



Province of Alberta

## **MENTAL HEALTH ACT**

Revised Statutes of Alberta 2000  
Chapter M-13

Current as of September 15, 2016

Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2013 cC-12.5 s17 amends s1(1)(f)(ii).

### Regulations

The following is a list of the regulations made under the *Mental Health Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Mental Health Act</b>		
Community Treatment Order .....	337/2009 .....	129/2015, 20/2017
Mental Health.....	19/2004 .....	78/2005, 228/2006, 208/2007, 150/2010, 197/2011, 187/2012, 51/2014, 135/2017
Mental Health Act Forms.....	136/2004 .....	14/2009, 250/2009, 342/2009, 190/2011, 170/2012, 147/2017
Mental Health Act Review Panel .....	14/2009	
Mental Health Patient Advocate.....	148/2004 .....	246/2009, 336/2009, 50/2014, 17/2018

# **MENTAL HEALTH ACT**

## Chapter M-13

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

### Definitions

**1(1)** In this Act,

- (a) "admission certificate" means a certificate issued pursuant to section 2 or 3;
- (b) "agent" means an agent as defined in the *Personal Directives Act*;
- (c) "board" means
  - (i) the board of an approved hospital under the *Hospitals Act* that is designated in whole or in part as a facility,
  - (ii) a provincial health board under the *Regional Health Authorities Act*, with respect to a hospital that is under the jurisdiction of such a board and is designated in whole or in part as a facility, or
  - (iii) if a facility is not a facility referred to elsewhere in this clause, the person in charge of the facility;
- (c.1) "community treatment order" means a community treatment order issued under section 9.1;
- (d) "facility" means a place or part of a place designated in the regulations as a facility;
- (e) "formal patient" means a patient detained in a facility pursuant to 2 admission certificates or 2 renewal certificates;
- (f) "guardian" includes
  - (i) the parent or guardian of a minor,

- (ii) a director as defined in the *Child, Youth and Family Enhancement Act*, with respect to a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order under the *Child, Youth and Family Enhancement Act*, and
  - (iii) a guardian appointed under the *Adult Guardianship and Trusteeship Act* with authority over the matters referred to in section 33(2)(a) and (g) of that 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;
- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) “nearest relative” means, with respect to a formal patient or a person who is subject to a community treatment order,
- (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;
  - (j) “patient” means a person who is admitted to a facility as an in-patient, or as an out-patient for diagnosis or treatment services, or both;
  - (k) “personal directive” means a personal directive as defined in the *Personal Directives Act*;
  - (l) “psychiatrist” means a regulated member of the College of Physicians and Surgeons of Alberta who is authorized to use the title “psychiatrist”;
  - (m) “psychosurgery” means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or that inserts indwelling electrodes for pulsed electric stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat intractable physical pain or epilepsy where those conditions are clearly demonstrable;
  - (n) “Public Guardian” means a person appointed as a Public Guardian pursuant to section 107 of the *Adult Guardianship and Trusteeship Act*;
  - (o) “renewal certificate” means a certificate issued pursuant to section 8;
  - (p) “review panel” means a review panel established pursuant to section 34.
  - (q) repealed 2002 cA-4.5 s56.

(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).

RSA 2000 cM-13 s1;RSA 2000 cH-7 s146;  
2002 cA-4.5 s56;2003 c16 s117;2005 c13 s4(4);  
2007 c35 s2;2008 cA-4.2 s142;2008 c34 s18

## Part 1 Admission and Detention

### Admission certificate

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.

RSA 2000 cM-13 s2;2007 c35 s3

### Person detained under Criminal Code

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.

RSA 2000 cM-13 s3;2003 c41 s4(32)

### Effect of one admission certificate

4(1) One admission certificate is sufficient authority

- (a) to apprehend the person named in the certificate and convey the person to a facility and for any person to care for, observe, assess, detain and control the person named in the



certificate during the person's apprehension and conveyance to a facility, and

- (b) to care for, observe, examine, assess, treat, detain and control the person named in the certificate for a period of 24 hours from the time when the person arrives at the facility.

(2) The authority to apprehend a person and convey the person to a facility under subsection (1)(a) expires at the end of 72 hours from the time when the certificate is issued.

1988 cM-13.1 s4

#### **Examination of person detained**

**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.

(2) When a person is conveyed to a facility under section 10, 12 or 24, that person shall be released on the expiry of 24 hours from the time when that person arrived at the facility unless, within that time, 2 admission certificates are issued with respect to that person.

(3) When a person is detained pursuant to one admission certificate, that person shall be released on the expiry of 24 hours from the time when that person arrived at the facility unless, within that time, another admission certificate is issued with respect to that person.

(4) Notwithstanding subsections (1) and (2), if a person who is subject to a community treatment order is conveyed to a facility under section 10 or 12, the person shall be dealt with in accordance with section 9.6(4).

RSA 2000 cM-13 s5;2007 c35 s4

#### **Contents of admission certificate**

**6** An admission certificate shall show

- (a) the name of the person in respect of whom the certificate is issued,
- (b) the name and address of the physician issuing it,
- (c) the date and time at which the personal examination was conducted,
- (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
- (f) the date and time of issue.

RSA 2000 cM-13 s6;2007 c35 s5

**Effect of 2 admission certificates**

**7(1)** Two admission certificates are sufficient authority to care for, observe, examine, assess, treat, detain and control the person named in them in a facility for a period of one month from the date the 2nd admission certificate is issued.

