

*Mental Health Care and Treatment Act*

**Provincial Policy and Procedure  
Manual**

**Revised: April 7, 2009**

*A copy of the Act is contained in the manual and labelled as Appendix A. Page numbers in the Act are Policy and Procedure Manual page numbers, not the page numbers of the Act.*



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**MENTAL HEALTH**  
*Care & Treatment Act*

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## **Introduction**

The *Mental Health Care and Treatment Act, SNL 2006, c. M-9.1* (Appendix A, “the Act”) is the legislative authority for the delivery of mental health services to persons who are involuntary certified. It provides the criteria and procedures for deciding if a person should be involuntarily certified.

The purpose of the Act is stated in Section 3. The Act was designed:

“(a) to provide for the treatment, care and supervision of a person with a mental disorder that is likely to result in dangerous behaviour or in substantial mental or physical deterioration or serious physical impairment;

(b) to protect a person with a mental disorder from causing harm to himself or herself or another and to prevent a person with a mental disorder from suffering substantial mental or physical deterioration or serious physical impairment;

(c) to provide for the apprehension, detention, custody, restraint, observation, assessment, treatment and care and supervision of a person with a mental disorder by means that are the least restrictive and intrusive for the achievement of the purpose set out in paragraphs (a) and (b); and

(d) to provide for the rights of persons apprehended, detained, restrained, admitted, assessed, treated and cared for and supervised under this Act.”

The majority of people who need treatment for mental illness receive it on a voluntary basis. The Act only applies to the small number of individuals who require detention and treatment on an involuntary basis. The Act replaces the Mental Health Act which has been in place in the province since 1971. The policy directions reflected in the new Act were generated by a multi-sectoral stakeholder committee that had been meeting since 2000. These directions received strong support in a series of targeted public consultations.

## **Purpose**

This manual was designed to assist the Regional Health Authorities (RHAs) in implementing and interpreting the Act. The manual must be read in conjunction with the Act. The manual establishes the policies to follow to ensure consistent and quality implementation of the Act across the province. These policies were developed by the Department of Health and Community Services (DHCS), with input from the Regional Health Authorities, consumer and stakeholder groups.

Every effort has been made to ensure accuracy, in the event of an error in the manual, please notify [dsmartin@gov.nl.ca](mailto:dsmartin@gov.nl.ca).

## **Structure and Numbering**

The policies are grouped in sections as indicated in the Table of Contents. Each section of the manual has an Arabic number and each policy within the section has an Arabic number which is a subset of the section number (e.g. 2.10). Multiples of 10 have been used to identify sequential policies within the same section. Reserve numbers are available for the addition of new policies.

## **Responsibility for Manual Review, Revisions and Additions**

The Department of Health and Community Services will review the manual at least once every three years. Specific issues may be reviewed as they arise. Upon review and consultation, any changes and additions will be forwarded to the RHA for inclusion in the manual. An up to date version of the manual will be available on the Department of Health and Community Services website.

Upon receiving a request for a revision or addition, the RHA will:

- review the request for revisions or additions;
- determine if the suggestion is requirement related;
- endeavour to clarify; and
- forward requested edits and/or suggestions to the DHCS.

The DHCS will:

- research proposed material as necessary;
- review, revise or edit material for appropriateness to the manual;
- incorporate new or revised policy(s) in the manual;
- distribute copies of the new or revised policy(s) and revised Table of Contents to the RHAs, if applicable; and
- update the manual on the DHCS website.

## **Responsibility for the Evaluation of the Act**

In conjunction with the RHAs and community mental health agencies, the DHCS will also, on a yearly basis monitor the effectiveness of the Act as per evaluation criteria with a view to preparing for the ministerial review that must be conducted every five years.

## **Definitions**

Throughout this manual,

- “administrator” means the person in charge of administrative functions within a psychiatric unit and includes his or her designates.
- “attending physician” means the physician who is given responsibility for the observation, care and treatment of a person during the period that a certificate or

community treatment order in respect of the person is in effect and includes an attending psychiatrist.

