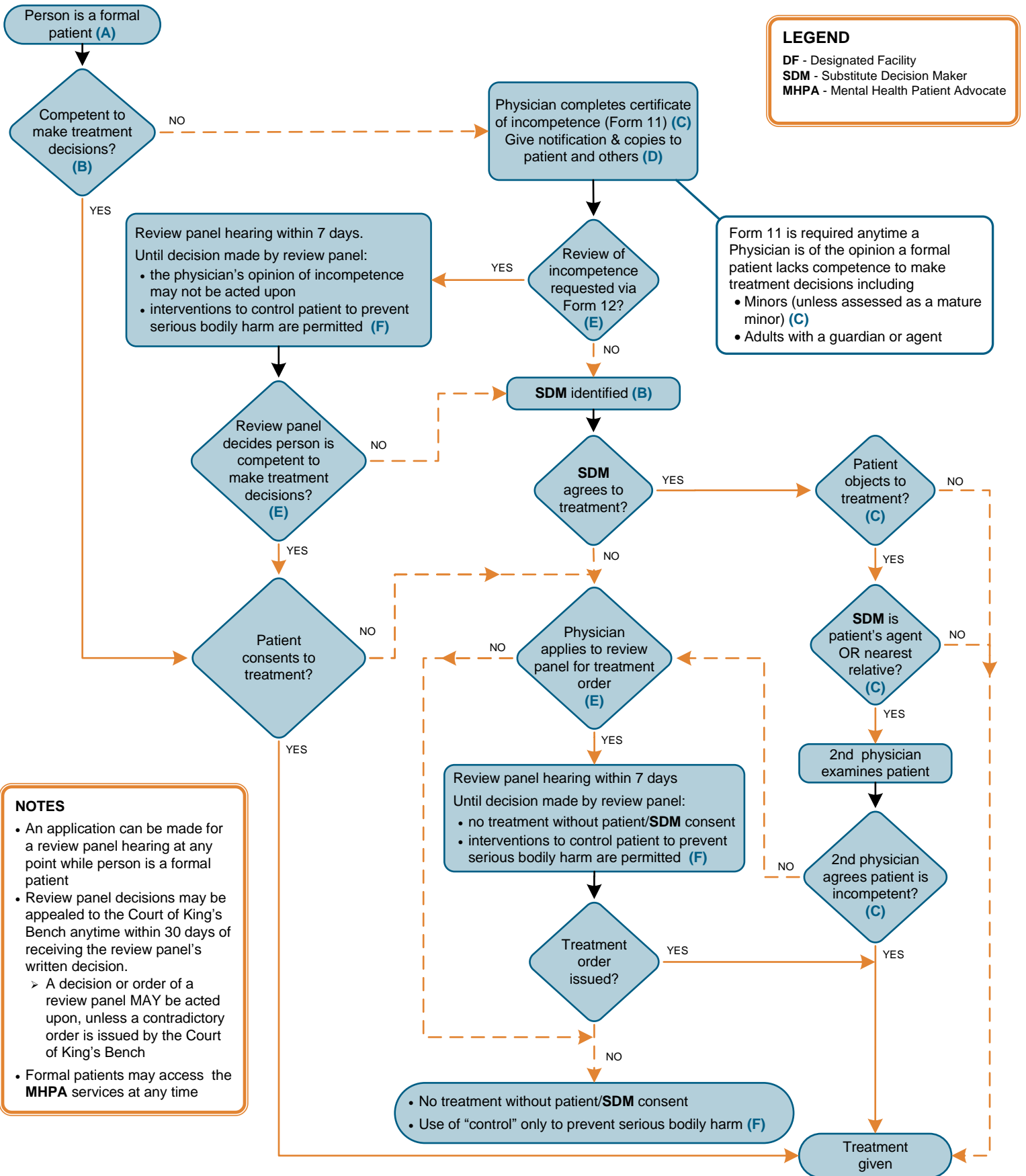


See Key Points for Reference Details A-F (over)



LEGEND
 DF - Designated Facility
 SDM - Substitute Decision Maker
 MHPA - Mental Health Patient Advocate

Form 11 is required anytime a Physician is of the opinion a formal patient lacks competence to make treatment decisions including

- Minors (unless assessed as a mature minor) (C)
- Adults with a guardian or agent

NOTES

- An application can be made for a review panel hearing at any point while person is a formal patient
- Review panel decisions may be appealed to the Court of King's Bench anytime within 30 days of receiving the review panel's written decision.
 - A decision or order of a review panel MAY be acted upon, unless a contradictory order is issued by the Court of King's Bench
- Formal patients may access the MHPA services at any time

• No treatment without patient/SDM consent
 • Use of "control" only to prevent serious bodily harm (F)

Definition of Mental Disorder (MHA s.1(1)(g))

A substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs: judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, 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.

