstanding sections 9.1, 9.3, 9.4, 9.5 and 9.6 but subject to the regulations, where no psychiatrist is available to issue, renew, amend or cancel a community treatment order or issue an apprehension order, a board or a regional health authority may designate a physician or health professional for the purpose of issuing, renewing, amending or cancelling a community treatment order or issuing an apprehension order.

(2) If a board or a regional health authority designates a physician or health professional under subsection (1), the designated physician or health professional may issue, renew, amend or cancel a community treatment order, or issue an apprehension order, only after consultation with a psychiatrist.

17 Section 10 presently reads in part:

10(1) Anyone who has reasonable and probable grounds to believe that a person is

- (b) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment*

may bring an information under oath before a judge of the Provincial Court.

(2) If the judge is satisfied that

- (a) the person is*
 - (i) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, or*

the judge may issue a warrant to apprehend that person for an examination.

(5) A warrant under this section

- (b) is authority for a peace officer to apprehend the person named or identified in the warrant and convey the person to a facility for examination.*

18 Section 12 is amended

(a) in subsection (1)

(i) by repealing clause (b)(i) and substituting the following:

(i) within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, or

(ii) by striking out “convey the person to a facility for examination” **and substituting** “convey the person to a facility or secure location for assessment and examination”;

(b) in subsections (2) and (3) by adding “or secure location” after “facility” wherever it occurs.

19 The following is added after section 12:

Duties of peace officers

12.1 After a person has been conveyed to a secure location under section 10 or 12 and has been assessed and examined, a peace officer shall

(6) While a person is being conveyed to a facility under the authority of a warrant, the warrant is sufficient authority to care for, observe, assess, detain and control the person named or identified in the warrant.

18 Section 12 presently reads in part:

12(1) When a peace officer has reasonable and probable grounds to believe that

(b) the person is

(i) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, or

the peace officer may apprehend the person and convey the person to a facility for examination.

(2) While a person is being conveyed to a facility under subsection (1), the authority in that subsection is sufficient authority to care for, observe, assess, detain and control the person.

(3) When a peace officer conveys a person to a facility under this section, the peace officer shall complete a statement in the prescribed form for the use of the facility, setting out

(a) the name of the person conveyed, if known,

(b) the date, time and place at which the person was apprehended, and

(c) the grounds on which the peace officer formed the peace officer's belief under subsection (1).

19 Duties of peace officers.

- (a) convey the person to the person's home, the location of apprehension or appropriate accommodations, if no admission certificate is issued after the examination, or
- (b) convey the person to a facility for a further assessment and examination, if an admission certificate has been issued.

20 The following is added after section 13:

Designation of secure location

13.1 The Minister may, by order, designate a place to be a secure location for the purposes of this Act.

21 The following is added before section 14:

Assessment, examination by video conference

13.2(1) A qualified health professional may, if the qualified health professional determines that it is reasonable in the circumstances,

- (a) conduct an assessment and examination of a person at a facility or secure location through video conference, and
- (b) request that an official or staff member of the facility or secure location at which the assessment and examination are conducted through video conference attend in the same room as the person being assessed and examined.

(2) An official or staff member who attends in the same room as a person who is being assessed and examined may share personal information and health information of the person with the qualified health professional conducting the assessment and examination for the purposes of the assessment and examination.

22 Section 14 is amended

- (a) in subsection (1)**
 - (i) in clause (a)**

20 Designation of secure location.

21 Assessment, examination by video conference.

22 Section 14 presently reads in part:

14(1) When 2 admission certificates or 2 renewal certificates are issued with respect to a patient,

(A) by adding “on reasonable grounds” after “objects”;

(B) by striking out “and” at the end of subclause (i);

(C) by repealing subclause (ii) and substituting the following:

(ii) the patient’s right to apply to the review panel for cancellation of the admission certificates or renewal certificates or for an order to the board to issue a community treatment order, and

(iii) the patient’s right to legal counsel,

and

(ii) in clause (b)

(A) by adding “on reasonable grounds” after “objects”;

(B) in subclause (ii) by striking out “, including copies of the admission certificates or renewal certificates”;

(C) by striking out “and” at the end of subclause (iv);

(D) in subclause (v) by adding “or for an order to the board to issue a community treatment order” after “renewal certificates”;

