

The *Mental Health Act* and the *Adult Guardianship and Trusteeship Act*

Interactions in Legislation

The *Mental Health Act* (MHA) and the *Adult Guardianship and Trusteeship Act* (AGTA) were created to be compatible. The *Personal Directives Act* (PDA) also interacts and is compatible with the MHA and the AGTA.

The MHA regulates the involuntary detention and treatment of persons with mental health issues. The AGTA provides decision-making options and safeguards to protect vulnerable adults who are no longer able to make all of their own decisions and who do not have a personal directive. The PDA allows adults to write a personal directive to name a decision-maker and provide written instructions regarding personal (non financial) decisions to be followed when they are no longer able to make all of their own decisions.

AGTA Decision-making Options

Supported decision-making option

Supported decision-making is a new option under the AGTA that helps capable adults who would like support to make and communicate decisions. This option may benefit people with mild disabilities or language barriers and could be especially useful for individuals during medical or similar 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 such as health care.

Co-decision-making option

Co-decision-makers are Court appointed. This option comes into play if an adult is assessed as having a significant impairment but can still make decisions about personal matters with help. The adult and the co-decision-maker must both consent to the Co-decision-making Order. This option will work well for people with long standing, trusting relationships because a co-decision-maker and an assisted adult must make decisions together.

Guardianship and Trusteeship option

A guardian and/or trustee, appointed by the Court, has the legal responsibility to make personal and/or financial decisions for an adult who lacks the capacity to make those decisions. Decisions must be made in the best interests of the represented adult and Court must decide that this is the least restrictive and least intrusive option that would still be effective.

Specific decision-making option

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 physical health care decisions or temporary admission to, or discharge from, a residential facility. Under the AGTA, physicians, nurse practitioners and dentists (for dental care only) may select a specific decision-maker from a ranked list of family members to make the decision for the adult. Specific decision-making does not apply to decisions regarding treatment of mental health decisions for formal patients, psychosurgery, and sterilization, removal of tissue for implantation or experimental activities, or end of life decisions.

Emergency decision-making option

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 the adult in question is unable to provide consent and no other appropriate substitute decision-maker is available. The physician shall, if practicable, obtain the written opinion of a 2nd physician, nurse practitioner, or registered nurse before providing the emergency health care to the adult.

Treatment Decisions

Mental Health Treatment

Mental health treatment decisions may be made on behalf of a formal patient or a person subject to a community treatment order¹ who is not mentally competent (under the MHA) by the patient's agent or guardian. If the patient does not have a guardian or agent, or the agent is not available, willing, or cannot be reached, then the patient's nearest relative (under the MHA) may make the decision. The Public Guardian may make the decision as a last resort. Co-decision-makers, supported decision-makers, and specific decision-makers cannot make mental health treatment decisions for formal patients or persons subject to a community treatment order who have been assessed as not competent to make treatment decisions.

¹ Provision not yet in effect



If a person is assessed as lacking capacity (under the AGTA) but is not a formal patient or a person subject to a community treatment order and needs a mental health treatment decision, the person's agent or guardian may seek to have the incapable adult assessed and then a determination can be made regarding whether or not the incapable adult is a formal or voluntary patient. If they are assessed as a formal patient, the treatment decision would proceed in accordance with the rules under the MHA.

Physical Health Treatment

Physical health treatment decisions may be made on behalf of a formal patient or a person subject to a community treatment orderⁱⁱ who is not mentally competent by the patient's agent or guardian. If the patient does not have a guardian or agent, or either is not available, willing, or cannot be reached, then a specific decision-maker (under the AGTA) may be selected to make the decision. The Public Guardian may make the decision as a last resort.

Emergency decision-making could be used to make treatment decisions for a formal patient or a person subject to a community treatment order.

Meanings under MHA

Mental competency means the ability to understand the subject-matter relating to a treatment decision and the ability to appreciate the consequences of making a treatment decision.

Formal patient means a patient detained in a facility pursuant to 2 admission certificates or 2 renewal certificates.

Community Treatment Orders (CTO)ⁱⁱⁱ are orders intended and designed for a unique and small number of patients with serious and persistent mental disorders who have demonstrated that without treatment and intensive supports in the community, they relapse and require hospitalization, or those individuals who pose a risk to public safety if intensive case management is not provided.

Nearest relative means the adult person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same descriptions of the half-blood and the elder or eldest of 2 or more relatives being preferred to the other of those relatives regardless of gender:

- spouse or interdependent partner;
- son or daughter;
- father or mother;
- brother or sister;
- grandfather or grandmother;
- grandson or granddaughter;
- uncle or aunt;
- nephew or niece; or

^{ii, iii} Provision not yet in effect.

- any adult that Alberta Health Services (or its delegate) designates in writing to act as the nearest relative if there is no nearest relative or if, in the opinion of the Alberta Health Services (or its delegate), the nearest relative determined would not act or is not acting in the best interest of the formal patient.

Admission certificates are issued only if a patient is suffering from a mental disorder; is likely to cause harm to himself or herself or others or to suffer substantial mental or physical deterioration or serious physical impairment; and is unsuitable for admission to a facility other than as a formal patient.

Meanings under AGTA

Capacity means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision.

Guardian means a person who is authorized by the Court to make decisions on behalf of an adult who has been assessed as lacking capacity to make personal decisions.

Trustee means a person who is authorized by the Court to make decisions on behalf of an adult who has been assessed as lacking capacity to make financial decisions.

Nearest relative consists of the same hierarchy of relatives as per the MHA with the exception of the last point, i.e. the designated adult category does not apply under AGTA.

Meanings under PDA

Capacity means the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the reasonably foreseeable consequences of the decision.

Agent means a person designated in a personal directive to make personal decisions on behalf of the maker.

Maker means a person who makes a personal directive.

Personal directive means a legal document which names a decision-maker and/or provides written instructions regarding personal matters to be followed when an individual no longer has capacity.

For more information

The Office of the Public Guardian administers the AGTA and PDA.

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

Please visit our website: www.seniors.alberta.ca/opg

Further information on the MHA may be obtained from the Alberta Mental Health Patient Advocate Office.

Toll-free: 310-0000

Please visit our website: www.mhpa.ab.ca