- “board” means the Mental Health Care and Treatment Review Board.
- “DHCS” means the Department of Health and Community Services;
- "facility" means a place where a psychiatric assessment may be conducted and includes a physician's office.
- “involuntary patient" means a person who is the subject of 2 certificates of involuntary admission issued in accordance with section 17 or a certificate of renewal issued in accordance with paragraph 30(2)(a).
- “peace officer” means a member of the Royal Canadian Mounted Police, a member of the Royal Newfoundland Constabulary, and a sheriff, sub-sheriff, bailiff and deputy sheriff appointed under the *Sheriff's Act, 1991*.
- “physician” means a person who is licensed to engage in the practice of medicine in the province or is otherwise lawfully engaged in the practice of medicine in the province.
- "psychiatric unit" means a facility which is a hospital or part of a hospital and that has been designated by the minister for the observation, assessment, detention, custody, restraint, treatment, care and supervision of a person with a mental disorder. The Minister has designated four facilities as psychiatric units:
  - Western Memorial Regional Hospital – Corner Brook
  - Central Newfoundland Regional Health Centre – Grand Falls-Windsor
  - Waterford Hospital – St. John's
  - General Hospital, Health Sciences Centre – St. John's
- “representative” means a person, other than the rights advisor, who has reached the age of 19 years and who is mentally competent and available who has been designated by, and who has agreed to act on behalf of a person with a mental disorder. Where no other person has been designated, the representative shall be considered to be the next of kin, unless the person with the mental disorder objects.
- “RHA” means a regional health authority;
- “safe space” means a specially designed room (see specification in Appendix E) in or near the emergency department of a health facility that is used for assessing a patient for involuntary admission. If the patient is deemed certifiable and requires a transfer to a psychiatric unit, the patient may be detained in this area. In facilities where there is no psychiatric unit, the safe space should be built so that it may also function as a seclusion room.
- “seclusion room” means a specially designed locked room on a psychiatric unit which is used to provide privacy, safety and seclusion for an agitated person. Controlling the person's environment by removing people, ward activity and other stimuli provides an opportunity for the person to calm themselves and regain composure. It is used often in combination with medication and serves to de-escalate a situation which may be dangerous to the agitated person or those around him or her.
- “staff” means the appropriate administrative and clinical personnel and physicians of a RHA;

## **1.0 Regional Health Authority**

### **1.10 Education Requirements**

The RHA shall ensure:

- Staff are educated and aware of the rights of the patient as outlined in the Act; (see Appendix B);
- Staff are educated and aware of the role and responsibilities of the rights advisor; (see section 4.0);
- Staff are educated and aware of the role of the representative; (See section 3.0);
- Staff are educated and aware of the role and responsibilities of the health professionals, persons and organizations named in a community treatment plan (See section 5.0);
- Staff are aware of the certification process as outlined in the Act; (See Appendix C);
- Attending physicians, administrators and the psychiatrists who issue community treatment orders are aware of their duties as outlined in the Act. (see Appendix D);
- Nursing and administrative staff are aware of the time lines in the Act and how they are to be tracked in accordance with provincial policy; and that
- Copies of the Act are available on all psychiatric units and in all emergency departments.

### **1.20 Facility Requirements**

The RHA shall ensure:

- There is a safe space available in the emergency department of the health facility in which the psychiatric assessment is conducted. This policy applies to all facilities that have psychiatric units and other facilities designated as safe spaces in the region. In facilities that have psychiatric inpatient beds this space will be a safe space only. In facilities that have no psychiatric inpatient beds this space shall double as a safe space/seclusion room; (See Appendix E for specifications for a safe space);
- There is a seclusion room in all facilities that have psychiatric units;
- Involuntary patients have access to materials and resources necessary to write and send correspondence, and reasonable access to correspondence that has been sent to them;

- Involuntary patients have access to a cordless telephone;
- There is space available for a person awaiting a psychiatric assessment and an involuntary patient to consult with a lawyer in private;
- Video conferencing is available for use, as appropriate;
- The Patients' Rights Poster is prominently displayed in all inpatient areas and public reception areas of the psychiatric unit;
- There is a designated space in the facility where copies of the certificates of involuntary admission and certificates of renewal are filed;
- Patients and persons awaiting psychiatric assessment have access to visitors during visiting hours; and
- Involuntary patients have access to an interpreter if required.