(E) by adding the following after subclause (v):

(vi) the patient’s right to legal counsel,

(vii) the steps for the patient to follow to obtain free legal services,

(viii) the function of the Mental Health Patient Advocate,

(ix) the patient’s right to contact the Mental Health Patient Advocate, and the mechanisms for making that contact, and

(x) the patient’s right to obtain free and timely access to the patient’s medical records relevant to a hearing before a review panel or the Court of Queen’s Bench,

(a) *the board shall inform the formal patient and make a reasonable effort to inform the patient's guardian, if any, and, unless the patient objects, the patient's nearest relative, of*

(i) *the reason, in simple language, for the issuance of the admission certificates or renewal certificates, and*

(ii) *the patient's right to apply to the review panel for cancellation of the admission certificates or renewal certificates,*

and

(b) *the board shall give the formal patient, the patient's guardian, if any, one person designated by the patient and, unless the patient objects, the patient's nearest relative a written statement of*

(i) *the reason, in simple language, for the issuance of the admission certificates or renewal certificates,*

(ii) *the authority for the patient's detention and the period of it, including copies of the admission certificates or renewal certificates,*

(iii) *the function of review panels,*

(iv) *the name and address of the chair of the review panel for the facility, and*

(v) *the right to apply to the review panel for cancellation of the admission certificates or renewal certificates.*

(1.1) When a community treatment order is issued, amended or renewed, a person designated in accordance with the regulations

(a) shall prepare a written statement of

(i) *the reason, in simple language, for the issuance, amendment or renewal of the community treatment order,*

(ii) *the authority for the issuance, amendment or renewal of the community treatment order,*

(iii) *information regarding the function of review panels,*

(iii) by adding the following after clause (b):

- (c) the board shall provide the patient, the patient’s guardian, if any, one person designated by the patient and, unless the patient objects on reasonable grounds, the patient’s nearest relative with
 - (i) copies of the admission certificates or renewal certificates, and
 - (ii) a summary of the assessment made of the patient’s competence to make treatment decisions,

and

- (d) the board
 - (i) shall inquire with the formal patient to determine whether the patient requests to be contacted by the Mental Health Patient Advocate, and
 - (ii) shall, if the formal patient requests to be contacted by the Mental Health Patient Advocate, notify the Mental Health Patient Advocate and provide the Mental Health Patient Advocate with a copy of the patient’s admission certificates or renewal certificates and a summary of information provided by the board to the patient under this section.

(b) in subsection (1.1) by striking out “person designated in accordance with the regulations” **and substituting** “qualified health professional”;

(c) in subsections (2), (3) and (4) by striking out “designated person” **wherever it occurs and substituting** “qualified health professional”;

(d) in subsection (5)

- (i) **by striking out** “designated person” **and substituting** “qualified health professional”;

(iv) *the name and address of the chair of the appropriate review panel, and*

(v) *the right of the person who is subject to the community treatment order to apply to the review panel for cancellation of the community treatment order,*

and

(b) *shall give the written statement and a copy of the issued, amended or renewed community treatment order*

(i) *to the person who is subject to the community treatment order,*

(ii) *to any person who exercises authority under section 28(1) to make treatment decisions on behalf of the person who is subject to the community treatment order,*

(iii) *to any persons providing treatment or care to the person pursuant to the community treatment order, and*

(iv) *to any other person prescribed in the regulations.*

(2) *In the event of language difficulty, the board or the designated person referred to in subsection (1.1), as the case may be, shall obtain a suitable interpreter and provide the information and the written statement referred to in subsection (1) or (1.1),*

(a) *in the case of a formal patient, in the language spoken by the formal patient or the patient's guardian, or*

(b) *in the case of a person who is subject to a community treatment order, in the language spoken by the person or the person's guardian.*

(3) *In addition to giving a written statement pursuant to this section, the board or the designated person referred to in subsection (1.1), as the case may be, shall do any other things the board or the designated person considers expedient to facilitate the submission of an application.*

(4) *If a formal patient or a person who is subject to a community treatment order has designated another person to receive notices, the board or the designated person referred to in subsection (1.1), as the case may be, shall also mail a copy of all notices and information required to be given to the patient or the person who is*

- (ii) **by striking out** “person’s family doctor” **and substituting** “physician or nurse practitioner who treats the person in their ordinary day-to-day health care needs”;

(e) by adding the following after subsection (5):

(6) If the formal patient applies for a review or files an appeal under this Act or is the subject of a review panel hearing, the board shall, without charge and as soon as practicable, provide the patient with a copy of the patient’s relevant medical records in advance of the hearing before the review panel or the Court of Queen’s Bench.

