



The Mental Health Act of Alberta

A Guide
for Consumers and
Caregivers

Compiled by:

Centre for Wellness

Canadian Mental Health Association – Calgary Region

Suite 400, 1202 Centre Street SE Calgary, Alberta T2G 5A5

The Mental Health Act of Alberta: A Guide for Consumers and Caregivers was written to help you understand your rights within the Act. It is intended as self-advocacy information only. Although the information in this publication is about legal issues, it should not be seen as providing legal advice. Those seeking specific legal advice or assistance should always contact a lawyer.

The guide does not include information specific to situations of involuntary detention and admission under the Criminal Code or Youth Justice Act. If you have questions about these situations, you should get more information from a lawyer or from Calgary Legal Guidance.

Although we have tried to ensure that the information in this booklet is accurate and current, because of the changing nature of the law and legislation, we make no warranty or guarantee concerning the accuracy or reliability of the contents of this publication.

In addition, the Mental Health Act is under review as this information is being prepared and might be amended at any time.

You may obtain a current copy of the Mental Health Act at www.qp.gov.ab.ca

It may also be purchased through:

Queen's Printer Bookstore
Main Floor, 455 6th ST SW
Calgary, AB
T2P-4E8

The Mental Health Act of Alberta permits involuntary detention and admission to a hospital for examination and treatment against an individual's will.

However, the Act provides various rights and safeguards. If you have concerns that your rights are not being respected, you should contact a lawyer or the provincial Mental Health Patient Advocate. In addition, Calgary Legal Aid may provide a lawyer for you if you have an upcoming review panel hearing.

Contact the Mental Health Patient Advocate's office at:

The Mental Health Patient Advocate
12th Floor, Centre West Building
10035 – 108 Street
Edmonton, AB
T5J 3E1

By telephone, call (780) 422-1812. Outside of Edmonton, use the Riteline, at 310-0000.

Contents

I. What is The Mental Health Act?	page 2
II. Who Does the Act Apply To?	page 3
1. Mental disorder	
2. A danger to self or others	
3. No alternative	
III. How Can I Be Admitted and Who Decides?	page 5
1. Apprehension and detention	
2. Admission	
IV. How Long Can I Be kept?	page 7
V. What Other Actions are Covered by the Act?	page 9
Examination	
Control	
Treatment	
When you are competent	
When you are not competent	
VI. What are My Rights?	page 12
Acknowledgements	page 15
Mission Statement	page 15

I. What is the Mental Health Act?

The Mental Health Act is a provincial statute or law. It allows for the involuntary detention and treatment of persons with mental illness, under certain conditions.

Involuntary means against your will, or without consent.

Detention means being kept in a given place.

This guide will describe what the Mental Health Act (called “the Act” from here on) permits, and what your rights are under it.

II. Who Does the Act Apply To?

To be admitted and detained in a hospital involuntarily, **you must meet *all three of the following conditions***, which are explained in more detail below:

1. Mental Disorder

You must have a mental disorder or you must be apparently suffering from a mental disorder.

2. A Danger to Self or Others

You must be in a condition that presents a danger to yourself or to others, or are likely to do so.

3. No Alternative

You must be unsuitable for admission in any other way. This is generally understood to mean that you refuse to be admitted voluntarily.

It is important to stress that **all three of these conditions must be met** in order for you to be detained against your will. Having a mental illness alone is *not* enough for involuntary detention or admission. Having a mental illness and exhibiting dangerous behaviour are not enough, unless there is no other way to admit you to a hospital for treatment.

1. Mental Disorder

A mental disorder is defined in the Act as “a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life.”

Perception means your awareness of the world through your physical senses, such as vision and hearing.

Orientation, as used here, refers to your awareness of who you are, where you are and what time you are living in. It does not mean sexual or religious orientation.

Notice that the disorder must be “substantial” and the impairment must be “gross.” Both of these mean “large.” A small change in thought, mood, or behaviour is not enough to allow you to be detained against your will. This definition of mental disorder means that you cannot be detained involuntarily simply for holding political or religious beliefs that are uncommon.

2. A Danger to Self or Others

According to the Act, presenting a danger “means there is a prediction that an act or state of harm is likely to materialize.” The dangerousness must be associated with the mental disorder. This means that you cannot be kept just because you might be a danger at some time. The danger has to be in the near future. Examples of such dangers include suicide attempts, self-destructive behaviour, or violence towards others.

3. No Alternative

You must be unsuitable for admission in any other way. This is generally understood to mean that you refuse to be admitted voluntarily.

