



BILL NO. 120

Government Bill

*1st Session, 64th General Assembly
Nova Scotia
71 Elizabeth II, 2022*

An Act to Amend Chapter 42 of the Acts of 2005, the Involuntary Psychiatric Treatment Act

CHAPTER 17
ACTS OF 2022

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
APRIL 22, 2022**

The Honourable Brian Comer
*Minister responsible for
the Office of Addictions and Mental Health*

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 42
of the Acts of 2005,
the Involuntary Psychiatric Treatment Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 42 of the Acts of 2005, the *Involuntary Psychiatric Treatment Act*, is amended by

- (a) adding (1) immediately after the Section number;**
- (b) adding “, including the interpretation and administration of this Act,” immediately after “health” in the second line of subsection (1);**
- (c) striking out clause (h) of subsection (1) and substituting the following clauses:**
 - (h) any certificate for involuntary psychiatric assessment, declaration of involuntary admission, declaration of incapacity or community treatment order, is made on the basis of evidence;
 - (i) all persons are treated with consideration of cultural safety and competency;
 - (j) persons with mental illness are entitled to treatment that is equal to that provided to those with other kinds of health issues and those with other kinds of mental illness.

and

(d) adding immediately after subsection (1) the following subsection:

(2) This Act shall be read and applied in a manner consistent with Canada’s accepted obligations under the United Nations Convention on the Rights of Persons with Disabilities.

2 Section 3 of Chapter 42, as amended by Chapter 8 of the Acts of 2008 and Chapter 32 of the Acts of 2014, is further amended by adding immediately after clause (e) the following clause:

(ea) “clear days” does not include a Saturday or a holiday as defined in the *Interpretation Act*;

3 Section 8 of Chapter 42 is amended by

- (a) striking out “is of the opinion” in the second line and substituting “has reasonable and probable grounds to believe”; and**
- (b) striking out “is likely to” in the first and second lines of subclause (a)(ii) and substituting “will”.**

4 Subsection 10(2) of Chapter 42 is amended by

(a) striking out “medical certificate” in the first line and substituting “certificate for involuntary psychiatric assessment”; and

(b) adding “the physician determines” immediately after “where” the first time it appears in the third line.

5 Subclause 13(4)(c)(iii) of Chapter 42 is amended by striking out “is likely to” in the first line and substituting “will”.

6 Subclause 14(d)(ii) of Chapter 42 is amended by striking out “is likely to” in the first line and substituting “will”.

7 Subsection 15(1) of Chapter 42 is amended by adding “, or such shorter period of time as may be prescribed by the regulations,” immediately after “hours” in the third line.

8 Subsection 16(2) of Chapter 42 is amended by striking out “The” in the first line and substituting “Subject to the regulations, the”.

9 Section 17 of Chapter 42 is amended by

(a) striking out “is of the opinion” in the second line and substituting “has reasonable and probable grounds to believe”; and

(b) striking out “is likely to” in the first line of subclause (c)(ii) and substituting “will”.

10 Section 18 of Chapter 42 is repealed and the following Section substituted:

18 (1) In determining a patient’s capacity to make admission and treatment decisions pursuant to clause 17(e), the psychiatrist shall assess whether the patient has the ability, with or without support, to

(a) understand information relevant to making a decision; and

(b) appreciate the reasonably foreseeable consequences of making or not making a decision including, for greater certainty, the reasonably foreseeable consequences of the decision to be made.

(2) In determining a patient’s capacity to make a treatment decision pursuant to clause 17(e), the psychiatrist shall assess whether the patient has the ability, with or without support, to

(a) understand the nature of the condition for which the specific treatment is proposed;

(b) understand the nature and purpose of the specific treatment;

(c) appreciate the risks and benefits involved in undergoing the specific treatment; and

(d) appreciate the risks and benefits involved in not undergoing the specific treatment.

(3) In determining a patient's capacity to make a treatment decision, the psychiatrist shall also consider whether the patient's mental disorder affects the patient's ability to appreciate the consequences of making the treatment decision.

11 Chapter 42 is further amended by adding immediately after Section 20 the following Section:

20A (1) Not later than thirty days after the issuance of a declaration of involuntary admission, a psychiatrist shall complete a written, individualized treatment plan for the patient.

(2) A treatment plan must

- (a) set out a plan of treatment for the patient;
- (b) include any conditions relating to the treatment or care and supervision of the patient; and
- (c) be in accordance with any other requirement prescribed by the regulations.

