

# Adult Guardianship and Trusteeship Act: Legislative and Practice Changes

Mareika Purdon, Vice President, Patients as Partners  
Dr Ty Josdal, Associate Senior Physician Executive  
Helen Stokes, Executive Director, Clinical Policy

Telehealth Sessions

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# What You Need to Know

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- What:** legislation is changing
- When:** 30<sup>th</sup> October 2009
- Who:** can obtain consent/give consent for health care
- How:** decision-making options / consent forms
- Where:** resources available
- Next steps:** AHS consent policy, procedures, forms

# What is the Adult Guardianship and Trusteeship Act ?

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- 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
- The *AGTA* provides a continuum of decision-making options when an adult needs assistance or requires a substitute for personal and financial decisions

# How the AGTA was Created

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- Extensive community consultation
- 4,330+ Albertans: guardians, trustees, physicians, dependent adults, health care providers, lawyers, community organizations, etc.
- Focus groups, town hall meetings, surveys, written submissions, etc.

# Key Concepts

- **Capacity is on a continuum**
  - capacity is the ability to **understand** the information that is relevant to a decision and to **appreciate** the reasonably foreseeable consequences of a decision



- there is a range between capable and incapable

# Guiding Principles (1)

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- **Capacity is presumed**
  - Regardless of age, disability, etc.
  
- **Communication method is not relevant to determination of capacity**
  - Hearing aid, language translator, sign language, assistive technology

## Guiding Principles (2)

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- **Autonomy is to be maintained through least intrusive and least restrictive measures**
  - new decision-making support options
- **Decisions are to be based on best interests and how the person would have made the decision if capable**
  - what were the adult's values and beliefs when the adult was capable?

# Legislative & Practice Changes

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- AHS implementation of the *AGTA* must be in place by October 30<sup>th</sup> 2009, on which date the *AGTA* will be proclaimed
- An AHS Administrative Directive has been developed to provide clarification about who can provide consent when an adult needs assistance or requires a substitute decision-maker for the purposes of health care decisions, as outlined in the *AGTA*

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- This directive applies to all Alberta Health Services staff, medical staff, volunteers, students, and other persons acting on behalf of Alberta Health Services, including contracted service providers

Alberta Health Services health care providers and physicians shall use this information to ensure that they obtain consent for health care from the appropriate decision-maker(s), as identified in the *Adult Guardianship and Trusteeship Act*

## Directive (cont)

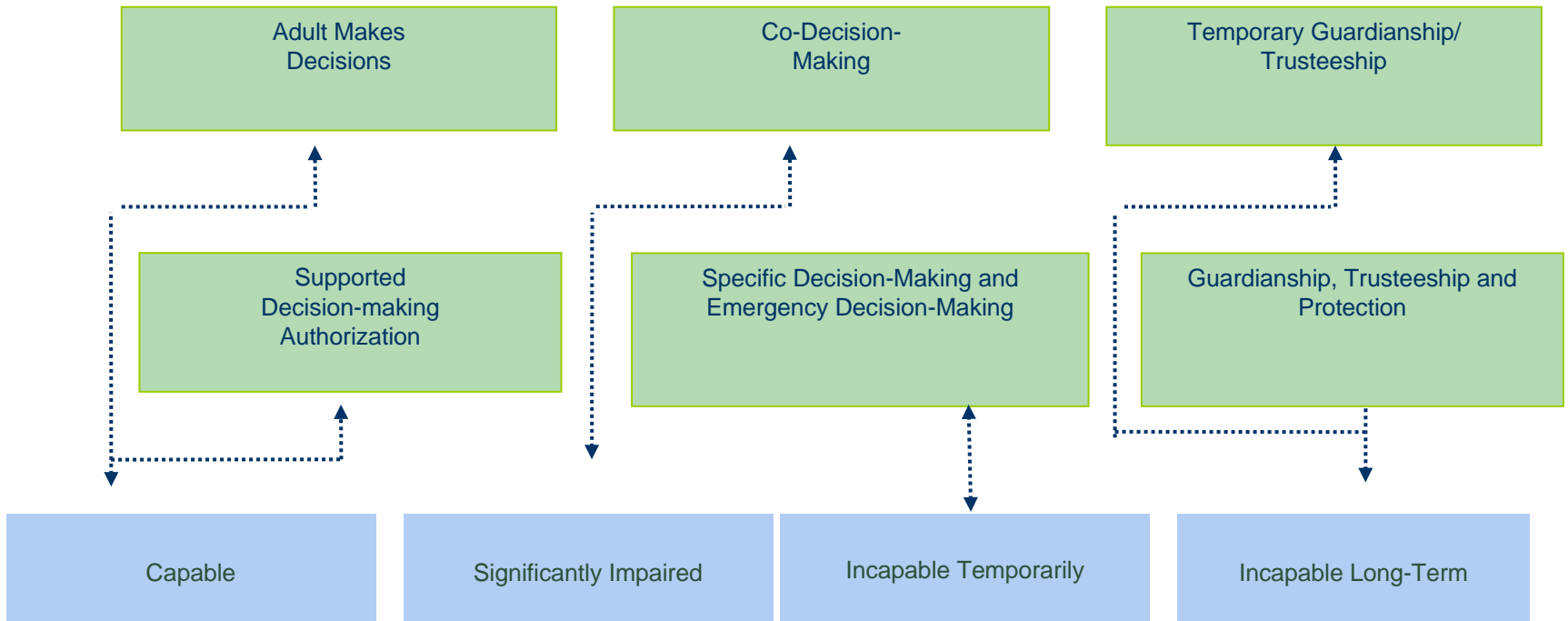
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- This information supersedes all existing consent policy requirements that are affected by the *Adult Guardianship and Trusteeship Act*. The key changes pertain to:
  - substitute decision-makers;
  - the addition of those who may provide assistance to the patient during health care decision-making;
  - the emergency exception for providing health care to an adult.