**(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.

1988 cM-13.1 s7

**Renewal certificates**

**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.

- (3)** Two renewal certificates are sufficient authority to care for, observe, examine, assess, treat, detain and control the person named in them,
- (a) in the first case where 2 renewal certificates are issued, for a period of not more than one additional month,
  - (b) in the 2nd case where 2 renewal certificates are issued, for a period of not more than one additional month, and
  - (c) in the 3rd case and in each subsequent case where 2 renewal certificates are issued, for a period of not more than 6 additional months.

RSA 2000 cM-13 s8;2007 c35 s6

**Contents of renewal certificate**

**9** A renewal certificate shall show

- (a) the name of the person in respect of whom the certificate is issued,
- (b) the name and address of the physician issuing it,
- (c) the date on which the personal examination was conducted,
- (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,
- (e) the name of the facility where the person was examined, and
- (f) the date and time of issue.

RSA 2000 cM-13 s9;2007 c35 s7

**Community treatment order**

**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
    - (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
    - (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
- (a) be in the prescribed form,
  - (b) identify the issuing physicians,
  - (c) set out the dates on which and the places where the examinations referred to in subsection (1) took place,
  - (d) set out the facts on which the issuing physicians formed the opinions referred to in subsection (1),
  - (e) set out the treatment or care referred to in subsection (1)(c),
  - (f) identify the person who is responsible for the supervision of the community treatment order and any reporting obligations in respect of the community treatment order in accordance with the regulations,
  - (g) satisfy any other requirement provided for in the regulations, and
  - (h) be signed by the issuing physicians.

(3) The certificates of admission or renewal for a formal patient are cancelled on the issuance of a community treatment order.

2007 c35 s8

#### **Duration of order**

**9.2** A community treatment order expires 6 months after the day it is issued unless

- (a) it is renewed in accordance with section 9.3, or
- (b) it is cancelled under section 9.5 or 9.6 before its expiry.

2007 c35 s8

#### **Renewal of order**

**9.3(1)** A community treatment order may be renewed at any time before its expiry for a period of 6 months in accordance with the regulations.

(2) There is no limit on the number of renewals under subsection (1).

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

2007 c35 s8

#### **Amendment of order**

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

2007 c35 s8

#### **Cancellation of order**

**9.5** A psychiatrist may at any time cancel a community treatment order in accordance with the regulations if any of the criteria set out in section 9.1(1)(b) to (d) cease to apply.

2007 c35 s8

#### **Apprehension for non-compliance**

**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.

**(3)** An order under this section expires 30 days after the date it is issued.

**(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.

2007 c35 s8;2009 c47 s1

#### **Designated physician or health professional**

**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.

2007 c35 s8;2009 c47 s1

### **Warrant for apprehension**

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

- (a) suffering from mental disorder, and
- (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.

**(1.1)** Anyone who has reasonable and probable grounds to believe that a person who is subject to a community treatment order is not complying with the community treatment order 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
  - (ii) subject to a community treatment order and is not complying with the community treatment order,

and

- (b) an examination can be arranged in no other way,

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

**(3)** If the judge issues a warrant under this section, the judge shall also issue brief written reasons for the issuance of the warrant.



- (4) A hearing under this section shall be recorded in accordance with the *Recording of Evidence Act*.
- (5) A warrant under this section
- (a) may be directed to any peace officer and shall name or otherwise identify the person with respect to whom the warrant is issued, and
  - (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.
- (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.
- (7) Where a peace officer has not apprehended a person within 7 days from the date of the warrant, the warrant ceases to be effective unless, before the expiry of the 7-day period, a judge of the Provincial Court extends the duration of the warrant under section 11.

RSA 2000 cM-13 s10;2006 c4 s3;2007 c35 s9;  
2008 c32 ss19,20

#### **Extension of warrant**

- 11(1)** On the application of a peace officer, a judge of the Provincial Court may extend the duration of a warrant issued under section 10 on one occasion only for a period of up to 7 days from the day on which the warrant expires under that section.
- (2) If, in the opinion of a peace officer, it would be impracticable to appear personally before a judge of the Provincial Court to apply for an order in accordance with subsection (1), the peace officer may make the application by telephone or other means of telecommunication to a judge of the Provincial Court.
- (3) The information on which an application for an order by telephone or other means of telecommunication is based shall be given on oath and shall be recorded verbatim by the judge who, as soon as practicable, shall cause the record or a transcription of the record, certified by the judge as to time, date and contents, to be filed with the clerk of the court.
- (4) For the purposes of subsection (3), an oath may be administered by telephone or other means of telecommunication.
- (5) The information submitted by telephone or other means of telecommunication shall include a statement of the circumstances

that make it impracticable for the peace officer to appear personally before a judge of the Provincial Court.

**(6)** A judge of the Provincial Court who is satisfied that an application made by telephone or other means of telecommunication

- (a) conforms to the requirements of subsection (5), and
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1)

may make an order extending the duration of the warrant for a period of up to 7 days from the day on which the warrant expires under section 10.

**(7)** If a judge of the Provincial Court makes an order under subsection (6),

- (a) the judge shall complete and sign an order in the prescribed form, noting on its face the date, time and place at which it was made,
- (b) the peace officer, on the direction of the judge, shall complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge making the order and the date, time and place at which it was made, and
- (c) the judge shall, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the court.

**(8)** An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under subsection (1).

RSA 2000 cM-13 s11;2008 c32 s19

#### **Peace officer's power**

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

- (a) a person is suffering from mental disorder,
- (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
- (ii) subject to a community treatment order and is not complying with the community treatment order,
- (c) the person should be examined in the interests of the person's own safety or the safety of others, and
- (d) the circumstances are such that to proceed under section 10 would be dangerous,

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).