III. How Can I Be Admitted and Who Decides?

There are two stages in the process of admitting you to a hospital against your will—the apprehension and detention for examination, and the admission to a hospital as a formal patient.

A. Apprehension and Detention

Apprehension means that you must be taken to a designated facility by a family member, friend or by a police officer, for example.

This apprehension may result in your being detained for up to a 24-hour period for assessment. During this time you may be cared for, controlled, examined and treated (these terms are discussed in the next section). Only certain hospitals can be used for these examinations and treatments.

Under certain conditions, any one of the following persons can order the apprehension:

1. A physician
2. A judge
3. A police officer.

Physician

Any physician who has examined you and feels that you have a mental disorder, are dangerous to yourself or others, and there was no other way to arrange for a hospital admission, can fill out an admission certificate. This certificate allows for your apprehension and detention.

The certificate ends if you have not been taken to a hospital within 72 hours of the certificate being made. You then cannot be picked up unless another certificate is made out.

Provincial Judge

A provincial judge can also order that you be taken to a hospital for examination. Anyone who believes that you are a) suffering from mental condition and b) dangerous can tell that to a provincial judge under oath.

If the judge is convinced that you are a danger and there is no other way to arrange an examination, the judge can issue a Mental Health Warrant. The warrant is authority for a peace officer to apprehend the person identified in the warrant and convey them to a facility for examination. A judge's warrant lasts for seven days, and can be renewed by the judge for a second seven-day period (as long as the judge renews it before the first seven-day period runs out).

Police Officer

Another method by which you may be taken for examination is under a police officer power. Any police officer who believes you a) have a mental disorder and need to be examined b) are a danger, may take you to a hospital for examination without a warrant **if waiting for a judge's warrant would be dangerous**. In addition to a person being a present danger, there must be some benefit that can be gained by submitting the person to an examination.

B. Admission

The second stage in the admission process happens once you have arrived at the hospital. The only person who can decide to admit you is a physician. He or she must examine you and decide if you meet all three of the conditions mentioned before for admission as an involuntary patient.

If you have been brought to the hospital under a physician's admission certificate and you continue to meet the Act's criteria, you need a second physician on staff (not the one who filled out the first admission certificate), to examine you and agree that you need to be admitted.

If you were brought to the hospital under a judge's warrant or under a police officer's power, two physicians must examine you independently and agree that you need to be admitted. In all cases, two admission certificates are required. At least one of physicians must be a staff member of the hospital.

IV. How Long Can I Be Kept?

The first admission certificate expires within 24 hours from the time of arrival at the hospital, unless a second admission certificate is completed within that time. Two admission certificates allow the hospital to keep you for up to one month from the date of the second certificate.

The admission can be appealed to the Review Panel.

The Review Panel is a group appointed by the Minister of Health. This group is made up of a lawyer (who must be the chairperson or the vice-chair), a medical doctor, a psychiatrist, and a member of the general public. This Panel will give you a fair, objective hearing. The panel is independent from the facility in which you are being detained and none of the people on the panel can be directly involved in providing service to you. You may give evidence at your review panel hearings, as can a lawyer and any other person you choose.

The Panel must review the admission within three weeks after receiving the application. The Review Panel must give at least seven days' notice of the date, time, place and purpose of the hearing. This seven days' notice allows the patient time to retain legal representation.

Issues heard by the review panel include:

- Admission or renewals
- Treatment orders
- Incompetence
- Transfer back to a correctional facility

A copy of the Review Panel's order or decision must be given to you. Any review panel decision can be appealed to the Court of Queen's Bench. However, you have only 14 days to appeal to the Court of Queens Bench. As of 2003, it will cost \$200.00 to file, and the entire appeals could cost \$2000.00 - \$3000.00. The waiting period is approximately three to four months. Speak to a lawyer immediately after the panel's decision if you want to appeal.

During your hospitalization, you are regularly assessed regarding the criteria of the certificates. **At any point when you no longer meet the criteria, the certificates are cancelled.** If at the end of the month, staff feels that you still meet the conditions for involuntary admission (mental disorder, dangerousness and no alternative), then two physicians separately can examine you. At least one of these physicians must be a staff member of the hospital, and at least one must be a psychiatrist. Each can issue a renewal certificate. Renewal certificates are good for up to one month, for the first two renewals.

