



Province of Alberta

MENTAL HEALTH AMENDMENT ACT, 2020

Statutes of Alberta, 2020
Chapter 15

Assented to June 26, 2020

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Bill 17

MENTAL HEALTH AMENDMENT ACT, 2020

Chapter 15

(Assented to June 26, 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, 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).

3 Section 2 is repealed and the following is substituted:**Admission certificate**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

- (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”.

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”.**

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,

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,

- (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”.

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”.

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”.**

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

- (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)

(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,

(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";**
 - (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”.**

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”.

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”.**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.

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.

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).

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,
 - (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”;

(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;
- (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,
 - (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.