RSA 2000 cM-13 s12;2007 c35 s10

#### **Remand to facility for examination**

**13(1)** A person who, pursuant to the *Criminal Code* (Canada) or the *Youth Criminal Justice Act* (Canada), is remanded to custody for observation may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

**(2)** A person who, pursuant to the *Criminal Code* (Canada) or the *Youth Criminal Justice Act* (Canada), is detained for treatment may be admitted to, examined, treated and detained in and discharged from a facility in accordance with the law.

RSA 2000 cM-13 s13;2003 c41 s4(32)

## Part 2 Administration

### Duties toward patients

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

- (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,
- (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 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.

RSA 2000 cM-13 s14;2007 c35 s11

#### **Communications by and to patients**

**15** No communication written by a patient in a facility or written to a patient in a facility shall be opened, examined or withheld and its delivery shall not be obstructed or delayed in any way by the board or a member of the staff of a facility.

1988 cM-13.1 s15

#### **Visiting hours**

**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.

(2) Notwithstanding subsection (1), a lawyer acting for a patient may visit the patient at any time.

1988 cM-13.1 s16

#### **Confidentiality of diagnoses, records, etc.**

**17(1)** In this section,

- (a) "board" means the board or person in charge of a diagnostic and treatment centre;
- (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*;

- (b.1) “health information” means health information as defined in the *Health Information Act*;
- (c) “legal representative” means an executor or administrator of the estate of a deceased person, the guardian or trustee of a represented adult under the *Adult Guardianship and Trusteeship Act*, the agent designated in a personal directive made by a person in accordance with the *Personal Directives Act* or the guardian of a minor;
- (d) “mentally competent” means able to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or refusing consent.

**(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.

**(2)** The board of a diagnostic and treatment centre shall cause a record to be kept of the diagnostic and treatment services provided to every person in the diagnostic and treatment centre.

**(3)** For the purpose of assessing the standards of care furnished to persons in a diagnostic and treatment centre or improving mental health care facilities or procedures or enforcing the Crown’s right of recovery under the *Crown’s Right of Recovery Act* or for any other purpose considered by the Minister to be in the public interest, the Minister or any person authorized in writing by the Minister may require that all or any of the following be sent to the Minister or any person designated by the Minister:

- (a) health information and other records in a centre;
- (b) extracts from and copies of those records.
- (c) repealed RSA 2000 cH-5 s119.

**(4), (5)** Repealed RSA 2000 cH-5 s119.

**(6)** The Minister or any person authorized by the Minister may, for the purpose of enforcing the Crown’s right of recovery under the *Crown’s Right of Recovery Act*, disclose information obtained under subsection (3).

**(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

- (a) – (c) repealed RSA 2000 cH-5 s119,
- (d) to a Public Guardian if the health information is, in the opinion of the person making the disclosure, relevant to the making of a guardianship order under the *Adult Guardianship and Trusteeship Act* in respect of the person to whom the health information relates,
- (e) to the Public Trustee if the health information is, in the opinion of the person making the disclosure, relevant to the making of a trusteeship order under the *Adult Guardianship and Trusteeship Act* in respect of the person to whom the diagnosis, record or information relates,
- (f) to a review panel that is to hear or is hearing an application from the person to whom the health information relates, or to the Court of Queen’s Bench for the purposes of an appeal under section 43,
- (g) repealed RSA 2000 cH-5 s114;
- (h) to a Director of Medical Services under the *Occupational Health and Safety Act* when the health information relates to an accident that occurred in respect of the person’s occupation or one or more of the person’s former occupations, or to a disease that is related to the person’s occupation or one or more of the person’s former occupations,
- (i) to The Workers’ Compensation Board, the Provincial Health Authorities of Alberta or a provincial hospital insurance authority if the information is required in order to establish responsibility for payment,
- (j) to the Department of Health (Canada) for purposes in connection with the *Canada Health Act* (Canada),
- (k) repealed RSA 2000 cH-5 s119,
- (l) to a Review Board appointed pursuant to the *Criminal Code* (Canada) that is to review the case of the person to whom the health information relates,
- (m) to the council or hearing tribunal of the College of Physicians and Surgeons of Alberta or the council of the College and Association of Registered Nurses of Alberta, if



- (i) an officer of the College of Physicians and Surgeons of Alberta or of the College and Association of Registered Nurses of Alberta, as the case may be, makes a written request for the health information and the disclosure is consented to by the person to whom the health information relates or the person's legal representative, or
  - (ii) the disclosure is made in compliance with a notice under sections 73 and 74 of the *Health Professions Act* to attend as a witness or to produce documents,
- (n) to a person conducting an investigation, a hearing tribunal or the council of the dental profession under the *Health Professions Act* if
- (i) an officer of the Alberta Dental Association and College makes a written request for it and the disclosure is consented to by the patient or the patient's legal representative, or
  - (ii) the disclosure is made in compliance with a notice under sections 73 and 74 of the *Health Professions Act* to attend as a witness or to produce documents,
- (o) repealed RSA 2000 cH-5 s119,
- (o.1) to a hearings director of a college under the *Health Professions Act*, if the disclosure is made in compliance with a notice under section 73 or 74 of the *Health Professions Act*,
- (p) to the Health Disciplines Board or
- (i) to the Committee of a designated health discipline governed by a Committee, or
  - (ii) in the case of a designated health discipline governed by a health discipline association, to the conduct and competency committee established by the health discipline association,
- if the disclosure is made in compliance with a notice under section 38(1) of the *Health Disciplines Act*, and
- (q) to an investigator or a hearing tribunal of the psychology profession under the *Health Professions Act* if

- (i) an officer of the College of Alberta Psychologists makes a written request for it and the disclosure is consented to by the patient or the patient's legal representative, or
- (ii) the disclosure is made in compliance with a notice under sections 73 and 74 of the *Health Professions Act* to attend as a witness or to produce documents.