## Directive (cont)

- Section 29 of the *Dependents Adults Act* (Treatment of Incapacitated Adults) no longer exists and cannot be relied upon
- Alberta Health Services health care providers and physicians shall continue to use existing consent forms but with modifications as required.

# New Decision-Making Options



Range of Capacity



# Capacity Assessments

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- The AGTA establishes a standardized framework for capacity assessments that will protect an individual's rights when assessments take place and provide 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

# Capacity Assessments

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For capacity assessments, **health care professional** means:

- medical practitioners (physicians) and psychologists
- registered nurses, registered psychiatric and mental deficiency nurses, occupational therapists, and social workers following completion of a required training program and designation by the Minister

For more information please read the "Guide to Capacity Assessments under the AGTA" available online from October 26th

# Who Can Obtain/Give Consent for Health Care

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- AGTA Definitions of:
  - Health Care
  - Health Care Provider
- Emergency Health Care
- Specific decision-making
- Support decision-making
- Co-decision-making
- Guardianship

## AGTA: Health Care

- 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

# AGTA: Health Care Provider

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In the AGTA, **health care provider** means:

- For **emergency health care**, medical practitioners (physicians) to assess and registered nurses if a second physician is not available to provide a written second opinion;
- For **specific decisions**, medical practitioners (physicians), nurse practitioners, and dentists (for dental care only).

# Emergency Healthcare

## (Section 101)

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- A physician may provide emergency health care to an adult without consent if the health care is necessary to preserve the adult's life, prevent serious physical or mental harm to the adult or alleviate severe pain
  - AND the adult lacks capacity as a result of drug or alcohol impairment, lack of consciousness or another cause

# Emergency Healthcare (Section 101)

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- Physician must, if practicable, consult with a second physician OR Nurse Practitioner OR Registered Nurse

## Comparison with the Dependent Adults Act

The *DAA* requires consultation with a second physician only (not an alternate health care provider)

# Specific Decision-Making

(Section 87 – 100)

Capable



Incapable

A health care provider may select the nearest relative to make a specific decision on behalf of the adult who:

- o requires a time sensitive decision related to health care or temporary admission to or discharge from a residential facility; and
- o lacks capacity to make this decision; and
- o does not have a guardian or a personal directive

## Hierarchy of Relatives

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**Nearest relative** means, when selecting a decision-maker, the adult's eldest relative of full blood is preferred in the following ranked order:

- Spouse or adult interdependent partner;
- Adult son or daughter;
- Father or mother;
- Adult brother or sister;
- Grandfather or grandmother;
- Adult uncle or aunt; or
- Adult nephew or niece

# Specific Decision-Making

(Section 87 – 100)

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- If there is a dispute regarding the selection of the specific decision-maker or there is no one willing or able to make the decision, the OPG will make the decision or, in some cases, authorize someone to make the decision.

## Comparison with the Dependent Adults Act

No comparable provision

**New**

# Supported Decision-Making (Section 3 - 10)



Capable

Incapable

- Supported decision-making is a new option under the AGTA that enables adults to choose support when making decisions and communicating
- 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

# Supported Decision-Making

## (Section 3 - 10)

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- Supporter is allowed to:
  - access, collect or obtain information, or assist adult in collecting information relevant to decision
  - assist the adult in making decisions
  - to communicate or assist the adult in communicating decisions

### Comparison with the Dependent Adults Act

- no comparable provision
- In *DAA*, only legal guardians and personal directive agents are able to assist in decision-making for incapable adults

**New**

# Co-Decision-Making Order Court-Ordered Process (Section 11-23)

- 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

**New**

# Co-Decision-Making Order Court-Ordered Process (Section 11-23)

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- Less intrusive measures (e.g. supported decision-making) must be considered and ruled out
- Limited to personal matters (not financial or property)

**Comparison with the Dependent Adults Act**  
No comparable provision

# Guardianship and Trusteeship

## Court Ordered (Section 24-42)

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- 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.
  - guardianship deals with personal decision-making such as health care decisions
  - trusteeship deals with financial decision-making.

