

Mental Health Amendment Act, 2020

Summary of Recent Changes

Bill 17: *Mental Health Amendment Act, 2020* received proclamation September 30, 2020.

This summary provides an overview of the recent amendments to the *Mental Health Act*:

- Changes to definitions and introductions of new definitions that impact criteria for Formal Patient Certification and Community Treatment Orders
- Addition of Qualified Health Professionals to the *Mental Health Act*
- Revised Responsibilities of Facility Leadership

Change in Definition of Mental Disorder

Mental Disorder is defined as a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgement, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life, ***new*** but does not include a disorder in which the resulting impairment is persistent and is caused solely by an acquired or congenital irreversible brain injury.

The change to the definition takes effect March 2021

Change to Admission & Renewal Criteria

new The person has the potential to benefit from treatment for the mental disorder.

Change to Harm Criteria

new Criteria concerning causing harm to others now requires the likelihood of harm to be within a reasonable time; criteria concerning harm to self requires the harm to be as a result of or related to the mental disorder.

Notification Requirements for Formal Patients

new In addition to existing notification requirements in Section 14, consider the following requirements during the notification of certification:

- Patient must make reasonable objection to not inform the patient's nearest relative (as defined by *Mental Health Act*) of certification
- Right to be provided a summary of the assessment made of their competence to make treatment decisions
- The patient's right to legal counsel **and** the steps to follow and obtain free legal services
- Provide the function of the Mental Health Patient Advocate (MHPA), the mechanisms for making contact with the MHPA **and** staff are required to ask the patient if the patient would like staff to contact the MHPA
 - If the patient does request that staff contact MHPA on their behalf then staff would include in that request copies of the patient's admission and renewal certificates and a summary of all information provided to the patient by the board

- In addition to patient's right to apply for a review panel hearing for a cancellation of their certificates the patient may now also apply to the review panel for an order that the board issue a Community Treatment Order
- The patient's right to obtain free and timely access to the patient's medical records relevant to a hearing before a review panel or the Court of Queen's Bench

Qualified Health Professional

Qualified Health Professional (QHP) means a physician or nurse practitioner or a person who is registered under section 33(1)(a) of the *Health Professions Act* as a member of a health profession or of a category within a health profession designated by the *Mental Health Act Regulations* for the purposes of all or part of the *Mental Health Act*.

The Minister may designate in the future other qualified health professionals under the *Mental Health Act Regulations* but at this time, a QHP is a psychiatrist, physician, or nurse practitioner.

At this time, a QHP is a Psychiatrist, Physician, or Nurse Practitioner

Treatment Changes under the *Mental Health Act*

Treatment means anything that is done for a therapeutic, preventive or other health-related purpose, including the implementation of a treatment plan.

Not later than one month after the issuance of a second admission certificate, the board shall ensure that a formal patient is provided with a written, individualized treatment plan. A Treatment plan must:

- Set out the type of treatment expected to be provided to the formal patient
- Set out the criteria on which release of the formal patient would be granted
- Set out the criteria on which privileges, including leave of absence is granted
- Have the form and content specified in the *MHA Regulations*

Other Facility Responsibilities

As soon as possible after an admission or renewal certificate is completed the board shall ensure that the certificate is reviewed to ensure completeness, issued, and provided to the person under one admission certificate or the formal patient.

The board shall provide the patient, the patient's guardian, if any, one person designated by the patient and, unless the patient objects on reasonable ground, the patient's nearest relative:

- Copies of the admission certificates or renewal certificates, and
- A summary of the assessment made of the patient's competence to make treatment decisions

The board shall inquire with the formal patient to determine whether the patient requests to be contacted by the MHPA and shall be contacted by MHPA notify the MHPA and provide the MHPA with a copy of the patient's admission certificates or renewal certificates and a summary of information provided by the board to the patient under this section.

If a formal patient applies for a review or files an appeal under the *Mental Health Act*, or is the subject of a review panel hearing, the board shall, without charge and as soon as practicable, provide the patient with a copy of the patient's relevant medical records in advance of the hearing before the review panel or the Court of Queen's Bench.