### **1.30 Forms**

The RHAs shall ensure that staff are able to access all the approved current forms and that the forms are completed as required under the Act.

#### **1.30.10 Certificates of Involuntary Admission**

- In accordance with *Section 17(1)* of the Act, a certificate of involuntary admission shall be in the approved form. (See form **MHCTA-1**, Appendix I)
- A copy of the certificate of involuntary admission must be provided to the person and the representative.

#### **1.30.20 Certificate of Renewal**

- In accordance with *Section 30(2)* of the Act, a certificate of renewal shall be signed in the event an involuntary patient continues to meet the criteria of an involuntary patient and the detention period is about to expire. (See form **MHCTA-2**, Appendix I)
- A copy of the certificate of renewal shall be provided to the person and the representative.

#### **1.30.30 Community Treatment Order**

- In accordance with *Section 41(1)* of the Act the community treatment order shall be completed in the approved form. (See form **MHCTA-3**, Appendix I)
- The form shall be signed by the attending psychiatrist who issued the order.
- A copy of the issued or renewed community treatment order shall be provided to the person who is the subject of the order, the representative, the rights advisor and each health care professional, person, and organization named in the community treatment plan.
- If the psychiatrist who issued the order is unable to carry out his/her responsibilities under the order, section 3 of the form shall be completed and a new copy of the form sent to the person who is the subject of the order, the



representative, the rights advisor and each health care professional, person, and organization named in the community treatment plan.

#### **1.30.40 Community Treatment Plan**

- In accordance with *section 40(2)(c)* of the Act, a community treatment plan shall be developed for a person subject to a community treatment order.( see form **MHCTA-4**, Appendix I)
- Where a community treatment plan has been varied by the psychiatrist who is responsible for the general supervision and management of the plan or by a health care professional, person, or organization named in the plan a new community treatment plan shall be completed and sent to the person who is the subject of the order, the representative, the rights advisor and each health care professional, person, and organization named the community treatment plan.

#### **1.30.50 Authorized Patient Pass**

- In accordance with *Section 37(2)* of the Act, a pass issued to an involuntary patient by the attending physician or designate permitting the patient to be absent from the unit for a specified period of time, subject to conditions, shall be issued on the approved form. (See form **MHCTA-5**, Appendix I). A copy of the pass must be filed with the administrator. The original pass must be placed on the patient chart.

#### **1.30.60 Order for the apprehension and conveyance of an involuntary patient due to unauthorized leave.**

- In accordance with *Section 38(1)* of the Act, where an involuntary patient is absent from a psychiatric unit, without a pass or his or her pass has expired, the administrator may issue an order for the apprehension and return of the patient. The order shall be in the approved form. (See form **MHCTA-6**, Appendix I)
- This order expires 30 days after the day it is issued.

#### **1.30.70 Notification Advising a Person that a Community Treatment Order is No Longer in Effect**

- In accordance with *section 50(4)* of the Act, notice to a person who is the subject of the CTO that the order is no longer in effect and that he or she may live in the community without being subject to the order, shall be in the approved form. (see form **MHCTA-7**, Appendix I)
- A copy of this notice shall be provided to the administrator (where appropriate) and to the representative, the rights advisor and each health care professional, person and organization named in the community treatment plan.