(7) Subsection (6) prevails despite the *Health Information Act* or a regulation under that Act.

(8) The board shall perform any other duties that are prescribed in the regulations.

23 Section 16(1) is amended by striking out “physician” and substituting “qualified health professional”.

24 Section 17 is amended

(a) **in subsection (1)(b) by striking out “section 49(a)” and substituting “section 49(1)(a)”;**

(b) **in subsections (1.1) and (7) by striking out “physician” and substituting “qualified health professional”.**

subject to a community treatment order to the person designated at the address provided by the patient or the person who is subject to a community treatment order.

(5) When a community treatment order expires or is cancelled, the designated person referred to in subsection (1.1) shall give notice of the expiry or cancellation, along with any recommendations for treatment,

- (a) to the person who was subject to the community treatment order,*
- (b) to the persons who were given a written statement under section 14(1.1)(b), and*
- (c) to the person's family doctor, if known.*

23 Section 16(1) presently reads:

16(1) A patient may receive visitors during hours fixed by the board unless a physician considers that a visitor would be detrimental to the patient's health.

24 Section 17 presently reads in part:

17(1) In this section,

- (b) "diagnostic and treatment centre" or "centre" means a place established by the Minister pursuant to section 49(a) or (b) and includes a facility that is not an approved hospital under the Hospitals Act and a hospital under the jurisdiction of a provincial health board under the Regional Health Authorities Act;*

(1.1) Except as permitted or required under this Act, the Minister, a person authorized by the Minister, a board, an employee of a board or a physician may disclose health information obtained from records maintained in a diagnostic and treatment centre or from persons having access to them only in accordance with the Health Information Act.

25 Section 22 is amended by adding the following after subsection (1):

(1.1) Despite subsection (1), the completion of a memorandum of transfer is not required for the transfer of a formal patient

- (a) between 2 facilities operated by a single regional health authority, or
- (b) between 2 facilities operated by a contracted service provider of a regional health authority.

26 Section 24(1) is amended by repealing clause (b) and substituting the following:

- (b) within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and

27 Section 27(3) is amended by adding “on reasonable grounds” after “objects”.

(7) The Minister, a person authorized by the Minister, a board, an employee of a board or a physician may disclose any health information relating to a person receiving diagnostic and treatment services in a centre

25 Section 22 presently reads in part:

22(1) A board may, if otherwise permitted by law and if arrangements have been made with the board of another facility, transfer a formal patient to that facility on completing a memorandum of transfer in the prescribed form.

26 Section 24 presently reads in part:

24(1) When the Minister has reasonable and probable grounds to believe that a person who is

(b) likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, and

may come or be brought into Alberta, the Minister may issue a certificate in the prescribed form authorizing a peace officer or other person to apprehend the person named in the certificate and convey the person to a facility for examination.

27 Section 27(3) presently reads:

(3) The board shall give to the formal patient, the patient's agent, if any, the patient's guardian, if any, and, unless the patient objects, the patient's nearest relative a copy of the certificate and written notice that the patient is entitled to have the physician's opinion reviewed by a review panel if the patient applies for the review by sending a notice of application to the chair of the review panel in the prescribed form.

28 Section 29(1) is amended by striking out “the attending physician” and substituting “a qualified health professional”.

29 Section 31 is amended by adding the following after subsection (3):

(4) The physician who cancels admission certificates or renewal certificates of a formal patient shall complete a cancellation certificate in the prescribed form in respect of the admission certificates or renewal certificates.

30 Section 32 is amended

(a) in subsection (1)

(i) in clause (b) by adding “on reasonable grounds” after “objects”;

(ii) in clause (c) by striking out “patient’s family doctor” and substituting “physician or nurse practitioner who treats the patient in their ordinary day-to-day health care needs”;

(b) in subsection (2) by striking out “physician” and substituting “qualified health professional”.