(3) The chief executive officer shall ensure that the patient and the patient's substitute decision-maker are promptly provided with a copy of the treatment plan.

12 Section 22 of Chapter 42 is amended by

(a) striking out "one month" in the first line of clause (a) and substituting "thirty days";

(b) striking out "one additional month" in the first line of subclause (b)(i) and substituting "thirty additional days";

(c) striking out "two additional months" in the first line of subclause (b)(ii) and substituting "sixty additional days";

(d) striking out "three additional months" in the first line of subclause (b)(iii) and substituting "ninety additional days"; and

(e) striking out "three additional months" in the first line of subclause (b)(iv) and substituting "ninety additional days".

13 Section 26 of Chapter 42 is repealed and the following Section substituted:

26 (1) Where a declaration of involuntary admission or a declaration of renewal is filed, the chief executive officer shall promptly inform the patient and the patient's substitute decision-maker in writing, in language that the patient is likely to best understand,

(a) that the patient has been admitted or continued as an involuntary patient or had the patient's status changed to that of an involuntary patient, as the case may be, of the psychiatric facility and the reason or reasons for the admission, renewal or change of status;

(b) the function of the Review Board;

- (c) that the patient has the right to apply to the Review Board for a review of the patient's status and the cancellation of the declaration;
 - (d) how the patient may make an application to the Review Board;
 - (e) the patient's right to retain and instruct legal counsel without delay;
 - (f) the steps the patient may follow to obtain free legal counsel;
 - (g) the function of the patient-advisor service; and
 - (h) the patient's right to obtain free and timely access to the patient's medical records under the *Personal Health Information Act* and this Act, and the steps the patient may follow in order to do so.
- (2) Where a declaration of involuntary admission or a declaration of renewal is filed, the chief executive officer shall promptly
- (a) deliver a copy of the declaration to the patient and the patient's substitute decision-maker;
 - (b) consult with the patient to determine whether the patient wishes to be contacted by the patient-advisor service, and shall, where the patient wishes to be contacted by the patient-advisor service, notify the patient-advisor service; and
 - (c) consult with the patient to determine whether the patient wishes to consult legal counsel, and shall, if the patient wishes to consult legal counsel, assist the patient in contacting legal counsel.

14 Subsection 27(2) of Chapter 42 is amended by striking out "twelve months" in the third line of clause (b) and substituting "one year".

15 Subsection 36(1) of Chapter 42 is amended by

- (a) striking out "a request" in the first line and substituting "an application";**
- (b) striking out "clause 26(b)" in the first line and substituting "Section 26";**
and
- (c) adding "the Review Board receives" immediately after "after" in the second line.**

16 Section 37 of Chapter 42 is amended by

- (a) adding "(1)" immediately after the Section number;**
- (b) striking out "sixth, twelfth, eighteenth and twenty-four month" in the first and second lines of clause (b) and substituting "one hundred and eightieth day, first year, first year and one hundred and eightieth day and second year";**
- (c) striking out "twenty-four months, every twelve months" in the second line of clause (c) and substituting "two years, every year"; and**

(d) adding immediately after subsection (1) the following subsection:

(2) Where an application is deemed to be made under subsection (1), the facility to which the patient has been admitted shall immediately notify the Review Board of the deemed application in writing.

17 (1) Subsection 38(1) of Chapter 42, as amended by Chapter 8 of the Acts of 2008, is further amended by adding “or representative” immediately after “guardian” in the first line of clause (b).

(2) Subsection 38(4) of Chapter 42, as amended by Chapter 8 of the Acts of 2008, is further amended by striking out “twelve-month” in the second line of clause (a) and substituting “one-year”.

18 Section 39 of Chapter 42 is repealed and the following Sections substituted:

39 (1) A substitute decision-maker shall, when making a decision in relation to psychiatric treatment and other related medical treatment,

(a) follow any clear and relevant instructions given by the patient while the patient had capacity, including instructions contained in the most recent personal directive made by the patient, unless

(i) the patient subsequently expressed a contrary wish while the patient still had capacity, or

(ii) the substitute decision-maker has reasonable and probable grounds to believe that following the patient’s instructions would endanger the physical or mental health or safety of the patient or another person;

(b) in the absence of the instructions referred to in clause (a), act in accordance with the patient’s current wishes unless the substitute decision-maker has reasonable and probable grounds to believe that to do so would endanger the physical or mental health or safety of the patient or another person;

(c) in the absence of the instructions referred to in clause (a) or the wishes referred to in clause (b), act in accordance with what the substitute decision-maker reasonably believes the wishes of the patient would be, based on what the substitute decision-maker knows of the values and beliefs of the patient; and

(d) in the absence of the instructions referred to in clause (a) or the wishes referred to in clause (b) and, where the substitute decision-maker is not able to determine in accordance with clause (c) what the wishes of the patient would be, act in the manner that the substitute decision-maker reasonably believes would best promote and protect the patient’s best interests.

