

Physicians and the Adult Guardianship and Trusteeship Act

What is the AGTA?

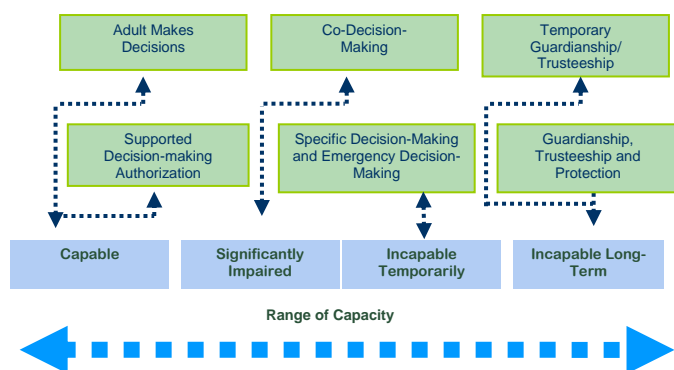
Once proclaimed on October 30, 2009, the *Adult Guardianship and Trusteeship Act* (AGTA) will replace the *Dependent Adults Act* (DAA). The AGTA is administered by the Office of the Public Guardian (OPG).

The AGTA provides a continuum of decision-making options when an adult needs assistance or requires a substitute for personal and financial decisions. The AGTA is based on four guiding principles:

- the adult is presumed to have capacity until the contrary is determined;
- the adult is entitled to communicate by any means that enables them to be understood;
- focus on the autonomy of the adult with the least intrusive and least restrictive approach; and
- decision-making that focuses on the best interests of the adult and how the adult would make decisions, if capable.

Decision-making Options

One of the key concepts of the AGTA is the belief that capacity, which is the ability to understand information that is relevant to a decision and to appreciate the reasonably foreseeable consequences of a decision, is on a continuum. Under the AGTA, decision-making options have been tailored to different levels of capacity and are designed to provide as much autonomy to the adult as possible.



What is specific decision-making?

Specific decision-making is designed to provide timely and effective decision-making services for adults who do not have the capacity to provide informed consent for health care decisions or temporary admission to, or discharge from, a residential facility.

Under the AGTA, a physician, nurse practitioner or dentist (for dental care only) may select a specific decision-maker from a ranked list of family members to make the decision for the adult. For individuals who do not have a family member willing or able to act as a specific decision-maker or if there is a dispute in the family on the decision, physicians, nurse practitioners or dentists can contact the Public Guardian and request a specific decision be made.

Health care means any examination, diagnosis, procedure, or treatment undertaken to prevent or manage any disease, illness, ailment or health condition; any procedure undertaken for the purpose of an examination or diagnosis; any medical, surgical, obstetrical or dental treatment; anything done that is ancillary to any examination, diagnosis, procedure or treatment; any procedure undertaken to prevent pregnancy, except sterilization that is not medically necessary; palliative care; and a treatment plan. Specific decision-making does not apply to decisions regarding treatment of mental health disorders, psychosurgery, sterilization, transplantation of tissues, experimental activities or end of life decisions.

Residential facility means a nursing home; a place of care for adults who are aged or infirm or who require special care; an approved hospital or auxiliary hospital; or a premises, other than a private residence, in which four or more adults who are not related to the operator of the premises are provided with living accommodation, care and supervision.

Temporary admission means admission for a period not exceeding 6 months (beginning on the day that a specific decision-maker consents to the admission).



Emergency decision-making

Emergency decision-making is designed to allow physicians to make treatment decisions to preserve life, to alleviate severe pain or prevent serious physical or mental harm when no one, including the adult in question, can provide consent. The physician shall, if practicable, obtain the written opinion of a 2nd physician or registered nurse before providing the emergency health care to the adult.

Supported decision-making

Supported decision-making is a new option under the AGTA that allows adults who would like support when making decisions and communicating. This option may benefit people with disabilities or language barriers and could be especially useful for individuals during doctor visits. The **supported** adult can give their supporter legal permission to access relevant personal information that might otherwise be protected under privacy laws about personal matters like health care.

Court Ordered Co-decision-making

Co-decision-making orders come into play if an adult is assessed as having a significant impairment but can still make decisions about personal matters with assistance. A co-decision-maker and the **assisted adult** must make decisions together. The assisted adult must consent to the co-decision-making order. This option will work well for people with long standing, trusting relationships.

Court Ordered Guardianship and Trusteeship

A guardian or trustee, appointed by the Court, has the legal responsibility to make decisions for an adult who lacks the capacity to make personal or financial decisions. Decisions must be made in the best interests of the **represented** adult and Court must decide that this appointment would be the least restrictive and least intrusive measure that would still be effective. Guardianship deals with personal decision-making such as health care decisions and trusteeship deals with financial decision-making.

Who can access personal information?

Under the AGTA and in compliance with the *Health Information Act* (HIA) and the *Freedom of Information and Protection of Privacy Act* (FOIP), physicians may disclose personal information to the following individuals for the purposes of fulfilling their legislative roles:

- supporter, specific decision-maker, co-decision-maker, guardian or trustee;
- someone applying for an order;
- capacity assessors; and
- investigators for the purposes of an investigation.

Capacity Assessments

The AGTA establishes a standardized framework for capacity assessments that protects an individual's rights when assessments take place and provides clear guidance to health care professionals who conduct assessments. Assessments will include a medical evaluation conducted by physicians to rule out temporary reversible conditions that may affect capacity. There are also two new Capacity Assessment Forms which have been piloted by physicians and psychologists: one for guardianship and trusteeship and one for co-decision-making. **For copies of all regulated forms**, please visit our website: www.seniors.alberta.ca/opg

Physicians and psychologists are authorized to perform capacity assessments. There will be free voluntary training sessions delivered across the province for physicians and psychologists. If you would like more information on these sessions or would like to request training, please contact the OPG and we would be happy to assist you. Social workers, occupational therapists, registered nurses, and registered psychiatric nurses may be designated by the Minister as capacity assessors once successfully completing a required training program.

A capacity assessor may charge a fee for a capacity assessment, including the capacity assessment report, of up to a maximum of \$500 if the capacity assessment relates to either co-decision-making, guardianship or trusteeship and up to a maximum of \$700 if the capacity assessment relates to both guardianship and trusteeship.

Certificates of incapacity for trusteeship will no longer exist. Any trusteeship appointments must be Court ordered and must include a capacity assessment report.

Protective Measures

The AGTA strengthens the protection of vulnerable people by incorporating new protective measures. These include enhanced screening of new private guardian and trustee suitability; allowing the Public Guardian or Public Trustee to investigate complaints that a private guardian or trustee may be causing harm to the adult they represent; and emergency protection provisions if a represented adult needs to be removed to a place of safety.

For more information

We welcome the opportunity to speak with you!

1-800 Help Line: 1-877-427-4525

Monday to Friday (8:15 a.m. – 4:30 p.m.)

After Hours Crisis Line: 1-866-262-9731

Evenings (after 4:30 p.m.) and Weekends

www.seniors.alberta.ca/opg