Involuntary Psychiatric Treatment Act

CHAPTER 42 OF THE ACTS OF 2005

as amended by

2008, c. 8, ss. 38, 39; 2010, c. 41, s. 114;
2014, c. 32, ss. 135, 136; 2022, c. 17

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An Act Respecting Involuntary Psychiatric Treatment

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Short title

1 This Act may be cited as the *Involuntary Psychiatric Treatment Act*.
2005, c. 42, s. 1.

Purpose of Act

2 **(1)** The purpose of this Act is to ensure that issues dealing with mental health, including the interpretation and administration of this Act, are dealt with in accordance with the following guiding principles:

(a) persons of all ages with mental disorders are entitled to be treated with dignity and respect;

(b) each person has the right to make treatment decisions to the extent of the person's capacity to do so;

(c) treatment and related services are to be offered in the least-restrictive manner and environment with the goal of having the person continue to live in the community or return to the person's home surroundings at the earliest possible time;

(d) the primary mode of admission to a psychiatric facility shall be as a voluntary patient wherever possible;

(e) treatment and related services, where possible, should promote the person's self-determination and self-reliance;

(f) the person has the right to a treatment plan that maximizes the person's potential and is based on the principles of evidence-based best practice;

(g) persons with mental disorders should have access to mental health services as close to the person's home as practicable;

(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.

(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. 2005, c. 42, s. 2; 2022, c. 17, s. 1.

Interpretation

3 In this Act,

(a) "attending psychiatrist" means the physician who is responsible for the examination, care and treatment of a patient in a psychiatric facility;

(b) "certificate for involuntary psychiatric assessment" means the certificate granted pursuant to Section 8;

(c) "certificate of cancellation of leave" means the certificate granted pursuant to Section 44;

(d) "certificate of leave" means the certificate granted pursuant to subsection 43(1);

(e) "chief executive officer" means the person who is responsible for the administration and management of a health authority, as defined by the *Health Authorities Act*, or a person designated in writing by such responsible person;

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

(f) "common-law partner" of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least one year;

(g) "community treatment order" means a community treatment order granted pursuant to Section 47;

(h) "declaration of change of status" means a declaration granted pursuant to Section 24;

(i) "declaration of competency" means a declaration of competency pursuant to subsection 53(3) of the *Hospitals Act*;

(j) "declaration of involuntary admission" means a declaration granted pursuant to Section 17;

(k) "declaration of renewal" means a declaration renewing a patient's involuntary admission pursuant to Section 21;

(l) "hospital" means a hospital pursuant to the *Hospitals Act*;

(m) "involuntary patient" means a patient who is admitted to a psychiatric facility pursuant to a declaration of involuntary admission;

(n) "involuntary psychiatric assessment" means an assessment of a person's mental condition by a psychiatrist for the purpose of determining whether the person should be admitted as an involuntary patient pursuant to Section 17;

(o) "judge" means a judge of the Supreme Court of Nova Scotia (Family Division) or, in an area of the Province where there is no Supreme Court (Family Division), a judge of the Family Court;

(p) "medical examination" means an assessment of a person's mental condition by a physician pursuant to Section 8;

(q) "mental disorder" means a substantial disorder of behaviour, thought, mood, perception, orientation or memory that severely impairs judgement, behaviour, capacity to recognize reality or the ability to meet the ordinary demands of life, in respect of which psychiatric treatment is advisable;

(r) "Minister" means the Minister of Addictions and Mental Health;

(s) "panel" means a panel of the Review Board;

(t) "patient advisor" means a representative or member of the staff of the patient advisor service;

(u) "patient-advisor service" means the service or organization designated by the regulations as the patient-advisor service;

(v) "physician" means a physician licensed pursuant to the *Medical Act*;

(w) "psychiatric facility" means a hospital or part of a hospital designated by the regulations for the examination, care and treatment of a person with a mental disorder;

(x) "psychiatrist" means a physician

(i) who holds a specialist's certificate in psychiatry issued by the Royal College of Physicians and Surgeons of Canada, or

(ii) whose combination of training and experience in psychiatry is satisfactory to the Nova Scotia College of Physicians and Surgeons and who has been approved by the College as a psychiatrist for the purpose of this Act;

(y) "Review Board" means the Review Board established under Section 65;

(ya) "spouse" means, with respect to any person, a person who is cohabiting with that person in a conjugal relationship as married spouse, registered domestic partner or common-law partner;

(z) "substitute decision-maker" means a person who is given the authority to make care or treatment decisions on behalf of an involuntary patient;

(aa) "voluntary patient" means a person who remains in a psychiatric facility with that person's consent or the consent of a substitute decision-maker. 2005, c. 42, s. 3; 2008, c. 8, s. 38; 2014, c. 32, s. 135; O.I.C. 2021-279; 2022, c. 17, s. 2.

VOLUNTARY ADMISSION

Voluntary patient

4 A psychiatrist who has examined a person and who has assessed the person's mental condition may admit the person as a voluntary patient of a psychiatric facility if the psychiatrist is of the opinion that the person would benefit from an in-patient admission. 2005, c. 42, s. 4.

Assessments of capability to consent

5 Any assessments of the capability of a voluntary patient to consent to treatment or the appointment of a substitute decision-maker shall be carried out pursuant to the relevant provisions of the *Hospitals Act*. 2005, c. 42, s. 5.

Voluntary patient may consent

6 Subject to Section 7, a voluntary patient who is capable of consenting to admission or discharge from a psychiatric facility may do so or a substitute decision-maker may do so on behalf of the patient. 2005, c. 42, s. 6.

Detention of voluntary patient

7 **(1)** A member of the treatment staff of a psychiatric facility may detain and, where necessary, restrain a voluntary patient requesting to be discharged if the staff member believes on reasonable grounds that the patient

(a) has a mental disorder;

(b) because of the mental disorder, is likely to cause serious harm to himself or herself or to another person or to suffer serious mental or physical deterioration if the patient leaves the psychiatric facility; and

(c) needs to have a medical examination conducted by a physician.

(2) A patient who is detained under subsection (1) must be examined by a physician within three hours. 2005, c. 42, s. 7.

MEDICAL EXAMINATION AND INVOLUNTARY PSYCHIATRIC ASSESSMENT

Certificate for involuntary assessment

8 Where a physician has completed a medical examination of a person and has reasonable and probable grounds to believe that the person apparently has a mental disorder and that

(a) the person, as a result of the mental disorder,

(i) is threatening or attempting to cause serious harm to himself or herself or has recently done so, has recently caused serious harm to himself or herself, is seriously harming or is threatening serious harm towards another person or has recently done so, or

(ii) as the result of the mental disorder, the person will suffer serious physical impairment or serious mental deterioration, or both; and

(b) the person would benefit from psychiatric inpatient treatment in a psychiatric facility and is not suitable for inpatient admission as a voluntary patient,

the physician may complete a certificate for involuntary psychiatric assessment for the person. 2005, c. 42, s. 8; 2022, c. 17, s. 3.