(2) When the substitute decision-maker is attempting to ascertain the patient’s instructions, wishes, values and beliefs in order to make a decision, the substitute decision-maker shall

- (a) consult with the patient;
- (b) advise the patient of the options that are reasonably and practically available;
- (c) encourage and facilitate the patient's participation in decision-making; and
- (d) make reasonable efforts to consult with any persons who the substitute decision-maker has reason to believe may be familiar with the patient's instructions, wishes, values and beliefs.

(3) The substitute decision-maker shall ensure that the patient is informed of any significant decision, including a decision to give or refuse consent to treatment, made by the substitute decision-maker on the patient's behalf.

(4) Notwithstanding subsections (1) to (3), a substitute decision-maker may not give consent on behalf of an involuntary patient or a patient on a community treatment order to

- (a) any treatment prescribed in the regulations as one to which a substitute decision-maker may not give consent; or
- (b) any treatment prescribed in the regulations as one to which a substitute decision-maker may only give consent in certain circumstances or under certain conditions if the circumstances are not present or conditions are not satisfied.

39A Notwithstanding the *Personal Health Information Act*,

- (a) a substitute decision-maker may access, use and disclose personal health information about the patient; and
- (b) a custodian under the *Personal Health Information Act* shall disclose personal health information to the substitute decision-maker,

only to the extent the personal health information is relevant to a decision that the substitute decision-maker is required to make under this Act, and the access, use or disclosure is necessary for the purpose of making the decision.

19 Section 40 of Chapter 42 is amended by striking out “39(b)” in the second line and substituting “39(1)(d)”.

20 Subsection 42(1) of Chapter 42 is amended by striking out “requested to do so by” in the third line and substituting “upon application of”.

21 Subsection 43(1) of Chapter 42 is amended by striking out “six months” in the third line and substituting “one hundred eighty days”.

22 Subsection 44(2) of Chapter 42 is amended by striking out “one month” in the second line and substituting “thirty days”.

23 Subsection 46(2) of Chapter 42 is amended by striking out “one month” in the first and second lines and substituting “thirty days”.

24 (1) Section 47 of Chapter 42 is amended by adding immediately after subsection (1) the following subsection:

(1A) The purpose of a community treatment order is to provide a person who suffers from a serious mental disorder with a comprehensive plan of community-based treatment or care and supervision that is less restrictive than being detained in a psychiatric facility, in order to reduce or prevent a pattern whereby the person is admitted to a psychiatric facility where the person's condition may be stabilized, but after being released from the facility, the person's condition changes such that the person must be re-admitted to a psychiatric facility.

(2) Subsection 47(3) of Chapter 42 is amended by

(a) striking out “is of the opinion” in the sixth line of clause (a) and substituting “has reasonable and probable grounds to believe”;

(b) striking out “is likely to” in the first line of paragraph (a)(ii)(B) and substituting “will”; and

(c) striking out “full” in the second line of subclause (a)(iii).

(3) Subsection 47(5) of Chapter 42 is repealed and the following subsections substituted:

(5) Where a community treatment order has been issued or renewed, the psychiatrist who issued or renewed the order shall ensure that the patient and the patient's substitute decision-maker are promptly informed in writing, in language that the patient is likely to best understand,

(a) that the patient has been made subject to the community treatment order or that the order has been renewed, and the reason or reasons for the order;

(b) the function of the Review Board;

(c) that the patient has the right to apply to the Review Board for a review of the patient's status and the cancellation of the order;

(d) how the patient may make an application to the Review Board;

(e) the patient's right to retain and instruct legal counsel without delay;

(f) the steps the patient may follow to obtain free legal counsel;

(g) the function of the patient-advisor service; and

(h) the patient's right to obtain free and timely access to the patient's medical records under the *Personal Health Information Act* and this Act, and the steps the patient may follow in order to do so.