**(8)** Repealed RSA 2000 cH-5 s119.

**(9)** The person in charge of a diagnostic and treatment centre shall, after the discharge of a patient from the centre for the purpose of transferring the patient to another centre, hospital or nursing home inside or outside Alberta, forward to that other centre, hospital or nursing home copies of the appropriate records of diagnostic and treatment services provided in respect of that patient for the use of that other centre, hospital or nursing home.

**(10) to (13)** Repealed RSA 2000 cH-5 s119.

RSA 2000 cM-13 s17;RSA 2000 cH-5 s119;  
RSA 2000 cH-7 ss140,145,146,147,153,155;  
2003 c39 s8;2005 c13 s4(4),6;2008 cA-4.2 s142;  
2009 cC-35 s58

#### **Refusal of admission to facility**

**18(1)** When any person is conveyed to a facility pursuant to one admission certificate and another admission certificate is not issued with respect to that person, the board shall inform the person and, if the person does not object, the referring source, of the reasons why another certificate was not issued and may refer the person to another facility or service, in which case the referring source shall, unless the person objects, be informed of any alternative arrangements made.

**(2)** Nothing in this section or section 19 abrogates or restricts the authority conferred on a board by the *Hospitals Act* or any other Act.

1988 cM-13.1 s18;1994 cR-9.07 s25(20)

#### **Treatment and security of patients**

**19(1)** On the admission of a patient to a facility, the board of the facility shall provide the diagnostic and treatment services that the patient is in need of and that the staff of the facility is capable of providing and able to provide.

(2) The board of a facility in which a formal patient is detained shall determine what level of security is reasonably required for each patient in view of all the circumstances and afterwards provide it and review the necessary level of security at intervals of not more than 3 months.

1988 cM-13.1 s19

#### **Leave of absence**

**20(1)** Notwithstanding any admission certificates or renewal certificates issued with respect to a formal patient, the board of a facility may grant a formal patient leave of absence from the facility.

(2) Leave of absence may be granted on any terms and conditions prescribed by the board and without restricting the generality of the foregoing may include a condition that the formal patient remain under the supervision and subject to the treatment of any person or persons designated by the board.

(3) When a formal patient is on a leave of absence granted under this section, the board may by notice in writing given to

- (a) the patient, or
- (b) the person supervising the patient,

revoke the leave of absence and recall the patient to the facility.

(4) When a formal patient refuses or neglects to return to the facility or when the board is unable to serve a notice in writing pursuant to subsection (3), the board may declare the patient to be absent without leave and issue an order in the prescribed form ordering any peace officer to return the patient to the facility.

(5) Nothing in this section authorizes the granting of a leave of absence to a formal patient who is detained in or remanded to a facility pursuant to the *Criminal Code* (Canada) or the *Young Offenders Act* (Canada).

1988 cM-13.1 s20

#### **Return of formal patient to facility**

**21(1)** If a formal patient leaves a facility when leave of absence has not been granted, the board may issue an order in the prescribed form ordering a peace officer to return the patient to the facility.

(2) On receipt of

- (a) an order under subsection (1), or

(b) an order under section 20,

every peace officer is empowered to apprehend, without warrant, the person named in the order and to return that person to the facility.

(3) A person who is returned to a facility under this section or section 20 may be detained for the remainder of the authorized period of detention to which the person was subject when the person's absence was discovered or, if the certificates relating to that person expired during the period the person was absent from the facility, the person is deemed to be a person in respect of whom one admission certificate is issued when the person is apprehended by a peace officer under this section or section 20.

(4) An order of the board under this section or section 20 shall state the date of expiration of the admission certificates or renewal certificates, as the case may be.

1988 cM-13.1 s21

#### **Transfer to another facility**

**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.

(2) When a formal patient is transferred under subsection (1), the authority conferred by any certificates relating to the patient continues in force in the facility to which the patient is transferred.

1988 cM-13.1 s22

#### **Transfer for hospital treatment**

**23(1)** When a formal patient requires hospital treatment that cannot be provided in the facility, the board may, if otherwise permitted by law, transfer the patient to a hospital for treatment and return the patient to the facility on the conclusion of the treatment.

(2) When a formal patient is transferred under subsection (1), the board of the hospital or a person designated by it has, in addition to the powers and duties conferred on it by any other Act, the powers and duties under this Act of a board in respect of the custody and control of the patient.

1988 cM-13.1 s23

#### **Transfer into Alberta**

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

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.

**(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.

RSA 2000 cM-13 s24;2007 c35 s12

#### **Transfer out of Alberta**

**25** When it appears to the Minister

- (a) that a formal patient has come or been brought into Alberta and that the patient's care and treatment is the responsibility of another jurisdiction, or
- (b) that it would be in the best interests of a formal patient to be cared for in another jurisdiction,

the Minister may, on compliance in Alberta with the laws of the other jurisdiction with all necessary modifications, issue a transfer in the prescribed form to authorize a transfer of the formal patient to the other jurisdiction.

1988 cM-13.1 s25

### **Part 3 Treatment and Control**

#### **Mental competence**

**26** For the purposes of this Part, a person is mentally competent to make treatment decisions if the person is able to understand the subject-matter relating to the decisions and able to appreciate the consequences of making the decisions.