Form and contents of certificate

9 **(1)** A certificate for involuntary psychiatric assessment must be in the form prescribed by the regulations and a physician who signs a certificate shall

(a) set out in the certificate

(i) that the physician has conducted a medical examination of the person who is the subject of the certificate within the previous seventy-two hours,

(ii) the date on which the physician examined the person, and

(iii) that the physician made careful inquiry into the facts relating to the case of the person while providing reasons to support the opinion that the person has a mental disorder and that the criteria in clauses 8(a) and (b) are fulfilled; and

(b) distinguish in the certificate between facts observed by the physician and facts communicated to the physician by any other person.

(2) The certificate for involuntary psychiatric assessment must be signed by the physician who examined the person.

(3) A certificate for involuntary psychiatric assessment is not effective unless the physician signs it within seventy-two hours after the medical examination. 2005, c. 42, s. 9.

Two certificates are sufficient authority

10 **(1)** Notwithstanding anything contained in this Act, two certificates for involuntary psychiatric assessment are sufficient authority for

(a) any peace officer to take the person into custody as soon as possible and to a suitable place for an involuntary psychiatric assessment as soon as possible;

(b) the person to be detained, restrained and observed in a psychiatric facility for not more than seventy-two hours; and

(c) a psychiatrist to conduct an involuntary psychiatric assessment.

(2) Notwithstanding subsection (1), one certificate for involuntary psychiatric assessment signed by a physician is sufficient authority for the purpose of clauses (1)(a), (b) and (c) where the physician determines compelling circumstances exist and where a second physician is not readily available to examine the person and execute a second certificate. 2005, c. 42, s. 10; 2022, c. 17, s. 4.

Certificate is prima facie evidence

11 Every medical certificate made and given under this Act is *prima facie* evidence of the facts therein appearing and that the judgment therein set out has been formed by the physician on such facts as if the matters therein appearing have been verified on oath. 2005, c. 42, s. 11.

Right to leave facility

12 Where, within seventy-two hours of detention pursuant to Section 10, the person has not been admitted to the psychiatric facility as an involuntary patient under Section 17 or as a voluntary patient under Section 4, the chief executive officer shall ensure that the person is promptly informed that the person has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act. 2005, c. 42, s. 12.

Judicial order for examination

13 (1) Any person may make a written statement under oath or affirmation before a judge requesting an order for the medical examination of another person by a physician and setting out the reasons for the request, and the judge shall receive the statement.

(2) A judge who receives a statement under subsection (1) shall consider the statement and, where the judge considers it not to be frivolous, vexatious or malicious, hear and consider, after appropriate notice has been given to both parties, the allegations of the person who made the statement and the evidence of any witnesses.

(3) A judge under subsection (2) may, where the judge considers it necessary under the circumstances, proceed with the hearing *ex parte*.

(4) The judge may issue an order for the medical examination of the other person if the judge has reasonable and probable grounds to believe that the other person

(a) has a mental disorder;

(b) will not consent to undergo a medical examination by a physician; and

(c) as a result of the mental disorder,

(i) is threatening or attempting to cause serious harm to self or has recently done so, or has recently caused serious harm to self,

(ii) is seriously harming or is threatening serious harm towards another person or has recently done so, or

(iii) will suffer serious physical impairment or serious mental deterioration, or both.

(5) An order under subsection (4) for the medical examination of a person by a physician shall direct

(a) a member of a police force named in the order; or

(b) an individual named in the order,

or both, to take the person named or described in the order into custody and take the person forthwith to a place where the person may be detained for the medical examination.

(6) An order under subsection (4) is valid for a period of seven days from and including the day that it is made. 2005, c. 42, s. 13; 2022, c. 17, s. 5.

Powers of peace officer

14 A peace officer may take a person into custody and take the person forthwith to a place for a medical examination by a physician if the peace officer has reasonable and probable grounds to believe that

(a) the person apparently has a mental disorder;

(b) the person will not consent to undergo medical examination;

(c) it is not feasible in the circumstances to make application to a judge for an order for a medical examination pursuant to Section 13; and

(d) the person,

(i) as a result of the mental disorder, is threatening or attempting to cause serious harm to himself or herself or has recently done so, has recently caused serious harm to himself or herself, is seriously harming or is threatening serious harm towards another person or has recently done so,

(ii) as a result of the mental disorder, will suffer serious physical impairment or serious mental deterioration, or both, or

(iii) is committing or about to commit a criminal offence. 2005, c. 42, s. 14; 2022, c. 17, s. 6.

Detention for twenty-four hours

15 (1) Where a person is taken in custody for a medical examination pursuant to Sections 13 or 14, the person may be detained for up to twenty-four hours, or such shorter period of time as may be prescribed by the regulations, in an appropriate place in order for a medical examination to take place.

(2) For the purpose of subsection (1), an appropriate place where a person may be detained means a hospital, the office of a physician or another suitable place for a medical examination, but does not include a jail or lock-up unless no other suitable place is available. 2005, c 42, s. 15; 2022, c. 17, s. 7.

Medical examination

16 (1) A peace officer or other authorized individual who takes a person into custody for a medical examination shall convey the person by the least intrusive means possible without compromising the safety of the person.

(2) Subject to the regulations, the peace officer or other authorized individual shall remain at the place of the medical examination and shall retain custody of the person until the medical examination is completed.

(3) Where a person is taken for a medical examination and it is decided not to recommend involuntary psychiatric assessment of the person, the peace officer or other authorized individual shall arrange and pay for the return of the person to the place where the person was taken into custody or, at the person's request, to some other appropriate place. 2005, c. 42, s. 16; 2022, c. 17, s. 8.

INVOLUNTARY ADMISSION

Admission as involuntary patient

17 Where a psychiatrist has conducted an involuntary psychiatric assessment and has reasonable and probable grounds to believe that

(a) the person has a mental disorder;

(b) the person is in need of the psychiatric treatment provided in a psychiatric facility;

(c) the person, as a result of the mental disorder,

(i) is threatening or attempting to cause serious harm to himself or herself or has recently done so, has recently caused serious harm to himself or herself, is seriously harming or is threatening serious harm towards another person or has recently done so, or

(ii) will suffer serious physical impairment or serious mental deterioration, or both;

(d) the person requires psychiatric treatment in a psychiatric facility and is not suitable for inpatient admission as a voluntary patient; and

(e) as a result of the mental disorder, the person does not have the capacity to make admission and treatment decisions,

the psychiatrist may admit the person as an involuntary patient by completing and filing with the chief executive officer a declaration of involuntary admission in the form prescribed by the regulations. 2005, c. 42, s. 17; 2022, c. 17, s. 9.