### **1.30.80 Order for the Apprehension, Conveyance and Examination of a Person who Failed to Comply to Community Treatment Order (CTO)**

- In accordance with *section 51(1)* of the Act, an order for the apprehension, conveyance and examination of a person who failed to comply to the conditions of the community treatment order shall be issued in the approved form. (see form **MHCTA-8**, Appendix I)
- This order shall expire 30 days after the date of the issuance of the order.

### **1.30.90 Authorization to Transfer to another Psychiatric Unit**

- In accordance with *Section 75(3)* of the Act where a patient is transferred to another psychiatric unit an Authorization to Transfer form shall be completed in the approved form. (See form **MHCTA-9**, Appendix I)
- A notice of this transfer shall be given to the involuntary patient, his or her representative and the rights advisor.

### **1.30.100 Authorization to Transfer to another Jurisdiction**

- In accordance with *Section 81(5)* of the Act when the attending physician authorizes the transfer of the patient to another jurisdiction it shall be on the approved form. (See form **MHCTA-10**, Appendix I)

### **1.30.110 Authorization to Transfer into the Province**

- In accordance with *Section 81(5)* of the Act when the physician authorizes the transfer of a patient into the province it shall be on the approved form. (See form **MHCTA-11**, Appendix I)

### **1.30.120 Order for Involuntary Psychiatric Assessment**

- In accordance with *Section 19* of the Act a judge may issue an order for an involuntary psychiatric assessment

### **1.30.130 Involuntary Certification/Communication Checklist**

- The RHA shall ensure there is a checklist for staff to complete which follows the patient through the certification process. This checklist will ensure the appropriate person fulfills his or her duties in relation to the certification process ensuring the appropriate timelines are met. This checklist shall remain as part of the patient's file (See form **MHCTA-12**, Appendix I) and in the event of transfer, the checklist will transfer with the patient.

### **1.30.140 Application / Withdrawal of Application for Review by the Mental Health Care and Treatment Review Board**

- In accordance with *section 64* of the Act, application may be made to the Mental Health Care and Treatment Review Board
  - To review the issuance of certification of involuntary admission or a certificate of renewal,
  - To review the issuance of a community treatment order or renewal, and
  - To review the denial of a right as set out in *section 11 or 12* of the Act.
- This application may also be withdrawn. (see form MHCTA – 13, Appendix I).

### **1.40 Administrative Files**

The RHA shall ensure:

- An administrative file on all persons detained under the Act is opened and maintained by the RHA. The file shall be in the person's name and shall contain information related to the administration of the Act in relation to the person. This information will include but not be limited to copies of:
  - certificates and renewal forms;
  - passes;
  - community treatment orders / variations / expirations / terminations / revocation orders;
  - automatic applications to Review Board.
- Administrative files shall be stored together and managed in a location to be determined by each RHA.

### **1.50 Notifying a Facility of Patient Conveyance**

- Under the Act, a patient may be conveyed to a facility when:
  - A person is detained at a facility with one certificate completed and requires conveyance to another facility for a second assessment; or
  - A person may be fully certified with two certificates signed, but in a facility that is not a psychiatric unit and therefore will require immediate conveyance to a psychiatric unit.

In these instances:

- The attending physician or Nurse Practitioner at the first facility must contact the attending physician at the second facility and notify her or her of the plan to convey the patient;
- Transfers must be completed as quickly as possible with no unnecessary delays.

### **1.60 Patient Passes**

- The RHA shall ensure there is a written procedure for staff to follow for issuing a pass for involuntary patients. The pass (Appendix I – MHCTA-5) permits the patient to be absent from the psychiatric unit for a specified period of time,

subject to the conditions specified in the pass. It must be issued on an approved form and signed by the attending physician or his or her designate. (See Appendix F for a sample procedure which the RHAs may use as a guide in developing procedures related to issuing a patient pass).