1988 cM-13.1 s26

#### **Competence to make treatment decisions**

**27(1)** A physician who is of the opinion that a formal patient is not mentally competent to make treatment decisions shall complete and file with the board a certificate in the prescribed form.

- (2) The physician shall include in the certificate written reasons for the opinion that the formal patient is not mentally competent.
- (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.
- (4) If an application is made to a review panel to review a physician's opinion that a formal patient is not mentally competent to make treatment decisions, neither a physician nor the board shall act on the opinion pending the outcome of the application.
- (5) A finding by a court or by a review panel that a formal patient is mentally competent or is not mentally competent applies only for the purposes of this Part.

1988 cM-13.1 s27;1996 cP-4.03 s39

**Treatment decisions on behalf of formal patient or person subject to community treatment order**

**28(1)** For the purposes of this Act other than section 29(5), treatment decisions may be made on behalf of a formal patient or a person who is subject to a community treatment order, where the patient or person is a minor or is not mentally competent, by a person who is apparently mentally competent, is available and is willing to make the decisions and is

- (a) the agent of the formal patient or the person who is subject to a community treatment order,
- (b) the guardian of the formal patient or the person who is subject to a community treatment order,
- (c) in a case where the formal patient or the person who is subject to a community treatment order does not have an agent or guardian or the agent or guardian is not available or not willing or cannot be contacted after every reasonable effort has been made, the patient's or person's nearest relative as defined in section 1(i)(i), or
- (d) in a case where the formal patient or the person who is subject to a community treatment order does not have a person referred to in this section, a Public Guardian.

(2) A person referred to in subsection (1)(a) or (c) shall not exercise the authority given by that subsection unless the person

- (a) has been in personal contact with the formal patient or the person who is subject to a community treatment order over the preceding 12-month period,
- (b) is willing to assume the responsibility of making treatment decisions, and
- (c) makes a statement in writing certifying the person's relationship to the formal patient or the person who is subject to a community treatment order and the facts set out in clauses (a) and (b).

**(3)** A person authorized by subsection (1)(a) or (c) shall make the treatment decisions in accordance with what the person believes to be the best interest of the formal patient or the person who is subject to a community treatment order.

**(4)** In order to determine the best interest of the formal patient or the person who is subject to a community treatment order, a person referred to in subsection (1)(a) or (c) shall have regard to the following:

- (a) whether the mental condition of the patient or the person will be or is likely to be improved by the treatment;
- (b) whether the patient's or person's condition will deteriorate or is likely to deteriorate without the treatment;
- (c) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient or person;
- (d) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

**(5)** If the attending physician is of the opinion that a formal patient is not mentally competent to make treatment decisions and the patient objects to treatment, the treatment shall not be given pursuant to a treatment decision made by a person referred to in subsection (1)(a) or (c) unless a 2nd physician is also of the opinion that the patient is not mentally competent to make treatment decisions.

**(6)** In the case of a person who is subject to a community treatment order, the community treatment order must be issued in accordance with section 9.1.

**(7)** If treatment decisions are made by a person referred to in subsection (1)(a) or (c) on behalf of a formal patient or a person who is subject to a community treatment order, that person's

statement under subsection (2)(c) can be relied on unless it is not reasonable to believe the statement.

**(8)** If a person acting on a treatment decision makes reasonable inquiries for persons entitled to make the decisions, the person so acting is not liable for failure to request the decision from the person entitled to make the decision on behalf of the formal patient or the person who is subject to a community treatment order.

RSA 2000 cM-13 s28;2007 c35 s13;2008 cA-4.2 ss142,143

### **Objection to treatment**

**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.

**(2)** A board or an attending physician who considers it in the best interest of a formal patient to administer treatment to which the patient or a person referred to in section 28(1) objects may apply in the prescribed form to a review panel for an order directing that the treatment may be administered.

**(3)** Before it makes an order under this section, the review panel must be satisfied after hearing the evidence of the attending physician and any other evidence it considers relevant that

- (a) the attending physician has examined the formal patient,
- (b) the proposed treatment is in the best interest of the formal patient having regard to the following:
  - (i) whether the mental condition of the patient will be or is likely to be improved by the treatment;
  - (ii) whether the patient's condition will deteriorate or is likely to deteriorate without the treatment;
  - (iii) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient;
  - (iv) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements of subclauses (i), (ii) and (iii).

**(4)** In addition to the evidence referred to in subsection (3), the review panel may authorize the examination of the formal patient by a psychiatrist who is not a member of the medical staff of the facility for the purpose of obtaining the psychiatrist's opinion as to whether the proposed treatment is in the best interest of the patient



having regard to the considerations referred to in clause (b) of that subsection.

(5) Notwithstanding anything in this section, psychosurgery shall not be performed on a formal patient unless

- (a) the patient consents to the psychosurgery, and
- (b) a review panel makes an order under this section directing that the psychosurgery may be performed.

1988 cM-13.1 s29

#### **Control**

**30** The authority to control a person under this Act is authority to control the person without the person's consent to the extent necessary to prevent serious bodily harm to the person or to another person by the minimal use of such force, mechanical means or medication as is reasonable, having regard to the physical and mental condition of the person.

1988 cM-13.1 s30

## **Part 4 Discharge**

#### **Cancellation or expiry of certificates**

**31(1)** A board shall comply with and take any action necessary to comply with a decision of a review panel concerning admission certificates or renewal certificates.

(2) When a formal patient no longer meets the criteria for the issuance of admission certificates or renewal certificates, a physician shall cancel the admission certificates or renewal certificates, as the case may be.