Capacity to make admission and treatment decisions

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. 2022, c. 17, s. 10.

Contents of declaration

19 A psychiatrist who signs the declaration of involuntary admission shall

(a) set out in the declaration

(i) that the psychiatrist personally examined the person who is the subject of the declaration,

(ii) the date or dates on which the psychiatrist examined the person, and

(iii) the reasons to support the psychiatrist's opinion that

(A) the person has a mental disorder, and

(B) the criteria in clauses 17(a) to (e) are fulfilled;[;]

(b) distinguish in the declaration between facts observed by the psychiatrist and facts communicated to the psychiatrist by any other person; and

(c) indicate to which psychiatric facility the person is to be admitted. 2005, c. 42, s. 19.

Psychiatric facility to admit

20 Notwithstanding Section 19, a person in respect of whom a declaration of involuntary admission has been executed shall be admitted to the psychiatric facility to which the person is taken. 2005, c. 42, s. 20.

Treatment plan

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. 2022, c. 17, s. 11.

Declaration of renewal

21 (1) Before the expiry of a declaration of involuntary admission, the attending psychiatrist shall examine the patient and assess the patient's mental condition and may renew the patient's status as an involuntary patient by complet-

ing and filing with the chief executive officer a declaration of renewal in the form prescribed by the regulations, if the prerequisites for admission as an involuntary patient as set out in Section 17 are met.

(2) Where the attending psychiatrist does not renew the patient's status as an involuntary patient, the psychiatrist shall promptly inform the patient that the patient has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act.

(3) Section 19 applies *mutatis mutandis* in respect of a declaration of renewal.

(4) Subsection (1) applies *mutatis mutandis* with respect to the expiry of a declaration of renewal. 2005, c. 42, s. 21.

Time limitations

22 An involuntary patient may be detained, observed and examined in a psychiatric facility

(a) for not more than thirty days under a declaration of involuntary admission; and

(b) for not more than

(i) thirty additional days under a declaration of renewal,

(ii) sixty additional days under a second declaration of renewal,

(iii) ninety additional days under a third declaration of renewal, and

(iv) ninety additional days for any subsequent declarations of renewal. 2005, c. 42, s. 22; 2022, c. 17, s. 12.

Examination of declarations

23 (1) Immediately after the filing of a declaration of involuntary admission or a declaration of renewal, the chief executive officer shall examine the declaration to ascertain whether or not the declaration has been completed in accordance with this Act.

(2) Where, in the opinion of the chief executive officer, the declaration has not been completed in accordance with this Act before the expiry of the period of detention authorized by this Act, the chief executive officer shall ensure that the attending psychiatrist is so informed. 2005, c. 42, s. 23.

Change to voluntary status

24 (1) An involuntary patient

(a) who does not continue to meet the requirements of clauses 17(a) to (e); or

(b) whose authorized period of detention has expired,

shall be changed to the status of a voluntary patient, subject to any detention that is lawfully authorized otherwise than under this Act.

(2) An attending psychiatrist may change the status of an involuntary patient to that of a voluntary patient by completing and filing with the chief executive officer a declaration of change of status.

(3) Where a patient's status is changed to that of a voluntary patient, the chief executive officer shall ensure that the patient is promptly informed that the patient is a voluntary patient and has the right to leave the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act. 2005, c. 42, s. 24.

Change to involuntary status

25 After examining a voluntary patient and assessing the patient's mental condition, the attending psychiatrist may change the status of the patient to that of an involuntary patient by completing and filing with the chief executive officer a declaration of involuntary admission if the prerequisites for admission as an involuntary patient set out in Section 17 are met. 2005, c. 42, s. 25.

Duty to inform patient

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. 2022, c. 17, s. 13.

Admission under warrant or order

27 (1) A psychiatric facility shall admit as a patient any person named in a warrant or order purporting to be made under an Act of the Parliament of Canada or of the Province.

(2) The psychiatric facility shall

(a) notify the Attorney General forthwith upon the admission of a person pursuant to this Section;

(b) report to the Attorney General immediately upon the recovery of such person and, in any event, at intervals of not more than one year on the condition and progress of all persons detained in the psychiatric facility, including progress of all persons detained in the psychiatric facility pursuant to this Section; and

(c) make any report required by the terms of the committing order or warrant.

(3) The provisions of this Act respecting discharge or transfer of patients do not apply to patients admitted pursuant to this Section if the terms of the committing order or warrant conflict with those provisions. 2005, c. 42, s. 27; 2022, c. 17, s. 14.

Admission pursuant to other laws

28 (1) In addition to the circumstances outlined in Section 27, a person may be admitted to a psychiatric facility pursuant to an Act of the Parliament of Canada or of the Province.

(2) A person admitted to a psychiatric facility pursuant to subsection (1) shall be admitted to the psychiatric facility, detained there and discharged from there in accordance with the appropriate legislation governing that person or any regulations, orders in council, orders of a court or warrants made pursuant to such legislation. 2005, c. 42, s. 28.

Transfer of involuntary patient

29 Where the chief executive officer believes that it is in the best interests of an involuntary patient to be treated in a psychiatric facility other than the psychiatric facility the patient is currently in, the chief executive officer may transfer the involuntary patient upon the agreement of the chief executive officer of that psychiatric facility. 2005, c. 42, s. 29.

Transfer for hospital treatment

30 When an involuntary patient requires hospital treatment that cannot be provided in a psychiatric facility, the chief executive officer may transfer the patient to a hospital for treatment and return the patient to the psychiatric facility on the conclusion of the treatment. 2005, c 42, s. 30.

Transfer from other jurisdiction

31 A psychiatric facility may admit on transfer a patient who is in a psychiatric facility in another jurisdiction or in a hospital under the jurisdiction of the Government of Canada and may detain such person for the purpose of an involuntary psychiatric assessment. 2005, c. 42, s. 31.

Transfer to other jurisdiction

32 When it appears to the Minister that

(a) an involuntary patient has come or been brought into the Province and the patient's care and treatment is the responsibility of another jurisdiction; or

(b) it would be in the best interests of an involuntary patient to be cared for in another jurisdiction,

the Minister may, having complied with the laws of the other jurisdiction, transfer the involuntary patient to the other jurisdiction. 2005, c. 42, s. 32.