(6) Where a community treatment order is issued or renewed, the psychiatrist who issued or renewed the order shall promptly

(a) deliver a copy of the order to the patient, the patient's substitute decision-maker, the chief executive officer, and any other health

practitioner or other person who has obligations under the community treatment plan;

(b) consult with the patient to determine if the patient wishes to be contacted by the patient-advisor service, and shall, where the patient wishes to be contacted by the patient-advisor service, notify the patient-advisor service;

(c) consult with the patient to determine if the patient wishes to consult legal counsel, and shall, where the patient wishes to consult legal counsel, assist the patient in contacting legal counsel.

(7) For greater certainty, the issuance of a community treatment order terminates any existing declaration of involuntary admission respecting the person named in the community treatment order.

25 Section 51 of Chapter 42 is amended by striking out “six months” in the first line and substituting “one hundred eighty days”.

26 Subsection 52(1) of Chapter 42 is repealed and the following subsection substituted:

(1) A community treatment order may be renewed by a psychiatrist for a period of one hundred eighty days at any time before its expiry if

(a) the community treatment order has demonstrated efficacy;

(b) the criteria listed in clause 47(3)(a) continue to exist; and

(c) the substitute decision-maker of the person named in the community treatment order has consented to the renewal.

27 Subsection 55(2) of Chapter 42 is amended by striking out “three months” in the second line and substituting “ninety days”.

28 Section 56 of Chapter 42 is amended by adding immediately after subsection (3) the following subsection:

(4) A community treatment order issued under clause (3)(b) is deemed to be a renewal of the community treatment order referred to in subsection (1).

29 (1) Subsection 58(3) of Chapter 42 is amended by striking out “month” in the fourth line and substituting “thirty days”.

(2) Section 58 of Chapter 42 is further amended by adding immediately after subsection (3) the following subsection:

(4) A psychiatrist who issues or renews a community treatment order or a psychiatrist appointed under subsection 53(2) shall notify the Review Board in writing immediately upon a deemed application being made pursuant to subsection (3).

30 Subsection 61(2) of Chapter 42 is amended by

- (a) adding “and” at the end of clause (g); and**
- (b) striking out clause (h).**

31 (1) Section 65 of Chapter 42 is amended by adding immediately after subsection (3) the following subsection:

(3A) A member of the Review Board whose term of office expires continues to hold office until the member is re-appointed, a successor is appointed or the appointment of the member is revoked.

(2) Section 65 of Chapter 42 is further amended by adding immediately after subsection (4) the following subsection:

(4A) A member of the Review Board may resign the member’s appointment by providing notice in writing to the Chair of the Review Board.

(3) Section 65 of Chapter 42 is further amended by adding immediately after subsection (5) the following subsections:

(6) The Governor in Council may designate one of the members of the Review Board appointed under clause (2)(b) as the Vice-chair of the Review Board.

(7) The Vice-chair of the Review Board may act as Chair of the Review Board if the Chair is unable to act or has ceased to hold office for any reason.

32 (1) Subsection 68(1) of Chapter 42 is amended by

- (a) adding “and subsection 58(3)” immediately after “37” in the second line;**
- (b) striking out “or” at the end of clause (d); and**
- (c) striking out clause (e) and substituting the following clauses:**
 - (e) a certificate of leave or a certificate of cancellation of leave;**
 - or**
 - (f) the status of a substitute decision-maker referred to in clauses 38(1)(c) to (g).**

(2) Subsection 68(3) of Chapter 42 is amended by

- (a) striking out “request” in the second line and substituting “application”; and**
- (b) by striking out “three months” in the second and third lines and substituting “ninety days”.**

(3) Subsection 68(4) of Chapter 42 is amended by

(a) striking out “A request” in the first line and substituting “An application”; and

(b) adding “or representative” immediately after “guardian” in the first line of clause (c).

(4) Section 68 of Chapter 42 is further amended by adding immediately after subsection (5) the following subsections:

(6) Notwithstanding subsection (1), the Review Board may adjourn or discontinue an application other than a deemed application provided for by Section 37 or subsection 58(3) if the applicant refuses to participate in the proceeding or has expressly or impliedly abandoned the application.

(7) As soon as possible after an application or deemed application is made, and prior to any hearing by the Review Board, the patient, the patient’s legal counsel and any person appointed under subsection 71(2) must be given access to all personal health information about the patient that is relevant to the application, except for personal health information that the facility is entitled to refuse pursuant to Section 72 of the *Personal Health Information Act*.

33 (1) Subsection 69(1) of Chapter 42 is amended by striking out “The” in the first line and substituting “Subject to the regulations, the”.

(2) Subsection 69(2) of Chapter 42 is amended by

(a) adding “by the Review Board” immediately after “received” in the second line; and

(b) striking out “calendar” in the second line.