A. Formal Patient (MHA s.1(e), s.2)

A patient detained in a designated facility pursuant to 2 admission or 2 renewal certificates. In both cases the following criteria must be met in the opinion of 2 QHPs:

- 1) suffering from a mental disorder
- 2) has the potential to benefit from treatment for the mental disorder
- 3) is within a reasonable time likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder
- 4) unsuitable for admission to a facility other than as a formal patient

B. Mental Competency (see MHA s.26-28)

Competency means that the person is able to understand the subject matter relating to, and consequences of making treatment decisions or giving consent and the consequences of not doing so.

When a physician determines a formal patient is incompetent to make treatment decisions, these decisions may be made by the:

- a. agent of the formal patient (under an enacted personal directive)
- b. guardian of the formal patient
- c. nearest relative as defined in section 1(i), or
- d. Public Guardian (last resort)

The nearest relative option is not utilized when an agent or guardian is in place. The SDM shall make the treatment decisions in the best interest of the formal patient.

C. Incompetence to Make Treatment Decisions (MHA s.27, s. 28)

- When a physician is of the opinion that a formal patient is not mentally competent to make treatment decisions, the physician shall submit a Form 11.
- Reasons for the opinion that the formal patient is not mentally competent must be included.
- When the SDM
 - is a **guardian**, any objection from the patient does not lead to any further requirements; treatment may proceed on the guardian's consent.
 - is an **agent or nearest relative**, and the patient objects to treatment, the MHA requires a second physician examination and opinion on the patient's competence, before treatment can proceed.
- When a second physician opinion is required, they would complete a separate Form 11.
- A **mature minor** is a person < 18 years old, who has been assessed and determined as having the intelligence and maturity to appreciate the nature, risks, benefits, consequences, and alternatives of the proposed treatment/procedure(s), including the ethical, emotional, and physical aspects.

D. Notifying Patients & Others (MHA s.27(3))

Who to notify:

- Formal patient
- Agent (if any)
- Guardian (if any)
- Nearest relative (unless patient objects on reasonable grounds)

What to include in the notification:

- A copy of the Certificate of Incompetence to Make treatment Decisions (Form 11)
- Written notice that the patient is entitled to have the physician's opinion of incompetence reviewed by a review panel
- A review panel hearing can be requested by sending a Application for Review Panel Hearing (Form 12)

E. Review Panels (MHA s.34-43, s. 14(1)(b)(x))

- Composed of a chair or vice-chair (lawyers), a psychiatrist and a member of the public
- The formal patient, or anyone on their behalf, may apply for a hearing via Form 12 to:
 - cancel admission/renewal certificates
 - request a CTO
 - overturn a physician's certificate of incompetence to make treatment decisions
- The formal patient has the right to legal representation at all review panel hearings.
- Prior to a hearing, formal patient is entitled to free & timely access to patient records relevant to review panel.
- A board or attending physician may apply to review panel for a treatment order.
- If an application is made to a review panel to review a physician's opinion that a formal patient is not mentally competent to make treatment decisions, neither a physician nor the board shall act on the opinion pending the outcome of the application.
- Any decision or order of the review panel may be appealed to the Court of King's Bench by the "applicant" of formal patient.
- A decision or order of a review panel MAY be acted upon, unless a contradictory order is issued by the Court of King's Bench.

F. Control (MHA s.30)

The MHA authorizes minimal use of reasonable force, by mechanical means or medication – without patient consent – as necessary to prevent serious bodily harm to the person or another. Means used must have regard for the physical and mental condition of the person.

Additional Information

- MHPA services are available at any time for all formal patients.
- In addition to the prescribed MHA forms referenced, all QHPs and any other staff assisting, are expected to follow professional standards and organizational guidelines for documentation

Form Name

11 Certificate of Incompetence to Make Treatment Decisions
12 Application for Review Panel Hearing

Completed by

Physician
Patient (for review of incompetence opinion) Physician or Board (for Treatment Order request)

All Mental Health Act forms can be found on the website: <https://www.albertahealthservices.ca/info/Page1256.aspx>

For additional information on the Mental Health Act please visit <https://www.albertahealthservices.ca/info/mha.aspx>
For any enquiries about these materials please email: MHAandCTO.Enquiries@ahs.ca