Certificate remains in force on transfer

33 When an involuntary patient is transferred pursuant to Section 29 or 30, the authority conferred by any certificates relating to the patient continues in force in the psychiatric facility or hospital to which the patient is transferred. 2005, c. 42, s. 33.

Authority to treat transferred patient

34 Where a patient in a psychiatric facility is transferred to another psychiatric facility or hospital, the psychiatric facility or hospital receiving the patient has the same authority to detain or treat the patient as the psychiatric facility from which the patient was transferred had. 2005, c. 42, s. 34.

Notification and transfer of records

35 (1) When a psychiatric facility transfers a patient pursuant to Section 29, 30 or 32, the psychiatric facility shall immediately notify the patient's substitute decision-maker.

(2) On the transfer of the patient referred to in subsection (1), the psychiatric facility transferring the patient shall forward to the new psychiatric facility or hospital to which the patient is transferred a copy of all relevant documents and information pertaining to the patient. 2005, c. 42, s. 35.

Review by Review Board

36 (1) Upon receiving an application for review pursuant to Section 26, the Review Board shall, as soon as possible, but no later than twenty-one days after the Review Board receives the request, review a patient's status to determine

whether the prerequisites for admission as an involuntary patient as set out in Section 17

(a) were met when the declaration of involuntary admission or the declaration of renewal, as the case may be, was filed in respect of the patient; and

(b) continue to be met at the time of the hearing of the application.

(2) The Review Board may, by order, confirm the patient's status as an involuntary patient if the Review Board determines that the prerequisites for admission as an involuntary patient set out in Section 17

(a) were met when the declaration of involuntary admission or the declaration of renewal was filed and continued to be met at the time of the hearing of the application; or

(b) were not met when the declaration of involuntary admission or the declaration of renewal was filed but were met at the time of the hearing of the application.

(3) The Review Board shall, by order, rescind the declaration of involuntary admission or the declaration of renewal if the Review Board determines that the prerequisites for admission as an involuntary patient set out in Section 17

(a) were not met when the declaration of involuntary admission or the declaration of renewal was filed and were not met at the time of the hearing of the application; or

(b) were met when the declaration of involuntary admission or the declaration of renewal was filed but did not continue to be met at the time of the hearing of the application.

(4) An order of the Review Board confirming or rescinding a declaration of involuntary admission or a declaration of renewal applies to the declaration of involuntary admission or the declaration of renewal in force immediately before the making of the order. 2005, c. 42, s. 36; 2022, c. 17, s. 15.

Periodic reviews

37 (1) The Review Board shall review the file of each person detained under a declaration of involuntary admission and the patient is deemed to have made an application to the Review Board

(a) sixty days from the date of the initial declaration of involuntary admission;

(b) at the end of the one hundred and eightieth day, first year, first year and one hundred and eightieth day and second year stage from the date of the initial declaration of involuntary admission; and

(c) where a declaration of involuntary admission is still necessary after two years, every year thereafter.

(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. 2005, c. 42, s. 37; 2022, c. 17, s. 16.

SUBSTITUTE DECISION-MAKERS

Who may give or refuse consent

38 (1) For the purpose of this Act, consent may be given or refused on behalf of an involuntary patient or a patient on a community treatment order by a substitute decision-maker who has capacity and is willing to make the decision to give or refuse the consent from the following in descending order:

(a) a person who has been authorized to give consent under the *Medical Consent Act* or a delegate authorized under the *Personal Directives Act*;

(b) the patient's guardian or representative appointed by a court of competent jurisdiction;

(c) the spouse of the patient;

(d) an adult child of the patient;

(e) a parent of the patient;

(f) a person who stands in *loco parentis* to the patient;

(fa) an adult sibling of the patient;

(fb) a grandparent of the patient;

(fc) an adult grandchild of the patient;

(fd) an adult aunt or uncle of the patient;

(fe) an adult niece or nephew of the patient;

(g) any other adult next of kin of the patient; or

(h) the Public Trustee.

(2) Where a person in a category in subsection (1) fulfils the criteria for a substitute decision-maker as set out in subsection (4) but refuses consent on the patient's behalf, the consent of a person in a subsequent category is not valid.

(3) Where two or more persons who are not described in the same clause of subsection (1) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.

(4) A person referred to in clauses ~~1(c)~~[(1)(c)] to (g) shall not exercise the authority given by that subsection unless the person

(a) excepting a spouse, has been in personal contact with the patient over the preceding one-year period or has been granted a court order to shorten or waive the ~~twelve-month~~ [one-year] period;

(b) is willing to assume the responsibility for consenting or refusing consent;

(c) knows of no person of a higher category who is able and willing to make the decision; and

(d) makes a statement in writing certifying the person's relationship to the patient and the facts and beliefs set out in clauses (a) to (c).

(5) The psychiatrist is responsible for obtaining consent from the appropriate person referred to in subsection (1). 2005, c. 42, s. 38; 2008, c. 8, s. 39; 2022, c. 17, s. 17.

Basis for decision

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. 2022, c. 17, s. 18.

Right to information

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. 2022, c. 17, s. 18.

Determining best interest

40 In order to determine the best interest of the patient for the purpose of clause 39(1)(d), regard shall be had to whether

(a) the mental condition of the patient will be or is likely to be improved by the specified psychiatric treatment;

(b) the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;

(c) the anticipated benefit to the patient from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and

(d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c). 2005, c. 42, s. 40; 2022, c. 17, s. 19.

Reliance on statement

41 Whoever seeks a person's consent on a patient's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the patient and as to the facts and beliefs mentioned in clauses 38(4)(a) to (c), unless it is not reasonable to believe the statement. 2005, c. 42, s. 41

Review of treatment decisions

42 (1) Where a substitute decision-maker approves or refuses treatment on behalf of a person pursuant to subsection 38(1), the Review Board may review the provision or refusal of consent ~~when~~ upon application of the attending psychiatrist or the patient to determine whether the substitute decision-maker has rendered a capable informed consent.

(2) Where the Review Board finds that a substitute decision-maker has not rendered a capable informed consent, the next suitable decision-maker in the hierarchy in subsection 38(1) becomes the substitute decision-maker. 2005, c. 42, s. 42; 2022, c. 17, s. 20.