Form 6: Transfer to another Facility

The memorandum of transfer, Form 6, is no longer required to transfer a formal patient between two facilities operated by a single regional health authority or between two facilities operated by a contracted service provider of a regional health authority.

Secure Location and Peace Officer Transport

Secure Location means a location designated by ministerial order. A peace officer may convey an individual under a warrant to these locations for an examination. This initial examination will occur as soon as possible by a QHP. If an admission certificate is issued following the examination, then a peace officer shall convey the person to a designated facility, or if no admission certificate is issued, a peace officer shall return the individual to the individual's home, the location of apprehension or appropriate accommodations.

At this time, no secure locations have been designated by the Minister, work is underway to select and propose locations

Community Treatment Order No Consent Criteria

Criteria for a Community Treatment Order to be issued without consent is now includes: "negative effects to the person, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, or of harm to others, and a community treatment order is reasonable in the circumstances and would be less restrictive than retaining the person as a formal patient" (*Mental Health Act*, Section 9.1(1)(f)(ii)(A)(B)).

Resources

- *Mental Health Act*
- *Mental Health Regulation*
- *Mental Health Act Forms and Designation Regulation*
- *Community Treatment Order Regulation*
- *Mental Health Amendment Act, 2020*
- [Mental Health Act Forms](#)

Qualified Health Professionals Roles under the *Mental Health Act*

Qualified Health Professional (QHP) means a physician or nurse practitioner or a person who is registered under section 33(1)(a) of the *Health Professions Act* as a member of a health profession or of a category within a health profession designated by the *Mental Health Act Regulations* for the purposes of all or part of the *Mental Health Act*.

Bill 17 Impacts to Various Roles under the MHA	Psychiatrist	Physician	Nurse Practitioner
Form 1 Issuance of Admission Certificate	✓	✓	✓
	<ul style="list-style-type: none"> - 1st Form 1 issued in the community or at a non-designated facility - 1st Form 1 issued at a facility - 2nd Form 1 issued at a facility <ul style="list-style-type: none"> - At least one of the admission certificates is issued by a physician - And at least one admission certificate is issued by a member of the staff of the facility 		
Form 2 Issuance of Renewal Certificate	✓	✓	✓
	<ul style="list-style-type: none"> - At least one of the 2 examinations must be completed by a psychiatrist 		
Cancellation of Form 1 & 2 Form 2.1 Cancellation of Admission or Renewal Certificate	✓	✓	
Form 3 Order to Return a Formal Patient to a Facility	<ul style="list-style-type: none"> - Not impacted by Bill 17 - Section 21(1) if a formal patient leaves a facility when leave of absence has not been granted, the board may issue a Form 3 ordering a peace officer to return the patient 		
Form 11 Certificate of Incompetence to Make Treatment Decisions	✓	✓	
	<ul style="list-style-type: none"> - Section 27(1) and 27(2) were not impacted by Bill 17 - The responsibility to issue a Form 11 still rests with a physician - Section 29(1) is amended by the Bill 17 - If a formal patient who is competent or the alternate decision-maker object to treatment, then the QHP shall not administer treatment without a treatment order (issued by the review panel) 		
Form 19 & 20 Community Treatment Order (CTO) Issuance & Renewal	✓	✓	✓
	<ul style="list-style-type: none"> - At least one of the 2 examinations must be completed by a psychiatrist 		
Form 21 CTO Amendment	✓	✓	✓
Form 25 CTO Written Statement	✓	✓	✓
Form 22 CTO Cancellation or Expiry	✓		
Form 23 CTO Apprehension Order	✓	✓	✓
Form 24 CTO Examination on Apprehension	✓	✓	✓
	<ul style="list-style-type: none"> - At least one of the 2 examinations must be completed by a psychiatrist 		
Examination by Video Conference	✓	✓	✓
	<ul style="list-style-type: none"> - May conduct an assessment and examination of a person at facility or secure location through video conference - May request an official or staff member of the facility or secure location at which the assessment and examination are conducted to attend in the same room as the person being assess and examined - The official or staff member may share personal information and health information with the QHP conducting the assessment/examination 		