28 Section 29(1) presently reads:

29(1) If a formal patient who is mentally competent to make treatment decisions or a person referred to in section 28(1) objects to any treatment the patient is receiving or will receive at a facility, the attending physician shall not administer the treatment unless the review panel makes an order under this section.

29 Section 31 presently reads in part:

(3) If the admission certificates or renewal certificates of a formal patient expire or are cancelled, the patient is thereupon in the facility on a voluntary basis subject to the bylaws of the board and shall be informed of that fact.

30 Section 32 presently reads in part:

32(1) When a patient is discharged from a facility, the board shall, where reasonably possible, give notice of the discharge

(b) to the patient's nearest relative, unless the patient being discharged objects, and

(c) to the patient's family doctor, if known, along with the discharge summary, including any recommendations for treatment,

and, when applicable, shall state in the notice whether a certificate of incapacity is in effect under the Public Trustee Act with respect to the patient.

(2) When a patient is eligible for discharge and refuses or is unwilling to leave the facility, the board of the facility after consultation with the patient's physician, a committee of the medical staff established to consider such matters, or the Minister, may

(a) declare that the patient is no longer in need of the services provided by that facility or of the services provided in a particular ward, section or unit of that facility, and is eligible for transfer or discharge, or

(b) arrange for the transfer of the patient

31 Section 36(2)(c) is amended by striking out “psychiatrist or physician” and substituting “qualified health professional”.

32 Section 38(1) is repealed and the following is substituted:

Application for hearing

38(1) A formal patient, the patient’s agent, the patient’s guardian or a person on the patient’s behalf may apply to a review panel for

- (a) cancellation of
 - (i) admission certificates, or
 - (ii) renewal certificates,

or

- (b) an order for the board to issue a community treatment order,

by sending a notice of application to the chair of the appropriate review panel in the prescribed form.

- (i) to another ward, section or unit of the facility,*
- (ii) to an approved hospital, or*
- (iii) to a nursing home or other accommodation.*

31 Section 36(2) presently reads in part:

(2) A person who is

- (c) a psychiatrist or physician or other person who is treating or who has treated the patient, or*

is not eligible to be appointed as a member or to sit as a member of a review panel for an application relating to that patient.

32 Section 38(1) presently reads:

38(1) A formal patient, the patient's agent, the patient's guardian or a person on the patient's behalf may apply to a review panel for cancellation of

- (a) admission certificates, or*
- (b) renewal certificates,*

by sending a notice of application to the chair of the appropriate review panel in the prescribed form.

33 Section 39(1) is amended

- (a) **by adding** “or applied for an order for the board to issue a community treatment order” **after** “review of the certificates”;
- (b) **by adding** “or an application for an order for the board to issue a community treatment order” **after** “review of certificates”.

34 Section 40(1)(c) is amended by striking out “psychiatrist or designated physician or” **and substituting** “qualified”.

35 The following is added after section 40:

Further psychiatric opinion

40.1 If an application is made under section 38 or 39, the review panel may, during the hearing, order a further psychiatric assessment and examination of the formal patient or person subject to a community treatment order for the purpose of obtaining the psychiatrist’s opinion respecting the formal patient or person subject to a community treatment order.

33 Section 39(1) presently reads:

39(1) If a formal patient has been subject to admission certificates or renewal certificates, or both, for a continuous period of 6 months and neither the patient nor the patient's representative has during that period applied for a review of the certificates, or an application for review of certificates has been withdrawn or cancelled during that period, the patient is deemed to have applied to the chair of the review panel for the facility in which the patient is detained, who shall cause a review panel to hear and consider cancellation of the certificates relating to the patient.

34 Section 40 presently reads in part:

40(1) On receipt of an application under section 33 or 38 or when an application is deemed to be made under section 39, the chair of a review panel shall give at least 7 days' notice of the date, time, place and purpose of the hearing

(c) in the case of a person who is subject to a community treatment order, to the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, and to the person responsible for the supervision of the community treatment order,

35 Further psychiatric opinion.

36 Section 41(1) is amended

(a) in clause (a)

(i) by striking out “or” at the end of subclause (i);

(ii) by adding “or” at the end of subclause (ii);

(iii) by adding the following after subclause (ii):

(iii) order the board to issue a community treatment order in respect of the patient within a reasonable amount of time;

(b) by adding the following after clause (a):

(a.01) with respect to an application for an order for the board to issue a community treatment order,

