



Province of Alberta

MENTAL HEALTH ACT

Revised Statutes of Alberta 2000
Chapter M-13

Current as of September 30, 2020

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:

2020 c15 s2 amends s1.

2020 c15 s19 adds s12.1; s22 amends s14; s37 amends s42; s38 amends s43; s42 amends s53.

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

	Alta. Reg.	<i>Amendments</i>
Mental Health Act		
Community Treatment Order	337/2009	129/2015, 20/2017, 127/2019, 174/2020
Mental Health.....	19/2004	78/2005, 228/2006, 208/2007, 150/2010, 197/2011, 187/2012, <i>NOTE: AR 175/2020 s4 comes into force Mar 31, 2021</i>
Mental Health Act Forms and Designation	136/2004	51/2014, 135/2017, 175/2020
Mental Health Act Review Panel	14/2009	14/2009, 250/2009, 342/2009, 190/2011, 170/2012, 147/2017, 183/2020
Mental Health Patient Advocate.....	173/2020	184/2020

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) repealed 2020 c15 s2;
- (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;
- (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;
 - (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*;
- (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;
- (o) “renewal certificate” means a certificate issued pursuant to section 8;
- (p) “review panel” means a review panel established pursuant to section 34.
- (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.
- (q) repealed 2002 cA-4.5 s56.
- (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).

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;
2020 c15 s2

Part 1 Admission and Detention

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.

RSA 2000 cM-13 s2;2007 c35 s3;2020 c15 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 qualified health professional 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);2020 c15 s4

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

- (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.

(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;2020 c15 s5

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 qualified health professional issuing it,
- (c) the date and time at which the personal examination was conducted,
- (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,

- (e) the name of the place where the person was examined and, 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;2020 c15 s6

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

- (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.

RSA 2000 cM-13 s7;2020 c15 s7

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.

(2) At least one of the qualified health professionals 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;2020 c15 s8

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.

2020 c15 s9

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 qualified health professional issuing it,
- (c) the date on which the personal examination was conducted,
- (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,
- (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;2020 c15 s10

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.

2020 c15 s11

Community treatment order

9.1(1) Two qualified health professionals, 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 qualified health professionals, the person is suffering from 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 qualified health professionals 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 qualified health professionals, 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 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, if the person does not receive continuing treatment or care while living in the community,
- (iv) a review panel has ordered a board to issue the community treatment order under section 41,
- (c) the 2 qualified health professionals, 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, 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, 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 qualified health professional, 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 qualified health professionals
 - (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 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 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 qualified health professionals,
- (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 qualified health professionals 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 qualified health professionals.

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

2007 c35 s8;2020 c15 s12

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.

(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.

2007 c35 s8;2020 c15 s13

Amendment of order

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

2007 c35 s8;2020 c15 s14

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 qualified health professional 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 qualified health professional 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 qualified health professional 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 qualified health professional 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 qualified health professionals, 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;2020 c15 s15

9.7 Repealed 2020 c15 s16.

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) 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,

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) 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
 - (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 or secure location for examination.

(6) While a person is being conveyed to a facility or secure location 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;2020 c15 s17

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) 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) 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 or secure location for assessment and examination.

(2) While a person is being conveyed to a facility or secure location 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 or secure location under this section, the peace officer shall complete a statement in the prescribed form for the use of the facility or secure location, 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;2020 c15 s18

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)

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.

2020 c15 s20

Part 2 Administration

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.

2020 c15 s21

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 on reasonable grounds, the patient's nearest relative, of
 - (i) the reason, in simple language, for the issuance of the admission certificates or renewal certificates,
 - (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
- (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 on reasonable grounds, 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,
 - (iii) the function of review panels,
 - (iv) the name and address of the chair of the review panel for the facility,
 - (v) 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,
 - (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;
- (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.

(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 physician or nurse practitioner who treats the person in their ordinary day-to-day health care needs, if known.
- (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.

RSA 2000 cM-13 s14;2007 c35 s11;2020 c15 s22

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 qualified health professional 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.

RSA 2000 cM-13 s16;2020 c15 s23

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(1)(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 qualified health professional 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 the *Opioid Damages and Health Care Costs 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* or the *Opioid Damages and Health Care Costs 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 qualified health professional 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 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;2019 cO-8.5 s17;2020 c15 s24;
2020 c27 s7

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.

(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.

(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.

RSA 2000 cM-13 s22;2020 c15 s25

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) 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

- (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;2020 c15 s26

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 on reasonable grounds, 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.

RSA 2000 cM-13 s27;2020 c15 s27

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, a qualified health professional 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.

RSA 2000 cM-13 s29;2020 c15 s28

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.

(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.

RSA 2000 cM-13 s31;2020 c15 s29

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 on reasonable grounds, and
- (c) to the physician or nurse practitioner who treats the patient in their ordinary day-to-day health care needs, 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 qualified health professional, 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;
2020 c15 s30

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, and
 - (c) repealed 2019 c15 s28,
 - (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;
2019 c15 s28

Quorum and voting

- 35(1)** A quorum for a review panel is the 3 members referred to in section 34(4).
- (2) Each member of the review panel is entitled to one vote.
- (3) A decision of a majority of the members is the decision of the review panel.
- RSA 2000 cM-13 s35;2019 c15 s28

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 qualified health professional 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;2020 c15 s31

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.

(2.1) A review panel may conduct a hearing by any one or more of the following methods as mutually agreed on by the applicant and the chair of the review panel:

- (a) in person;
- (b) by telephone;
- (c) by video conference or any other means of telecommunication.

(3) The applicant and the applicant's representative have the right to be 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.

RSA 2000 cM-13 s37;2019 c15 s28

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.

(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;2020 c15 s32

Deemed reviews

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 applied for an order for the board to issue a community treatment order, or an application for review of certificates or an application for an order for the board to issue a community treatment order 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 second 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;2019 c15 s28;2020 c15 s33

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 qualified 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;2020 c15 s34

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.

2020 c15 s35

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,
 - (ii) refuse to cancel the admission certificates or renewal certificates, or
 - (iii) order the board to issue a community treatment order in respect of the patient within a reasonable amount of time;
- (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;
- (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;2020 c15 s36

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 qualified 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;2020 c15 s37

Appeal to Court of Queen's Bench

43(1) Within 30 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 qualified 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;
2020 c15 s38

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

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.

(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;
2020 c15 s39

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 by order

- (a) declare that an individual has the authority of a psychiatrist, physician or qualified health professional for the purposes of this Act in circumstances where no psychiatrist, physician or qualified health professional 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.
- (b) repealed 2020 c15 s40.

(3) Repealed 2020 c15 s40.

RSA 2000 cM-13 s49;2007 c35 s22;2020 c15 s40

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.

2020 c15 s41

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* or the *Opioid Damages and Health Care Costs Recovery Act*.

RSA 2000 cM-13 s50;2009 cC-35 s58;2019 cO-8.5 s17

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), (b) repealed 2020 c15 s42;
- (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(1)(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), (i) repealed 2020 c15 s42;
- (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;
 - (l.1) respecting the powers and duties of the board for the purposes of this Act;
 - (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.
- (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.
- (3)** If the Minister designates a place as a facility, the Minister 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;

(d) respecting the form and content of treatment plans.

(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;
2020 c15 s42

54 Repealed 2020 c15 s43.



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