CERTIFICATE OF LEAVE

Issuance of certificate

43 (1) Notwithstanding any declaration of involuntary admission or declaration of renewal with respect to an involuntary patient, the psychiatrist of an involuntary patient may issue a certificate of leave for up to one hundred eighty days, in such form as prescribed by the regulations, allowing the patient to live outside the psychiatric facility subject to specific written conditions as may be specified in the certificate.

(2) A certificate of leave is not effective without the consent of the involuntary patient's substitute decision-maker.

(3) A patient for whom a certificate of leave is issued shall

(a) attend appointments with the psychiatrist or with any other health professional referred to in the certificate at the times and places scheduled from time to time; and

(b) comply with the psychiatric treatment described in the certificate.

(4) A psychiatrist who issues a certificate of leave shall give a copy of it to

(a) the patient;

(b) a substitute decision-maker who consented to the issuance of the certificate under subsection (1);

(c) the chief executive officer; and

(d) any other health professional involved in the treatment plan.

(5) The provisions of this Act respecting an involuntary patient continue to apply in respect of a patient who is subject to a certificate of leave.

(6) This Section does not authorize placing a patient on leave where the patient is subject to detention otherwise than under this Act. 2005, c. 42, s. 43; 2022, c. 17, s. 21.

Cancellation of leave

44 **(1)** The psychiatrist, by a certificate of cancellation of leave, may, without notice, cancel the certificate of leave for breach of a condition or if the psychiatrist is of the opinion that

(a) the patient's condition may present a danger to the patient or others; or

(b) the patient has failed to report as required by the certificate of leave.

(2) A certificate of cancellation of leave is sufficient authority for thirty days after it is signed for a peace officer to take the patient named in it into custody and to a psychiatric facility for an involuntary psychiatric assessment. 2005, c. 42, s. 44; 2022, c. 17, s. 22.

Review respecting breach of condition

45 **(1)** On application, the Review Board shall review the status of the patient to determine whether or not there has been a breach of a specific written condition of the certificate of leave.

(2) The Review Board, by order, may confirm or rescind the certificate of cancellation of leave. 2005, c. 42, s. 45.

Absence without leave

46 **(1)** Where an involuntary patient leaves a psychiatric facility when a certificate of leave has not been granted, a peace officer, or other person appointed by the chief executive officer, may apprehend, without warrant, the person named in the order and return that person to the facility.

(2) An involuntary patient who has not been returned within thirty days after the patient's absence has become known shall, unless subject to detention otherwise than under this Act, be deemed to have been discharged from the psychiatric facility.

(3) A person who is returned to a facility under this Section may be detained for the remainder of the declaration of involuntary admission to which the person was subject when the person's absence was discovered. 2005, c. 42, s. 46; 2022, c. 17, s. 23.

TREATMENT IN THE COMMUNITY

Community treatment order

47 **(1)** In this Section, "in the community" means outside of a psychiatric facility.

(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) A psychiatrist may issue a community treatment order respecting a person where the criteria in clause (3)(a) exist.

(3) A community treatment order must

(a) state that the psychiatrist has examined the person named in the community treatment order within the immediately preceding seventy-two hours and that, on the basis of the examination and any other pertinent facts regarding the person or the person's condition that have been communicated to the psychiatrist, the psychiatrist has reasonable and probable grounds to believe that

(i) the person has a mental disorder for which the person is in need of treatment or care and supervision in the community and the treatment and care can be provided in the community,

(ii) the person, as a result of the mental disorder,

(A) is threatening or attempting to cause serious harm to himself or herself or has recently done so, has recently caused serious harm to himself or herself, is seriously harming or is threatening serious harm towards another person or has recently done so, or

(B) will suffer serious physical impairment or serious mental deterioration, or both,

(iii) as a result of the mental disorder, the person does not have the capacity to make treatment decisions,

(iv) during the immediately preceding two-year period, the person

(A) has been detained in a psychiatric facility for a total of sixty days or longer,

(B) has been detained in a psychiatric facility on two or more separate occasions, or

(C) has previously been the subject of a community treatment order, and

(v) the services that the person requires in order to reside in the community

(A) exist in the community,

(B) are available to the person, and

(C) will be provided to the person;

(b) state that the person's substitute decision-maker has consented to the person being placed on a community treatment order;

(c) state the facts on which the psychiatrist has formed the opinion that the person meets the criteria set out in clause (a);

(d) describe the services that will be provided to the person and the community treatment plan that is recommended for the person;

(e) state that the person is to submit to the medical treatment that is prescribed by the physician and is to attend appointments with the physician or with the responsible individuals identified in clause (f) in the places as scheduled, from time to time, consistent with good medical practice;

(f) identify the names of the health professionals who will be providing treatment and support services pursuant to clause (d);

(g) show the date on which the examination was made;

(h) be signed by the psychiatrist in the presence of one subscribing witness; and

(i) be in the prescribed form.

(4) For the purpose of determining whether the criteria in ~~clause~~ [subclause] (3)(a)(iii) are met, Section 18 applies.

(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. 2005, c. 42, s. 47; 2022, c. 17, s. 24.

Community treatment plan

48 A community treatment plan shall contain

(a) a plan of treatment for the person subject to the community treatment order;

(b) any conditions relating to the treatment or care and supervision of the person;

(c) the obligations of the person subject to the community treatment order;

(d) the obligations of the substitute decision-maker, if any;

(e) the name of the psychiatrist, if any, who has agreed to accept responsibility for the general supervision and management of the community treatment order;

(f) the names of all persons or organizations who have agreed to provide treatment or care and supervision under the community treatment plan and their obligations under the plan;

(g) provision for the naming of another psychiatrist if the psychiatrist who issued the order under subsection 47(2) is unable to carry out that person's responsibilities under the order; and

(h) any other requirement as prescribed by the regulations. 2005, c. 42, s. 48.

Variation of plan

49 (1) The psychiatrist may vary any part of the community treatment plan.

(2) In the event of a variation pursuant to subsection (1), the psychiatrist shall provide notice to the individuals named in subsection 47(5). 2005, c. 42, s. 49.

Voluntary continuation under plan

50 Where a person on a community treatment order no longer fulfils the criteria in subclause 47(3)(a)(iii), the person may choose to voluntarily continue with the obligations of the community treatment plan until its expiry, but the psychiatrist shall terminate the community treatment order. 2005, c. 42, s. 50.

Expiration of order

51 A community treatment order expires one hundred eighty days after the day it is made unless

(a) it is renewed in accordance with Section 52; or

(b) it is terminated earlier in accordance with Section 55, 56 or 57. 2005, c. 42, s. 51; 2022, c. 17, s. 25.

Renewals of order

52 (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.