(i) order the board to issue a community treatment order in respect of the patient within a reasonable amount of time, or

(ii) refuse to order the board to issue a community treatment order in respect of the patient;

37 Section 42 is amended

(a) in subsection (2)

(i) by striking out “or the Court of Queen’s Bench”;

(ii) by striking out “psychiatrist or designated physician or” and substituting “qualified”;

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

(3) In a hearing before the Court of Queen’s Bench under this Act in respect of a community treatment order, the onus is on the qualified health professional who issued, amended or renewed the community treatment order, as the case may be, the chair or vice-chair of the review panel that made a decision under section 41 in respect of the community treatment order or the person supervising the community treatment order to show that the person meets the criteria set out in section 9.1(1)(a) to (e).

36 Section 41(1) presently reads in part:

41(1) A review panel may

- (a) with respect to an application for the cancellation of admission certificates or renewal certificates,*
 - (i) cancel the admission certificates or renewal certificates, as the case may be, that are in effect at the time of the hearing, or*
 - (ii) refuse to cancel the admission certificates or renewal certificates;*

37 Section 42(2) presently reads:

(2) In a hearing before a review panel or the Court of Queen's Bench under this Act in respect of a community treatment order, the onus is on the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, or the person supervising the community treatment order, to show that the person meets the criteria set out in section 9.1(1)(a) to (e).

38 Section 43 is amended

- (a) in subsection (1) by striking out “14 days” and substituting “30 days”;**
- (b) in subsection (3.1)**
 - (i) in clause (a)**
 - (A) by striking out “psychiatrist or designated physician or” and substituting “qualified”;**
 - (B) by striking out “and”;**
 - (ii) by adding the following after clause (a):**
 - (a.1) the chair or vice-chair of the review panel if the decision appealed is an order to a board to issue a community treatment order, and

39 Section 45(1) is repealed and the following is substituted:

Mental Health Patient Advocate

45(1) The Lieutenant Governor in Council shall appoint a Mental Health Patient Advocate.

(1.1) The Patient Advocate

- (a) shall contact each formal patient who has requested contact as soon as practicable after receipt of the patient’s admission certificates or renewal certificates,
- (b) may provide to each formal patient, the patient’s guardian, if any, one person designated by the patient and, unless the patient objects, the patient’s nearest relative, information respecting
 - (i) the authority for the patient’s detention and the period of it,
 - (ii) the function of review panels,
 - (iii) the name and address of the chair of the review panel for the facility,

38 Section 43 presently reads in part:

43(1) Within 14 days after the receipt of an order or a written decision of a review panel under this Act, the applicant or formal patient may appeal the order or decision to the Court of Queen's Bench.

(3.1) In the case of an appeal in respect of a community treatment order, in addition to being served on the persons set out in subsection (3) the application shall be served on

(a) the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, and

39 Section 45(1) presently reads:

45(1) The Lieutenant Governor in Council shall appoint a Mental Health Patient Advocate, who shall investigate complaints from or relating to formal patients or persons who are subject to community treatment orders and exercise any other powers and perform any other duties that are prescribed in the regulations.

- (iv) the right to apply to the review panel for cancellation of the admission certificates or renewal certificates or for an order to the board to issue a community treatment order, and
- (v) the right of a patient to free and timely access to their medical records relevant to a hearing before a review panel or the Court of Queen’s Bench,
- (c) shall ensure that a formal patient has been provided complete information by the board under section 14,
- (d) shall review the summary of the information provided by the board under section 14 with the formal patient,
- (e) shall investigate complaints from or relating to formal patients or persons who are subject to community treatment orders, and
- (f) shall exercise any other powers and perform any other duties that are prescribed in the regulations.

(1.2) The Patient Advocate may contact and advise a formal patient or a person who is subject to a community treatment order at any time, regardless of whether a complaint has been received from or relating to the formal patient or person who is subject to a community treatment order.

40 Section 49 is amended

(a) in subsection (2)

(i) by adding “by order” after “The Minister may”;

(ii) in clause (a)

(A) by striking out “designate an individual as a health professional” and substituting “declare that an individual has the authority of a psychiatrist, physician or qualified health professional”;

(B) by striking out “or physician” and substituting “, physician or qualified health professional”;

40 Section 49 presently reads in part:

(2) The Minister may

(a) designate an individual as a health professional for the purposes of this Act in circumstances where no psychiatrist or physician is available to issue, renew, amend or cancel a community treatment order if in the opinion of the Minister the individual is competent to carry out those functions, and

(b) designate classes of health professionals for the purposes of this Act.

