

The *Mental Health Act* of Alberta

A Summary of Recent Changes

The *Mental Health Act* of Alberta was proclaimed January 1, 1990. There have been a number of amendments since that date related to treatment. To ensure the act remains responsive to the needs of involuntary patients and to provide a community treatment option that continues to provide safeguards, supports and supervision, the Minister of Health and Wellness initiated the process to examine the *Mental Health Act* (MHA) in 2004.

The *Mental Health Amendment Act* was the result of that review. Based on input from written and oral submissions, a number of amendments were put forward to the legislature. The *Mental Health Amendment Act* received Royal Assent on December 7, 2007 and was proclaimed in two stages on September 30, 2009 and January 1, 2010.

This document provides an overview of the recent amendments to the *Mental Health Act*.

- The criteria for involuntary admission changed from “danger” to “harm,” including mental or physical deterioration or impairment, which permits earlier intervention.
- The expectation for treatment plans/recommendations to be provided to an individual’s family physician, if known, upon discharge from a facility was added.
- Community treatment orders (CTOs) were introduced to encourage compliance and success with mental health treatment in the community, and
- The powers of the Mental Health Patient Advocate were expanded.

Effective September 30, 2009:

Changes in Certification Criteria

The criteria for certification (involuntary detention) was broadened. The MHA states:

When a physician examines a person and is of the opinion that the person is

- a. suffering from a mental disorder,
- b. likely to cause **harm** to themselves or others or to suffer substantial mental or physical deterioration or serious physical impairment, and
- c. unsuitable for admission to a facility other than as a formal patient,

the physician may, not later than 24 hours after the examination, issue an admission certificate in the prescribed form with respect to the person.

Changes in Notification (Section 32(1))

When a patient is discharged from a facility, where reasonably possible, notification is given to:

- a. the patient’s guardian, if any,
- b. the patient’s nearest relative, unless the patient being discharged objects, and
- c. the patient’s family doctor, if known, along with the discharge summary, including recommendations for treatment.

Effective January 01, 2010:

Community Treatment Orders (CTOs)

Community treatment orders (CTOs) were introduced in January 2010 as a new approach in Alberta to expand the continuum of addiction and mental health service options already available to patients and their care providers.

CTOs are primarily intended and designed for a unique and small number of persons 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 currently reside in the community but may pose a risk to public safety without the intensive case management provided under a CTO.

Broadly speaking, physicians must determine whether certain criteria are met, whether an individual has the ability to comply with the conditions of the CTO, and whether required services under the CTO are available and will be provided to the individual.

Specifically, the conditions and criteria under the MHA state:

9.1(1) Two physicians, one of whom must be a psychiatrist, may, in accordance with the regulations, issue a community treatment order with respect to a person if

- (a) in the opinion of the 2 physicians, the person is suffering from a mental disorder,
- (b) one or more of the following apply:
 - (i) within the immediate preceding 3-year period the person has on 2 or more occasions, or for a total of at least 30 days,
 - A. been a formal patient in a facility
 - B. been in an approved hospital or been lawfully detained in a custodial institution where there is evidence satisfactory to the 2 physicians that, while there, the person would have met the criteria (for a formal patient) as set out in section 2(a) and (b) at that time or those times, or
 - C. both been a formal patient in a facility and been in an approved hospital or lawfully detained in a custodial institution in the circumstances described in paragraph (B);
 - (ii) the person has within the immediately preceding 3-year period been subject to a community treatment order;
 - (iii) in the opinion of the two physicians, the person has, while living in the community, exhibited a pattern of recurrent or repetitive behavior that indicates that the person is likely to cause harm to the person or others or suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,
- (c) the 2 physicians, after separate examinations of the person by each of them within the immediately preceding 72 hours, are both of the opinion that the person is likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,

- (d) the treatment or care the person requires exists in the community, is available to the person and will be provided to the person,
- (e) in the opinion of each physician, the person is able to comply with the treatment or care requirements set out in the community treatment order, and
- (f) either
 - (i) consent to the issuing of the community treatment order has been obtained,
 - (A) if the person is competent, from the person, or
 - (B) if the person is not competent, in accordance with section 28(1),
 - or
 - (ii) consent to the issuing of the community treatment order has not been obtained but in the opinion of the issuing physicians
 - (A) the person has, while living in the community, exhibited a history of not obtaining or continuing with treatment or care that is necessary to prevent the likelihood of harm to others, and
 - (B) a community treatment order is reasonable in the circumstances and would be less restrictive than retaining the person as a formal patient.

In addition to meeting the above criteria, a person can only be placed on a CTO if the doctor is satisfied that the person and his/her substitute decision-maker have been informed of the person's rights.

Mental Health Patient Advocate

Further to the above amendments, the role of Alberta's Mental Health Patient Advocate has been expanded. The Advocate is appointed to promote and protect mental health patients' rights and investigate and take appropriate action to resolve mental health patients' concerns and complaints with regard to their rights, care and treatment.

Previously, the Advocate could intervene only if a person had formal patient status, that is, had two admission or two renewal certificates. With the recent amendments, the Advocate's office can respond to and investigate complaints when a person is detained under one certificate. Their jurisdiction also extends to persons subject to CTOs.

Zone and Provincial contacts are available for consultation.

Further information is available on the Alberta Health Services website at:

<http://www.albertahealthservices.ca/MHA.asp>