Subsequent renewals are good for up to six months. If you have been in hospital for six months involuntarily, and your case has not yet been reviewed, it must automatically be reviewed by the Review Panel. You can also appeal to the Review Panel to have them

consider canceling your certificates. You can apply to the Review Panel as often as you wish, but the Panel reserves the right to not hear you if they believe there has been no significant change

Cancellation of the admission or renewal certificates happens when you no longer meet all the admission conditions. Once you no longer meet the criteria for involuntary detention which you no longer meet the criteria for involuntary detention which are specified in the Act, your doctor is required to cancel your certificates. You may then be discharged. If you are not discharged, you must be told that you have become a voluntary patient and, therefore, are free to leave if you want.

V. What Other Actions Are Covered by the Act?

A. Examination

Being taken to a hospital for examination and possibly admission, as described previously, is permitted by the Act. The term “examined” does not necessarily mean a physical examination. It may just involve talking to you and asking certain questions designed to assess your mental condition.

B. Control

As well, the Act permits control of you to prevent serious injury to yourself or others. This control can be through mechanical means or medication. The use of force will be as minimal, as is reasonable, having regard for your physical and mental condition.

Mechanical refers to restraints, which could range from handcuffs during transportation to cloth bindings in bed.

Reasonable means that, for example, the amount of force used against a frail elderly woman should be much less than that needed to control a strong, young man.

Note: If there is an element of dangerousness in your behaviour, this section overrides your ability to refuse treatment. That is, you can be forcibly treated and receive an injection against your will.

C. Treatment

The Act also allows for treatment of a person admitted under the Act, under certain circumstances. These conditions depend on whether or not you are considered “competent” to make decisions about your own treatment.

Competence is defined as being able to understand the subject matter relating to the decisions and able to appreciate the consequences of making the decisions. Only a basic level of understanding is expected.

Competence is difficult to assess. You may be competent to make some decisions but not others. Competence is not now-and-forever. And you may be competent some times but not others.

It is important to note that to **appreciate** the consequences of your decisions, it is not enough that you know what the consequences are. You must also be able to understand the value of the consequences.

1. Treatment When You Are Competent

If you are considered competent and consent to treatment, you will be treated.

If you are competent but refuse treatment:

a) Your physician may respect your decision,

or

b) Your physician may make a request to the Review Panel for a Treatment Order. **Your physician may *not* go ahead with treatment without a Treatment Order authorized by the Review Panel.** If the Review Panel issues a Treatment Order, you will be treated against your will.

The Review Panel will only order treatment if it is satisfied that the physician has examined you, and that treatment is in your best interest based on the following four conditions:

1. You are likely to improve with treatment,
2. You are likely to get worse without treatment,
3. The benefit of treatment outweighs the risks of the treatment; and
4. The treatment is the least limiting and invading of all possible treatments that fill the first three requirements.

The Review Panel may also ask for an outside opinion by a psychiatrist who is not on staff at the hospital, to see if the proposed treatment is in your best interests. If the Review Panel decides that the physician's treatment plans are in your best interest, the Act permits that the treatment be given without your consent through the issuing of a Treatment Order.

Despite the fact that the Panel can order treatment, **the Act states that psychosurgery cannot be performed without both your consent and a Review Panel order.**

Psychosurgery is surgery on the brain carried out to change mental processes. **Electro-Convulsive Therapy (ECT) is *not* considered psychosurgery** and may be given without a Treatment Order. However, ECT is not considered as the first option of treatment. It is usually an alternative of last resort.

2. Treatment when you are not competent

If you are not competent, you cannot legally consent to treatment. The doctor must complete a **Form 11 certificate**. The Form 11 certificate will state reasons why you are deemed not competent. A copy of the Form 11 certificate must be given to you. It must also be given to either your guardian (if there is one) and, unless you object, your nearest relative. This person will be asked to make treatment decisions for you.

If you have been deemed incompetent and refuse treatment, a second physician must examine you and also find you incompetent.

If a second physician also finds you incompetent, you may postpone being treated against your will by appealing the Form 11 certificate to the Review Panel. If you appeal, you cannot be treated until the Panel has heard your case.

If the Review Panel agrees that you are incompetent, your guardian or nearest relative will make treatment decisions for you and then you can be treated against your will.

The relative or guardian

A guardian is the parent of a minor (person under the age of 18 years) or someone legally appointed to act in your interests. For more information on guardianship, you should look at the Dependent Adults Act.

Your parent or guardian must make decisions based on what he or she believes to be in your best interests. Hopefully, they will have had a conversation with you about your treatment wishes. These best interests may also be determined by using the same criteria used by the Review Panel.