(2) There are no limits on the number of renewals under subsection (1). 2005, c. 42, s. 52; 2022, c. 17, s. 26.

Responsibility of issuing psychiatrist

53 (1) A psychiatrist who issues or renews a community treatment order is responsible for the general supervision and management of the order.

(2) Where the psychiatrist who issues or renews a community treatment order is absent or, for any other reason, is unable to carry out the psychiatrist's responsibilities under subsection (1) or under Section 55, 56 or 57, the psychiatrist may appoint another psychiatrist to act in the psychiatrist's place, with the consent of that other psychiatrist. 2005, c. 42, s. 53.

No liability where belief is reasonable

54 (1) Where the psychiatrist who issues or renews a community treatment order or a psychiatrist appointed under subsection 53(2) believes, on reasonable grounds and in good faith, that the persons who are responsible for providing treatment or care and supervision under a community treatment plan are doing so in accordance with the plan, the psychiatrist is not liable for any default or neglect by those persons in providing the treatment or care and supervision.

(2) Where a person who is responsible for providing an aspect of treatment or care and supervision under a community treatment plan believes, on reasonable grounds and in good faith, that the psychiatrist who issued or renewed the community treatment order or a psychiatrist appointed under subsection 53(2) is providing treatment or care and supervision in accordance with the plan, the person is not liable for any default or neglect by the psychiatrist in providing the treatment or care and supervision. 2005, c. 42, s. 54.

Review of condition

55 (1) At the request of the substitute decision-maker for a person who is subject to a community treatment order, the psychiatrist who issued or

renewed the order shall review the person's condition to determine if the person is able to continue to live in the community without being subject to the order.

(2) The psychiatrist may refuse to review the file of a patient upon request of the patient at any time during the ninety days following the date the file was previously reviewed.

(3) Where the psychiatrist determines, upon reviewing the person's condition, that the circumstances described in subclauses 47(3)(a)(i), (ii) and (iii) no longer exist, the psychiatrist shall

(a) terminate the community treatment order;

(b) notify the person that the person may live in the community without being subject to the community treatment order; and

(c) notify the persons referred to in subsection 47(5) that the community treatment order has been terminated. 2005, c. 42, s. 55; 2022, c. 17, s. 27.

Failure to comply with order

56 (1) Where a psychiatrist who issued or renewed a community treatment order has reasonable cause to believe that the person subject to the order has failed in a substantial or deleterious manner to comply with that person's obligations under clause 48(c), the psychiatrist shall request a peace officer to take the person into custody and promptly convey the person to the psychiatrist for a medical examination.

(2) The psychiatrist shall not make a request to a peace officer under subsection (1) unless

(a) the psychiatrist has reasonable cause to believe that the criteria set out in subclauses 47(3)(a)(i), (ii) and (iii) continue to be met; and

(b) reasonable efforts have been made to

(i) locate the person,

(ii) inform the person's substitute decision-maker of the failure to comply,

(iii) inform the substitute decision-maker of the possibility that the psychiatrist may make a request under subsection (1) and of the possible consequences, and

(iv) provide reasonable assistance to the person to comply with the terms of the order.

(3) A request under subsection (1) is sufficient authority, for thirty days after it is issued, for a peace officer to take the person named in it into custody and convey the person to a psychiatrist who shall examine the person to determine whether

(a) the person should be released without being subject to a community treatment order;

(b) the psychiatrist should issue another community treatment order if the person's substitute decision-maker consents to the community treatment plan; or

(c) the psychiatrist should conduct a psychiatric assessment to determine if the person should be admitted as an involuntary patient under a declaration of involuntary admission.

(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). 2005, c. 42, s. 56; 2022, c. 17, s. 28.

Where services become unavailable

57 (1) Where the services required for a community treatment order become unavailable, the psychiatrist shall

(a) terminate the community treatment order;

(b) notify the person of the termination of the order and the requirement for the psychiatrist to review the person's condition pursuant to subsection (2); and

(c) notify the persons referred to in subsection 47(5) that the community treatment order has been terminated.

(2) Within seventy-two hours after receipt of the notice, the psychiatrist shall review the person's condition to determine if the person is able to continue to live in the community without being subject to the order.

(3) Where the person subject to the community treatment order fails to permit the psychiatrist to review the person's condition and the psychiatrist has reasonable cause to believe that the criteria set out in subclauses 47(3)(a)(i), (ii) and (iii) continue to be met, the psychiatrist may, within the seventy-two hour period, request a peace officer to take the person into custody and promptly convey the person to a psychiatric facility for an involuntary psychiatric assessment.

(4) A request under subsection (3) is sufficient authority, for thirty days after it is issued, for a peace officer to take the person named in it into custody and then promptly convey the person to the psychiatrist who made the request.

(5) The psychiatrist shall promptly examine the person to determine whether

(a) the person should be released; or

(b) the psychiatrist should conduct a psychiatric assessment to determine if the person should be admitted as an involuntary patient under a declaration of involuntary admission. 2005, c. 42, s. 57.

Application to Review Board respecting order

58 (1) A person who is subject to a community treatment order or the person's substitute decision-maker may apply to the Review Board to inquire into whether the criteria for issuing or renewing a community treatment order have been met.

(2) An application pursuant to subsection (1) may be made each time a community treatment order is issued or renewed.

(3) When a community treatment order is renewed and on the occasion of every second renewal thereafter, the person is deemed to have applied to the Review Board unless an application has already been made in the preceding thirty days.

(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). 2005, c. 42, s. 58; 2022, c. 17, s. 29.

Review by Minister

59 **(1)** The Minister shall undertake a review of the following matters:

(a) whether community treatment orders were or were not used during the review period;

(b) the effectiveness of community treatment orders during the review period;

(c) the methods used to evaluate the outcome of any treatment used under community treatment orders; and

(d) any further matters prescribed by the regulations.

(2) The review must be undertaken during the sixth year after the date on which Sections 47 to 59 come into force utilizing data collected on community treatment orders for the entire five-year period.

(3) The Minister shall make available to the public for inspection and table, in the House of Assembly, the written report of the review completed under subsection (1). 2005, c. 42, s. 59.

PATIENT-ADVISOR SERVICE AND PATIENT RIGHTS

Regulations designating services and qualifications

60 **(1)** The Governor in Council may make regulations designating an organization as a patient-advisor service and the qualifications of a patient advisor.

(2) A patient-advisor service or a patient advisor in the employment of such a service or organization designated under subsection (1) shall not be employed by or have privileges at a health authority, as defined by the *Health Authorities Act*.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2005, c. 42, s. 60; 2014, c. 32, s. 136.