(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.

RSA 2000 cM-13 s32;2007 c35 s14

#### **Removal after discharge**

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

- (a) to the patient's guardian, if any,
- (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
  - (i) to another ward, section or unit of the facility,
  - (ii) to an approved hospital, or
  - (iii) to a nursing home or other accommodation.

(3) Any patient who has been declared eligible for transfer or discharge as provided in this section and who refuses or fails to leave when requested to do so is a trespasser.

(4) Any other person who remains on facility premises without the consent of the board or a representative of the board and fails or refuses to leave the premises when requested to do so is a trespasser.

RSA 2000 cM-3 s32;2007 c35 s14;2008 cA-4.2 s142

#### **Return to correctional facility**

**33(1)** Whether or not admission certificates or renewal certificates have been issued with respect to a person who is sent to a facility for treatment after having been sentenced to a correctional facility, the person may apply to the chair of the review panel for the facility for an order transferring the person back to a correctional facility.

(2) A review panel hearing an application under subsection (1) may

- (a) make the order applied for,

- (b) cancel the admission certificates or renewal certificates, if any, or
- (c) refuse to make the order applied for or to cancel the admission certificates or renewal certificates.

**(3)** When a review panel makes an order transferring a person from a facility to a correctional facility or cancels admission certificates or renewal certificates under this section, the board of the facility in which the person is detained shall

- (a) comply with the order, or
- (b) if admission certificates or renewal certificates are cancelled, arrange to have the person returned to a correctional facility.

1988 cM-13.1 s33

## **Part 5 Review Panels**

### **Review panels**

**34(1)** The Minister shall, in respect of each facility,

- (a) appoint and prescribe the term of office of a chair and a vice-chair, who must be lawyers, and
- (b) appoint and prescribe the term of office of a roster of eligible persons to act as the other members

of review panels to hear applications under sections 27, 29, 33, 38 and 39.

**(1.1)** Terms of office referred to in subsection (1) must be prescribed in accordance with the *Alberta Public Agencies Governance Act* and any applicable regulations under that Act.

**(1.2)** If regulations under the *Alberta Public Agencies Governance Act* apply in respect of a term of office referred to in subsection (1), those regulations prevail, to the extent of any conflict or inconsistency, over any regulations prescribing the term of office under that subsection.

**(2)** A vice-chair shall act in the absence or inability to act of the chair.

**(3)** When an application under section 27, 29, 33, 38 or 39 is made to the chair of the review panel for a facility, the chair shall appoint the other members of the review panel from the roster established by the Minister.

(4) A review panel shall be composed of

- (a) the chair or a vice-chair,
- (b) a psychiatrist,
- (c) a physician, and
- (d) a member of the general public.

(5) The Minister shall provide secretarial, legal, consultative and interpretation services and other assistance to review panels.

RSA 2000 cM-13 s34;2009 cA-31.5 s58

#### **Quorum and voting**

**35(1)** A quorum for a review panel is the 4 members referred to in section 34(4).

(2) Each member of the review panel is entitled to one vote, and in the event of a tie vote, the chair or vice-chair has a 2nd vote.

(3) A decision of a majority of the members is the decision of the review panel.

1988 cM-13.1 s35

#### **Persons prohibited as members of review panel**

**36(1)** No person who is a member of the staff of a facility is eligible to sit as a member of a review panel when the panel is considering an application relating to a patient in that facility.

(2) A person who is

- (a) related to the patient by blood or marriage or by virtue of an adult interdependent relationship,
- (b) a spouse or adult interdependent partner of the patient,
- (c) a psychiatrist or physician or other person who is treating or who has treated the patient, or
- (d) a lawyer who is acting or who has acted for the patient

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.

RSA 2000 cM-13 s36;2002 cA-4.5 s56

#### **Authority of review panel**

**37(1)** A review panel shall hear and consider applications in accordance with this Act and the regulations and for that purpose the members of the review panel have all the powers, duties and

immunities of a commissioner appointed under the *Public Inquiries Act*.

(2) All proceedings of a review panel shall be conducted in private and, subject to subsection (3), no person has the right to be present without the prior consent of the chair.

(3) The applicant and the applicant's representative have the right to be personally present during the presentation of any evidence to the review panel and to cross-examine any person who presents evidence to the review panel.

(4) Where an application is made to a review panel and the review panel is of the opinion that disclosure of information to the patient might seriously endanger the safety of another person, the review panel may refuse to disclose the information to the patient.

1988 cM-13.1 s37

#### **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 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.

(1.1) A person who is subject to a community treatment order, the person's agent, the person's guardian or a person on behalf of the person who is subject to a community treatment order may apply to a review panel for cancellation of the community treatment order by sending a notice of application to the chair of the appropriate review panel in the prescribed form.

(2) A board may submit an application under subsection (1) on behalf of a formal patient or person who is subject to a community treatment order, but when an application is so made the word "applicant" wherever it occurs in this Part means the formal patient or person who is subject to a community treatment order and not the board.

(3) Subject to subsection (4), a formal patient, person who is subject to a community treatment order, guardian, person on the patient's behalf or on behalf of the person who is subject to a community treatment order or a board that has made an application under this section with respect to 2 admission certificates, 2

renewal certificates or a community treatment order may make further applications with respect to those certificates or that order.

**(4)** No further application made under this section by a formal patient, person who is subject to a community treatment order, guardian, person on the patient's behalf or on behalf of the person who is subject to a community treatment order or a board shall be considered by a review panel if the chair of the review panel reasonably believes

- (a) that the application is frivolous, vexatious or not made in good faith, or
- (b) that there has been no significant change in circumstances since the previous hearing by the review panel.