VI. What Are My Rights?

Although the Act appears to have frightening powers to hold you against your will and force you to accept treatments you do not agree to, the Act does have the protection of your rights written into it. First, any apprehension, detention or admission must meet the prescribed steps, or you cannot be held. Second, the Act directly states several of your rights.

You have the right to:

- Information
- Confidentiality
- Communications
- Visitors
- Legal representation
- Refuse treatment
- Appeal
- Have an advocate

1. Your Right to Information

If two admission or renewal certificates are issued, you must be told what the reasons for the certificate are. Also, you must be told about your right to appeal to the Review Panel for cancellation of the certificates. Your nearest relative must also be given this information. (You can prevent your relative from being given this information if you object.) If you have a guardian, he or she must be given this information.

You must also be given:

- A written statement of the reasons for, and the period of, certification;
- Copies of the certificates;
- A written description of the function of the Review Panel, along with the name and address of the chairperson of the panel; and
- Written information about your right to apply to the Panel for cancellation of the certificates.

Again, your nearest relative must be informed, unless you object. Your guardian is automatically notified. **It can also be given to any one person chosen by you.**

If there is a language barrier, the hospital must obtain an interpreter to provide you with this information in your own language.

2. Your Right to Confidentiality

Information in your hospital record must remain private. It cannot be released in any way that would be harmful to your interests.

3. Your Right to Communications

You have the right to have your communications, such as personal mail and telephone conversations, to remain private. As well, you have the right to unlimited access to your mail and telephone. **Therefore, hospital staff cannot open or hold back you mail, or deny you the use of the telephone**, unless you are abusing this use.

4. Your Right to Visitors

You may have visitors during set visiting hours. The only limit is if your physician feels that a specific visitor is harmful to you. This usually only happens if that visitor is someone who has been abusing you, mentally or physically. It could happen if a certain visitor would set back your healing.

5. Your Right to a Lawyer

You have the right to have a lawyer represent you, and your lawyer may visit you at any reasonable time. If you cannot afford a lawyer, you may have access to one through Legal Aid. Your lawyer may be present at any Review Panel and may ask questions about the evidence presented. If you choose to appeal a Review Panel decision, this appeal must be heard at the Court of Queen's Bench. This process requires legal representation and cannot be handled without a lawyer.

6. Your Right to Refuse Treatment

You have the right to refuse treatment if you are found to be competent to make decisions about your treatment. If you are deemed incompetent, and treatment is consented to by your nearest relative, you may object to the treatment by appealing the incompetence issue to the Review Panel. No treatment shall be given while you are waiting for a Review Panel decision. However, the Review Panel may decide that a treatment is in your best interest and order it despite your objections.

Psychosurgery can *never* be performed without your consent.

7. Your Right to Appeal Decisions

You have the right to appeal to the Review Panel all decisions regarding your certification, admission, renewal, or competence. If you are not satisfied with your Review Panel hearing, you have the right to appeal the Panel's decision to the Court of Queen's Bench. (There are legal fees and a waiting period to do this.) You must file notice to begin this appeal within 14 days of the Review Panel's decision. The appeal to the Court of Queen's Bench is a new proceeding and all information must be presented again to the judge. The decision of this Court can not be appealed.

8. Your Right to Advocacy

The Act provides for an appointed provincial Mental Health Patient Advocate to look into complaints from patients. These complaints could concern rights, treatment issues, or any other concerns regarding being an involuntary patient. The Advocate can provide you with information or advice, or may undertake an investigation of your complaint.

This information could include how to get a lawyer, how to apply to a Review Panel or the Court of Queen's Bench, or how to deal with care-related concerns. Investigations could include reviewing your records and asking questions of you and the hospital staff. These may result in recommendations being given to the hospital, the Minister of Health, or other officials.

Informal advocates are not mentioned in the Act, but you are allowed to give information about yourself to any person you choose. Although non-appointed advocates could help you by getting information for you or by representing your interests, she or he will not have the same authority as an appointed advocate to access information, subpoena records or interview staff.

Canadian Mental Health Association - Calgary Region

Vision

Mentally healthy people in a healthy society

Mission

A leader in promoting mental health and wellness through comprehensive community-based services for individuals, families, groups, and organizations.

For further information contact:

The Canadian Mental Health Association
Calgary Region
Suite 400, 1202 Centre Street SE
Calgary, Alberta T2G 5A5
(403) 297-1700

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