(3) Section 69 of Chapter 42 is further amended by adding immediately after subsection (2) the following subsections:

(2A) For the purpose of subsection (2), the Review Board is deemed to have received an application when the application is delivered by a patient to the facility to which the patient has been admitted.

(2B) When a facility receives an application from a patient, the facility shall immediately forward the application to the Review Board.

34 Chapter 42 is further amended by adding immediately after Section 69 the following Section:

69A Subject to subsection 69(1) and the regulations, the Review Board may hold hearings by means of synchronous telecommunication, video-conferencing or other electronic medium.

35 Subsection 70(1) of Chapter 42 is repealed.

36 Subsection 71(2) of Chapter 42 is repealed and the following subsection substituted:

(2) Subject to the regulations, where the patient is unable or unwilling to attend a hearing before the Review Board, or where the Review Board determines that the patient is not capable of effectively representing the patient's interests in a hearing before the Review Board, and the patient has not appointed someone to act on the patient's behalf, the Review Board shall appoint a person to attend the hearing and act on behalf of the patient, or represent the patient's interests, and where necessary, to instruct legal counsel for that purpose, subject to such conditions as the Review Board may require.

37 Section 74 of Chapter 42 is amended by adding immediately after subsection (2) the following subsection:

(3) Provided that no party is prejudiced thereby, the Review Board may disregard trivial, minor or insubstantial errors in forms or other documents.

38 (1) Subsection 76(1) of Chapter 42 is amended by

(a) striking out "ten" in the first line and substituting "six clear"; and

(b) striking out "person requesting the review" in the first line of clause (a) and substituting "applicant".

(2) Subsection 76(2) of Chapter 42 is amended by

(a) striking out clause (a) and substituting the following clause:

(a) where an application is made to review a declaration of involuntary admission or a declaration of renewal, or to cancel a declaration of involuntary admission or a declaration of renewal, the Review Board may, or may refuse to,

(i) cancel the declaration and change the patient's status to that of a voluntary patient; or

(ii) where the Review Board is satisfied that the criteria set out in clause 47(3)(a) exist, require the chief executive officer to cause the issuance of a community treatment order in accordance with clauses 47(3)(d), (e), (f), (h) and (i) and subsections 47(5) and (6), within a reasonable time, and a community treatment order issued pursuant to this subclause is deemed to be a community treatment order made under Section 47 for all purposes under this Act;

and

(b) striking out clause (c) and substituting the following clause:

(c) where the application is to review whether a substitute decision-maker made a capable informed consent, or the status of a substitute decision-maker referred to in clauses 38(1)(c) to (g), the Review

Board may appoint another person to be the patient's substitute decision-maker or may refuse to do so;

39 Subsection 83(1) of Chapter 42 is amended by

(a) adding immediately after clause (c) the following clauses:

- (ca) prescribing periods of time for the purpose of subsection 15(1);
- (cb) respecting circumstances during a medical examination under Section 16 in which a peace officer or other authorized individual is required or not required to remain at the place of a medical examination or retain custody of the person examined;
- (cc) respecting requirements for treatment plans made under Section 20A;
- (cd) prescribing treatments to which a substitute decision-maker may not give consent for the purpose of clause 39(4)(a);
- (ce) prescribing treatments to which a substitute decision-maker may give consent only in certain circumstances or under certain conditions for the purpose of clause 39(4)(b);
- (cf) establishing the circumstances and conditions under which a substitute decision-maker may give consent to a treatment prescribed under clause (ce);

and

(b) adding immediately after clause (g) the following clauses:

- (ga) prescribing types of hearings and circumstances in which a full oral hearing may not be required;
- (gb) prescribing procedures, conditions and requirements for hearings which are not full oral hearings;
- (gc) respecting the circumstances or conditions under which hearings may be held by means of synchronous telecommunication, video-conferencing or other electronic medium;
- (gd) respecting rules, conditions or requirements for hearings held by means of synchronous telecommunication, video-conferencing or other electronic medium;
- (ge) respecting the circumstances or conditions under which examinations and assessments may be held by means of synchronous telecommunication, video-conferencing or other electronic medium;
- (gf) respecting standards and conditions for examinations and assessments held by means of synchronous telecommunication, video-conferencing or other electronic medium;
- (gg) respecting the appointment of a person to attend a hearing and act on behalf of a patient, or represent the patient's interests under subsection 71(2);
- (gh) prescribing standards and conditions for the assessment of a person's capacity to make decisions for purposes of this Act;

40 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