RSA 2000 cM-13 s38;2007 c35 s15

#### **Review after 6 months**

**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.

**(2)** When a community treatment order is renewed for the first time, and at the time of every 2nd renewal after that until the community treatment order expires or is cancelled, unless the person, the person's agent, the person's guardian or another person on the person's behalf has made an application for review within the month preceding any of those renewals, the person who is subject to the community treatment order is deemed to have applied to the chair of the appropriate review panel, who shall cause the review panel to hear and consider cancellation of the community treatment order.

RSA 2000 cM-13 s39;2007 c35 s16

#### **Notice of hearing**

**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

- (a) to the patient or the person who is subject to a community treatment order, the patient's or person's agent and the

patient's or person's guardian or another person referred to in section 28(1), if any,

- (b) to one person designated by the patient or the person who is subject to a community treatment order, to the nearest relative, unless the patient or the person objects, and to any other person that the chair considers may be affected by the application and should be notified,
- (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,
- (d) in the case of a formal patient, to the board of the facility in which the patient is detained, and
- (e) to the applicant.

**(2)** On receipt of an application under section 27 or 29, the chair of a review panel shall give reasonable notice of the date, time, place and purpose of the hearing

- (a) to the patient, the patient's agent and the patient's guardian or the person referred to in section 28(1)(a) or (b), if any,
- (b) to one person designated by the patient, to the nearest relative, unless the patient objects, and to any other person that the chair considers may be affected by the application and should be notified,
- (c) to the applicant,
- (d) to the board of the facility in which the patient is detained, and
- (e) in the case of an application under section 27, to the physician whose opinion is being reviewed.

**(3)** A hearing is to be held and the review panel shall make an order or refuse to make an order under section 27 or 29 and so advise the formal patient, the patient's agent, if any, and the patient's guardian, if any, within 7 days after the receipt of an application under either of those sections by the chair.

**(4)** A review panel shall hear and consider an application under section 33, 38 or 39 as soon as it is able to do so and in any case within 21 days after the receipt by the chair of the application

under section 33 or 38 or the date on which an application is deemed to be made under section 39, as the case may be.

**(5)** The chair may adjourn a hearing under section 33, 38 or 39 for any period up to 21 days and, if the patient or the patient's representative, or the person who is subject to a community treatment order or that person's representative, as the case may be, requests the adjournment, for a further period or periods.

RSA 2000 cM-13 s40;2007 c35 s17

#### **Decision of review panel**

**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;
  - (a.1) with respect to an application for cancellation of a community treatment order,
    - (i) cancel the community treatment order, or
    - (ii) refuse to cancel the community treatment order;
  - (b) with respect to an application to review a physician's opinion under section 27,
    - (i) cancel the certificate referred to in that section, or
    - (ii) refuse to cancel the certificate;
  - (c) with respect to an application to direct that treatment may be administered in accordance with section 29,
    - (i) make an order under that section, which may be subject to any conditions that the review panel considers appropriate, or
    - (ii) refuse to make an order under that section.
- (2)** A review panel shall, with respect to a decision under section 33, 38 or 39,



- (a) make the decision within 24 hours of hearing the application, and
- (b) inform the patient and the patient's guardian, if any, or the person who is subject to a community treatment order and the person's guardian, if any, of the decision and send a copy of the decision in the prescribed form to every person referred to in section 40(1) within 24 hours of making the decision.

**(3)** If the review panel refuses to cancel admission certificates, renewal certificates, a community treatment order or a physician's certificate under section 27 or refuses to make an order under section 29 or 33, the written report of the decision of the review panel shall include a statement of the right to appeal the decision of the review panel to the Court of Queen's Bench under section 43.

**(4)** If the review panel decides not to cancel admission or renewal certificates or a community treatment order, it shall give written reasons for its decision.

RSA 2000 cM-13 s41;2007 c35 s18

### **Onus**

**42(1)** Subject to subsection (2), in a hearing before a review panel or the Court of Queen's Bench under this Act, the onus is on the board of the facility in which the patient is detained to show that

- (a) detention is required and the patient meets the criteria referred to in sections 2 and 8(1),
- (b) the physician's opinion under section 27 is correct,
- (c) it is in the best interest of the formal patient to administer treatment in accordance with section 29, or
- (d) the patient should not be returned to a correctional facility under section 33,

as the case may be.

**(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).

RSA 2000 cM-13 s42;2007 c35 s19;2009 c47 s1

**Appeal to Court of Queen's Bench**

**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.

(2) The appeal shall be made by application.

(3) The application shall be served on

- (a) the Minister,
- (b) the board of the facility in which the patient is detained, and
- (c) any other persons the Court directs,

not less than 15 days before the application is returnable, and the practice and procedure of the Court pertaining to applications by originating application apply, insofar as they are applicable, to an application under this section, except as otherwise provided by this section.

**(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
- (b) the person responsible for the supervision of the community treatment order.

(4) An appeal under this section shall be a rehearing of the matter on the merits, and in addition to any further evidence adduced, the Court may direct that any transcript or minutes taken by the review panel at the original hearing of the evidence be put in evidence on the appeal and that further evidence be given as it considers necessary.

(5) An order of the Court under this section is not subject to appeal.

(6) The Court may make whatever order as to the costs of the application that it considers fit.

(7) The Court may

- (a) cancel or refuse to cancel admission certificates, renewal certificates, a community treatment order or a physician's certificate under section 27, as the case may be,
  - (b) rescind or refuse to rescind the order of a review panel under section 29, or
  - (c) make any other order it considers just.
- (8) An appeal under this section shall be heard in private unless the Court otherwise directs.