# Guardianship and Trusteeship Court Ordered (Section 24-42)

**Revised**

- 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

## Comparison with the Dependent Adults Act

Guardianship provisions modernized but essential components of guardian role and court role remains the same

**Revised**

# Temporary Guardianship Court-Ordered Process (Section 27)

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- Allows fast-track to Court in urgent and high-risk cases
- Requirements for capacity assessment and notification of family and interested person waived
- Order must be reviewed after 90 days

## Comparison with the Dependent Adults Act

This procedure was available under the *DAA* but with no time limit

# Protective Measures

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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
- emergency protection provisions if a represented adult needs to be removed to a place of safety.

- Bill 24 establishes a central registry of co-decision orders, guardianship orders, and trusteeship orders
- Enables tracking and monitoring of orders, their renewal status, and their content
- Formalizes an already existing informal tracking process by OPG
- Public Guardian and Public Trustee may disclose information in the registry according to regulations

## Comparison with the Dependent Adults Act

No comparable provision

# What Types of Decision-Making will be Tracked in the Registry?

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- Co-decision-making orders
- Guardianship orders (under DAA and AGTA)
  - temporary guardianship orders
- Trusteeship orders (under DAA and AGTA)
  - temporary trusteeship orders
- Certificates of Incapacity (under DAA and PTA)
- Temporary protection orders.

# What Types of Decision-Making will not be Tracked in the Registry?

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- Supportive decision-making authorizations
- Specific decision makers
- Emergency decisions by physicians

# Use of Existing Consent Forms

- All existing consent forms are to be used until replaced by the revised consent forms that will be developed in conjunction with the new AHS consent policy and procedures
- Further examples of consent forms will be posted on the AHS website, Information for Health Professionals:  
<http://www.albertahealthservices.ca/771.asp>
- For questions relating to the use of existing consent forms, please contact: Irene Prosser, Director, Clinical Policy Development Tel: 403-943-0271

# Use of Existing Consent Forms

## CALGARY:

### Consent to Investigation, Treatment or Operative Procedures

| Signature of: <input type="checkbox"/> Patient <input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian <input checked="" type="checkbox"/> Other (explain) | Date (dd/mm/yy) | Time |
|--|-----------------|------|
| Co-Decision Maker  |                 |      |

# Use of Existing Consent Forms

## PEACE COUNTRY:

### General Consent for Admission and Care in a Continuing Care Centre

I have read (or been read) and have had this consent for admission and care explained to me.  
I understand it and do consent to admission and care.

Signature:

RESIDENT  AGENT  LEGAL GUARDIAN

FAMILY-APPOINTED REPRESENTATIVE

Date

Time

*Specific Decision Maker*

# Use of Existing Consent Forms

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## PALLISER HEALTH REGION: Admission Consent - Inpatient

Signature: \_\_\_\_\_

Patient  Client  Resident  Parent  Legal Guardian

Agent  Co-Decision Maker  Specific Decision Maker

Other \_\_\_\_\_

\_\_\_\_\_ }  
Date (DD/MM/YYYY)

\_\_\_\_\_ }  
Time (2400 hour)

Signature of Witness: \_\_\_\_\_

# Use of Existing Consent Forms

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## DAVID THOMPSON HEALTH REGION: Resident Consent/Refusal for Influenza Immunization

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*by signing below you are consenting to the treatment or services outlined and confirming that you are legally authorized to provide this consent*

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**Signature of Family Member/Guardian**  
*(or person legally authorized to provide consent)*

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**Date** *(dd-Mon-yyyy)*

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# Resources Available

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- Office of the Public Guardian
  - website: multiple fact sheets, brochures, forms available
  
- Office of the Public Guardian
  - toll-free information line: **1-877-427-4525** (Monday-Friday, 8:15 am – 4:30 pm) for any questions
  - after hours crisis line: **1-866-262-9731** (evenings and weekends) for obtaining urgent personal decisions and/or consents
  
- AHS website
  - information for Health Professionals section
  - direct resources and links to other information
  - examples of consent forms: ongoing updates

## Next Steps

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- Development of AHS consent policy, procedures and forms will continue with appropriate patient and clinician engagement
- On completion of this work, this new suite of documents will replace the Directive and existing consent forms throughout the organization
- Time line to be confirmed following further scoping of the work required

## Questions?

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- For questions about the Directive and associated processes: please ask now
  - For questions about specific patient-related instances: please see resources via AHS website for further more comprehensive details