Functions and duties of patient-advisor service

61 **(1)** The patient-advisor service may offer advice and assistance to

(a) a person who is undergoing an involuntary psychiatric assessment;

(b) an involuntary patient who is subject to a declaration of involuntary admission;

(c) a patient who is on a community treatment order or an involuntary patient who is subject to a certificate of leave; or

(d) a substitute decision-maker of a patient referred to in clause (a), (b) or (c).

(2) A patient-advisor service shall

(a) meet as soon as possible with an involuntary patient, unless the patient objects, and the patient's substitute decision-maker, unless the substitute decision-maker objects;

(b) explain the significance of the situation to the patient;

(c) identify available options;

(d) communicate information in a neutral, non-judgemental manner;

(e) assist the patient in making application to the Review Board;

(f) assist in obtaining legal counsel, if requested, and applying for legal aid;

(g) accompany the patient to Review Board hearings, unless the patient or the substitute decision-maker objects; and

(h) *repealed 2022, c. 17, s. 30*.

(i) maintain patient confidentiality. 2005, c. 42, s. 61; 2022, c. 17, s. 30.

Notice to service

62 A chief executive officer shall ensure that the patient-advisor service is given notice of

(a) a decision to admit a person as an involuntary patient;

(b) a decision to change the status of a voluntary patient to that of an involuntary patient or to change the status of an involuntary patient to that of a voluntary patient;

(c) the filing of each declaration of renewal in respect of an involuntary patient;

(d) the issuance of a community treatment order;

(e) the issuance of a certificate of leave; or

(f) an application to the Review Board in respect of an involuntary patient. 2005, c. 42, s. 62.

Right to meet and confer

63 (1) Subject to the wishes of an involuntary patient or a substitute decision-maker, a patient advisor has the right at all reasonable times to meet and confer with an involuntary patient.

(2) Notwithstanding subsection (1), an involuntary patient may not object to a substitute decision-maker meeting with a patient advisor and *vice versa*. 2005, c. 42, s. 63.

Rights and privileges not to be deprived

64 A person who has been detained under a certificate for involuntary psychiatric assessment, a patient who has been admitted to a psychiatric facility by a declaration of involuntary admission or a patient who is the subject of a community treatment order shall not be deprived of any right or privilege enjoyed by others by reason of receiving or having received mental health services, subject to those rights prescribed by the regulations. 2005, c. 42, s. 64.

REVIEW BOARD

Appointment of Review Board

65 (1) The Governor in Council shall establish a Review Board to hear and consider applications under this Act.

(2) The Governor in Council shall appoint the members of the Review Board from a roster of

(a) psychiatrists who are members pursuant to the *Medical Act*, one of whom shall be a psychiatrist with a specialized knowledge of adolescent psychiatry;

(b) lawyers who are barristers pursuant to the *Barristers' and Solicitors Act* and who express an interest in mental health issues; and

(c) persons who do not meet the criteria of clauses (a) and (b) and who express an interest in mental health issues and preferably are or have been a consumer of mental health services.

(3) The Governor in Council shall determine the term of these appointments.

(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.

(4) A member of the Review Board is eligible for re-appointment after the expiry of the member's appointment.

(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.

(5) The Governor in Council shall designate one of the members of the Review Board appointed pursuant to clause (2)(b) as Chair of the Review Board.

(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. 2005, c. 42, s. 65; 2022, c. 17, s. 31.

Panels of Review Board

66 (1) A panel of at least three members of the Review Board shall be appointed by the Chair of the Review Board or the Chair's designate to hold a review pursuant to Section 68.

(2) A panel may exercise all the jurisdiction and powers of the Review Board.

(3) A panel shall consist of at least one member appointed pursuant to each of clauses 65(2)(a), (b) and (c).

(4) Where a review concerns a patient who is under nineteen years of age, the panel should preferably include a psychiatrist who specializes in adolescent psychiatry.

(5) The Chair of the Review Board or the Chair's designate shall appoint a chair of the panel who must be a member of the Review Board appointed pursuant to clause 65(2)(b).

(6) A quorum for a panel consists of at least one member appointed pursuant to each of clauses 65(2)(a), (b) and (c). 2005, c. 42, s. 66.

Conflict of interest or bias

67 (1) A member of the Review Board is not eligible to sit on a panel for an application relating to a patient if the member

(a) is the patient's spouse or common-law partner;

(b) is related by blood or marriage to the patient;

(c) is a psychiatrist or a physician who is treating or has treated the patient;

(d) is an officer, employee or staff member of the psychiatric facility in which the person is being treated;

(e) is a lawyer who is acting for or has acted for the patient or the psychiatric facility in which the person is being treated; or

(f) has a close personal or professional relationship with a person referred to in clauses (a) to (e).

(2) Where there is a reasonable apprehension of bias, a member of the Review Board shall remove himself or herself from the panel.

(3) A member of the Review Board who has sat on a *Criminal Code* (Canada) review board hearing for a patient shall not sit as a member on a panel of the Review Board for that patient. 2005, c. 42, s. 67.

Applications for review

68 **(1)** In addition to the mandatory reviews provided for in Section 37 and subsection 58(3), the Review Board shall consider an application to review

(a) a declaration of involuntary admission or a declaration of renewal;

(b) a declaration of competency for involuntary patients pursuant to subsection 58(1) of the *Hospitals Act*;

(c) pursuant to subsection 42(1), whether a capable informed consent by a substitute decision-maker has been rendered;

(d) a community treatment order or a renewal of a community treatment order;

(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) In considering an application pursuant to subsection (1), the Review Board may make such recommendations to the chief executive officer as it sees fit respecting the treatment or care of a patient.

(3) Notwithstanding subsection (1), the Review Board may refuse to review the file of a patient upon application of the patient at any time during the ninety days following the date the file was previously reviewed.

(4) An application for the Review Board to conduct a review pursuant to subsection (1) may be initiated by

(a) the patient;

(b) a substitute decision-maker;

(c) a guardian or representative appointed by law;

(d) a person who has been authorized to give consent under the *Medical Consent Act*;

(e) a person authorized by the patient to act on the patient's behalf;

(f) the chief executive officer;

(g) the Minister; or

(h) the Review Board where it believes it is in the patient's interest to have a review.

(5) An application pursuant to this Section must be in the prescribed form.

(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*. 2005, c. 42, s. 68; 2022, c. 17, s. 32.

Conduct of hearings

69 (1) Subject to the regulations, the Review Board shall conduct its hearings for the review of a patient's file pursuant to Sections 37 and 68 as full oral hearings.