RSA 2000 cM-13 s43;2007 c35 s20;2009 c53 s113

## Part 6 Mental Health Patient Advocate

### Definition

**44** In this Part, "Patient Advocate" means the Mental Health Patient Advocate appointed under section 45.

1988 cM-13.1 s44

### Patient Advocate

**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.

(2) The Lieutenant Governor in Council may make regulations

- (a) respecting the powers and duties of the Patient Advocate;
- (b) requiring any person to make available any information referred to in the regulations for the purpose of an investigation by the Patient Advocate.

(3) A regulation made under subsection (2)(b) prevails despite the *Health Information Act*.

RSA 2000 cM-13 s45;2007 c35 s21;2009 c47 s2

### Employees and advisors

**46(1)** In accordance with the *Public Service Act*, there may be appointed any employees required to assist the Patient Advocate in performing the Patient Advocate's duties under this Act.

(2) The Patient Advocate may engage the services of lawyers, psychiatrists or other persons having special knowledge in connection with the Patient Advocate's duties under this Act.

1988 cM-13.1 s46

**Annual report**

**47(1)** As soon as possible after the end of each year, the Patient Advocate shall prepare and submit to the Minister a report summarizing the Patient Advocate's activities in that year.

**(2)** On receiving a report under subsection (1), the Minister shall lay a copy of the report before the Legislative Assembly if it is then sitting, and if not, within 15 days after the commencement of the next sitting.

1988 cM-13.1 s47

**Part 7  
General****Delegation**

**48(1)** The Minister may in writing delegate any of the powers, duties or functions conferred or imposed on the Minister under this Act or the regulations, including the power to form an opinion, to any person for any purpose in connection with the administration of this Act.

**(2)** Subsection (1) does not apply to any power of the Minister to make regulations.

**(3)** A board may delegate to any employees or other persons on the staff of the facility any of its powers and duties under this Act or the regulations.

1988 cM-13.1 s48

**Powers of Minister**

**49(1)** The Minister may do anything the Minister considers advisable for preventing circumstances that may lead to mental disorder and distress and for promoting and restoring mental health and well-being and, without limiting the generality of the foregoing, may

- (a) establish and operate places for the observation, examination, care, treatment, control and detention of persons suffering from mental disorder,
- (b) make available diagnostic and treatment centres to provide mental health services, including in-patient services, clinical services in the community, community residential services, rehabilitation services, consultation, public education, research and prevention, in various locations in Alberta,
- (c) enter into agreements

- (i) to obtain services under this Act and for the prevention and treatment of mental illness, and
- (ii) with appropriate authorities of the Government of Canada or the government of a province or territory for the reception, observation, examination, care, treatment and detention in a facility in Alberta of persons suffering from mental disorder,

and

- (d) charge fees for any service or materials provided or research done under this Act.

**(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.

RSA 2000 cM-13 s49;2007 c35 s22

**Crown's right of recovery**

**50** The Crown in right of Alberta is entitled to recover the Crown's cost of mental health services under the *Crown's Right of Recovery Act*.

RSA 2000 cM-13 s50;2009 cC-35 s58

**Mental health advisory committees**

**51(1)** The Minister may establish one or more mental health advisory committees to act in an advisory capacity in connection with any matter specified by the Minister.

**(2)** The Minister may, with respect to any committee established under this section,

- (a) appoint or provide for the appointment of its members;
- (b) prescribe the term of office of its members;
- (c) designate a chair and a vice-chair;

- (d) authorize, fix and provide for the payment of remuneration to its members.

**(3)** A committee established pursuant to this section may exercise any powers and perform any duties and functions that the Minister confers or imposes on it in connection with mental health matters.

1988 cM-13.1 s50

#### **Validity of documents**

**52** An admission certificate, renewal certificate, community treatment order, certificate under section 27, warrant, order, transfer or other form issued under this Act or the regulations shall not be held to be insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or in any proceedings in connection with it.

RSA 2000 cM-13 s52;2009 c47 s2

#### **Regulations**

**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;
- (c) in respect of facilities or any class of facility,
  - (i) providing for the creation, establishment, construction, alteration, renovation and maintenance of them, and
  - (ii) providing for the government, management, conduct, operation, use and control of them;
- (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);
- (e) respecting community treatment orders;
- (f) respecting examinations for the purposes of sections 9.1 and 9.6 and the manner in which, or the means by which, they may be conducted;
- (g) respecting persons who may be responsible for the supervision of community treatment orders and the qualifications required for that purpose;
- (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);
- (j) respecting the reporting obligations in respect of community treatment orders;
- (k) respecting the issuing, renewal, amendment or cancellation of community treatment orders;
- (l) respecting requirements for notice respecting community treatment orders;
- (m) respecting the designating of persons for the purposes of section 14(1.1);
- (n) defining any terms used but not defined in this Act;
- (o) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

**(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

- (a) prescribing the remuneration and expenses to be paid to members of review panels;
- (b) requiring review panels to submit annual reports to the Minister and governing the contents of those reports;
- (c) governing forms and their use.

(5) If regulations under the *Alberta Public Agencies Governance Act* apply in respect of the remuneration or expenses to be paid to members of review panels, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations prescribing remuneration or expenses under subsection (4)(a).

RSA 2000 cM-13 s53;2007 c35 s23;2009 cA-31.5 s58

**Review by committee of Legislative Assembly**

**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.

2007 c35 s24











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