(3) A designation by the Minister under subsection (2)(b) expires 3 months after the date on which it is made.

(C) by striking out “and” at the end of clause (a);

(iii) by repealing clause (b);

(b) by repealing subsection (3).

41 The following is added after section 49:

Regional health authority reporting to Minister

49.1 On an annual basis and on any other basis or schedule specified by the Minister, a regional health authority shall provide the Minister with a written report

- (a) assessing the completion, accuracy and use of the forms required for the detention of a patient, and
- (b) respecting any other matter under this Act, on the Minister’s request.

42 Section 53 is amended

(a) in subsection (1)

(i) by repealing clauses (a) and (b);

(ii) in clause (d) by striking out “section 49(a)” and substituting “section 49(1)(a)”;

(iii) by repealing clauses (h) and (i);

(iv) by adding the following after clause (l):

- (l.1) respecting the powers and duties of the board for the purposes of this Act;

(v) by repealing clause (m);

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

(2.1) The Minister may make regulations

- (a) designating a health profession or a category within a health profession for the purposes of section 1(1)(n.1) of this Act;

41 Regional health authority reporting to Minister.

42 Section 53 presently reads in part:

53(1) The Lieutenant Governor in Council may make regulations

- (a) designating any place or part of a place as a facility;*
- (b) classifying facilities for any purpose;*
- (d) respecting charges and expenses and liability for charges and expenses with respect to the conveyance, observation, examination, admission, treatment, care, accommodation and maintenance of a person in a facility or in a place referred to in section 49(a) or (b);*
- (h) respecting health professionals and classes of health professionals for the purposes of this Act, including the qualifications required of health professionals in respect of the issuing, supervision, renewal, amendment or cancellation of community treatment orders and the circumstances in which health professionals may issue, supervise, renew, amend or cancel community treatment orders;*
- (i) respecting designating physicians or health professionals for the purposes of section 9.7(1);*

- (b) designating any place or part of a place as a facility;
- (c) classifying facilities for any purpose.
- (c) in subsection (3) by striking out “Lieutenant Governor in Council” wherever it appears and substituting “Minister”;**
- (d) by adding the following after subsection (4)(c):**
 - (d) respecting the form and content of treatment plans.

43 Section 54 is repealed.

Related Amendment

Amends SA 2018 cM-13.2

44(1) The *Mental Health Services Protection Act* is amended by this section.

(2) Section 1(f) is repealed and the following is substituted:

- (f) “mental disorder” means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs
 - (i) judgment,
 - (ii) behaviour,

- (l) *respecting requirements for notice respecting community treatment orders;*
- (m) *respecting the designating of persons for the purposes of section 14(1.1);*
- (2) *If there is a conflict between the regulations under subsection (1)(d) and the Hospitals Act or the regulations under that Act, the regulations under subsection (1)(d) prevail.*
- (3) *If the Lieutenant Governor in Council designates a place as a facility, the Lieutenant Governor in Council may by regulation*
 - (a) *provide for which purposes under this Act or the regulations that place is designated as a facility;*
 - (b) *make inapplicable to a facility or any class of facility any of the provisions of this Act or the regulations.*
- (4) *The Minister may make regulations*
 - (c) *governing forms and their use.*

43 Section 54 presently reads:

54 Within 5 years after the coming into force of section 8 of the Mental Health Amendment Act, 2007, a committee of the Legislative Assembly must begin a comprehensive review of the amendments made by that Act and must submit to the Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

Related Amendment

44(1) Amends chapter M-13.2 of the Statutes of Alberta, 2018.

(2) Section 1 presently reads in part:

1 In this Act,

- (f) *“mental disorder” means a mental disorder as defined in the Mental Health Act;*

- (iii) capacity to recognize reality, or
- (iv) ability to meet the ordinary demands of life;

Coming into Force

Coming into force

45 This Act, except sections 2(a)(iii) and (iv), 24(a), 42(a)(i) and (ii), (b) and (c) and 43, comes into force on Proclamation.

Coming into Force

45 Coming into force.