(2) A hearing must begin as soon as reasonably possible after an application is received by the Review Board but no later than twenty-one days from the receipt of the application.

(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.

(3) In every application to the Review Board, the patient or any person who has applied on behalf of the patient, the patient's substitute decision-maker and the attending psychiatrist are parties and the chief executive officer is entitled to be a party.

(4) The Review Board may add as a party any person who, in the opinion of the Review Board, has a substantial interest in matters under review. 2005, c. 42, s. 69; 2022, c. 17, s. 33.

Virtual hearings

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. 2022, c. 17, s. 34.

Notice

70 (1) *repealed 2022, c. 17, s. 35*.

(2) The Review Board shall give three clear days written notice of the application to

(a) every party;

(b) every person who is entitled to be a party;

(c) the patient advisor if no one has been authorized to act on behalf of the involuntary patient; and

(d) to any person who, in the opinion of the Review Board, has a substantial interest in the subject-matter of the application.

(3) The notice period referred to in subsection (2) may be waived by the parties. 2005, c. 42, s. 70; 2022, c. 17, s. 35.

Closed hearing and representation

71 (1) A hearing before the Review Board shall be closed except for the parties, the patient advisor, any person having material evidence, any person required for security and any other person the Review Board determines.

(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. 2005, c. 42, s. 71; 2022, c. 17, s. 36.

Entitlement to representation

72 Every party is entitled to be represented by counsel or an agent in a hearing before the Review Board. 2005, c. 42, s. 72.

Evidence

73 (1) Every party is entitled to present such evidence as the Review Board considers relevant and to question witnesses.

(2) Every party, where possible, shall be given an opportunity to examine and to copy, before the hearing, any recorded evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 2005, c. 42, s. 73.

Powers of Review Board during hearing

74 (1) The Review Board shall inform itself fully of the facts by means of the hearing and, for this purpose, the Review Board may require the attendance of witnesses and the production of documents in addition to the witnesses called and documents produced by the parties.

(2) For the purpose of a hearing, the Review Board may arrange for the patient to be examined by a second psychiatrist.

(3) Provided that no party is prejudiced thereby, the Review Board may disregard trivial, minor or insubstantial errors in forms or other documents. 2005, c. 42, s. 74; 2022, c. 17, s. 37.

Public Inquiries Act

75 Members of the Review Board have the powers and privileges of commissioners appointed under the *Public Inquiries Act*. 2005, c. 42, s. 75.

Decision

76 **(1)** Within six clear days after each review, the Review Board shall forward a written decision, setting out fully the conclusion of the Review Board, to

(a) the applicant;

(b) the patient and the patient's representative;

(c) the patient's substitute decision-maker;

(d) the attending psychiatrist;

(e) the chief executive officer; and

(f) the Minister.

(2) The written decision referred to in subsection (1) may make an order as to the following:

(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;

(b) where the application is to review a physician's opinion that a patient is not competent to handle their personal affairs, the Review Board may cancel the declaration of competency or may refuse to do so;

(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;

(d) where the application is to review a certificate of leave, the Review Board may revoke the certificate of leave and allow the patient to live in the community without being subject to the certificate of leave or may refuse to do so;

(e) where the application is to review a certificate of cancellation of leave, the Review Board may confirm the cancellation or may refuse to do so; or

(f) where the application is to review a community treatment order, the Review Board may revoke the community treatment order and allow the patient to live in the community without being subject to the community treatment order or may refuse to do so. 2005, c. 42, s. 76; 2022, c. 17, s. 38.

Onus of proof

77 The onus of proof during a Review Board hearing shall be borne by the psychiatric facility. 2005, c. 42, s.77.

Standard of proof

78 In a proceeding under this Act before the Review Board, the standard of proof is proof on the balance of probabilities. 2005, c. 42, s. 78.

Appeal

79 (1) A party may appeal on any question of law from the findings of the Review Board to the Nova Scotia Court of Appeal and any findings of fact made by the Review Board are binding on the Court.

(2) The notice of appeal shall be filed at the Nova Scotia Court of Appeal and served upon the other party not later than thirty days after the party receives the final decision or order of the Review Board.

(3) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply *mutatis mutandis* to appeals to the Court of Appeal pursuant to this Section.

(4) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Review Board takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act where, in its discretion, it deems fit. 2005, c. 42, s. 79.

Annual report

80 (1) Each year the Review Board shall make a report to the Minister of its activities during the preceding year.

(2) The Minister shall table the report in the Assembly within twenty days after it is made to the Minister if the Assembly is then sitting and, if it is not then sitting, within twenty days of the commencement of the next sitting of the Assembly.

(3) The annual report of the Review Board to the Minister shall not contain any personal information of patients. 2005, c. 42, s. 80.

GENERAL

No action lies

81 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything done in good faith, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility. 2005, c. 42, s. 81.

Application of Personal Health Information Act and Hospitals Act

82 (1) The *Personal Health Information Act* applies to the records of a patient in a psychiatric facility.

(2) For greater certainty, any issues dealing with an involuntary patient's competency to administer the patient's estate shall be dealt with pursuant to the *Hospitals Act*. 2005, c. 42, s. 82; 2010, c. 41, s. 114.

Regulations

83 (1) The Governor in Council may make regulations

(a) designating psychiatric facilities;

(b) designating patient-advisor services;

(c) respecting patient rights;

(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);

(d) prescribing further items to be included in a community treatment plan pursuant to clause 48(h);

(e) respecting further items for the review of community treatment orders pursuant to clause 59(1)(d);

(f) prescribing the manner in which applications may be made to the Review Board;

(g) governing proceedings of the Review Board;

(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;

(h) respecting forms and providing for their use;

(i) defining any word or expression used but not defined in this Act;

(j) further defining or redefining any word or expression defined in this Act;

(k) deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2005, c. 42, s. 83; 2022, c. 17, s. 39.

Independent review of Act

84 (1) The Minister shall undertake and have completed an independent review of this Act during the sixth year after the date on which this Act comes into force.

(2) The Minister shall table the review in the House of Assembly at the next sitting of the House. 2005, c. 42, s. 84.

CONSEQUENTIAL AMENDMENTS

Corrections Act amended

85 *amendment*

Hospitals Act amended
86 *amendments*

Medical Consent Act amended
87 *amendment*

Patients' Abandoned Property Act amended
88 *amendment*

Public Trustee Act amended
89 *amendments*

Smoke-free Places Act amended
90 *amendment*

Vital Statistics Act amended
91 *amendment*

Proclamation
92 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2005, c. 42, s. 92.

Proclaimed - April 24, 2007
In force - July 3, 2007