### **1.70 Return of Person Detained and Released**

Where a person is released from a facility under *Section 23(1)* of the Act, the RHA shall, unless the detained person otherwise requests, arrange for the return of the person to the place where the person was when taken into custody or to another appropriate place. Ordinary discharges are not covered by this policy. It is only to be used when someone has been conveyed to the facility for an involuntary psychiatric assessment and a certificate is not signed or an assessment has not been conducted within 72 hours of arrival at the facility.

- All reasonable costs, including meals, accommodation and transportation during the return shall be the responsibility of the facility where the person is released.
- If the person requests a delay in return, this shall be accommodated up to seven days. The person is responsible for the all costs during that time frame.
- The RHAs must have a written procedure to follow in returning a person who has been detained and released. (Appendix G is a sample procedure which the RHAs may use as a guide in developing procedures related to returning a person who has been detained and released.)

### **1.80 Occurrences**

- The RHA shall have a written procedure to follow in the event of an occurrence. The following events are to be considered occurrences under the Act:
  - A time frame of more than 48 hours between the arrival of the person at a facility and the completion of a psychiatric assessment.
  - CTO not ordered due to inadequate resources.
  - Renewals of certification or CTOs not completed within established timeframes.
  - Assessment of detained voluntary patient in a psychiatric unit not completed within 4 hours (*Section 34(3)*).

(See Appendix H for a sample procedure which the RHAs may use as a guide in developing procedures related to an occurrence.)

### **1.90 Evaluation**

The RHA shall ensure:

- Mechanisms are developed to ensure monitoring reports are submitted and signed in accordance with the organization's quality initiatives.

## 2.0 Representative

The Act requires that certain specified information be disclosed to the representative.

### 2.10 Rights of the Representative

- Representatives must: (*Section 11(2)*)
  - be informed as soon as practicable by the RHA that:
    - the person is being detained in the facility for the purpose of an involuntary psychiatric assessment;
    - the detained person has the right to retain and instruct counsel without delay;
  - be given a copy of the certificate, order or other authorization under which the person has been apprehended or detained.
  
- Where a person has been admitted as an involuntary patient or his or her status as an involuntary patient has been renewed, the administrator must provide a copy of all notices and other information required to be given to the involuntary patient to the representative. This includes notification: (*Section 12*)
  - of the person's status as an involuntary patient and the reason for the issuance of the certificates of the involuntary admission or the certificate of renewal;
  - that the patient has the right to retain and instruct counsel without delay and consult in private either in person or by other means;
  - that the patient or representative may apply to the board for a review of the certificate of involuntary admission or the certificate of renewal;
  - that the representative has the right to meet with the rights advisor;
  
- During the application of diagnostic procedures or treatment the attending physician and another health care professional must: (*Section 35(3)*)
  - consult with the representative; and
  - provide him or her with an explanation of the purpose, nature, and effect of the procedure or treatment; and
  - consider the representative's views on the procedure, treatment, alternatives and the manner in which they are to be provided.

- Where a person is the subject of a community treatment order, the representative has the right to:
  - apply to the board for a review of the issuance, renewal or revocation of the CTO; (*Section 41(2)(c)*)
  - be given a copy of the issued or renewed CTO by either the administrator or psychiatrist; (*Section 43*)
  - be provided with written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO; (*Section 44(3)*)
  - be provided with written notice the CTO has expired and is not renewed by either the administrator or psychiatrist; (*Section 47(2)*)
  - provided with written notice of any variation in the community treatment plan by the psychiatrist who issued the CTO; (*Section 49(2)*)
  - be given a copy of a written notice by the psychiatrist that the order is no longer in effect and that the person may live in the community without being subject to the order; (*Section 50(3)(c)*) and
  - be provided with a notice of transfer where an involuntary patient is transferred to another psychiatric unit because it is in his/her best interest to be treated in another psychiatric unit or because he/she requires hospital treatment or other services that cannot be provided in a psychiatric unit. (*Section 77*)

### **3.0 Rights Advisor**

Rights advisors report to the Department of Health and Community Services.

#### **3.10 Responsibilities of the Rights Advisor**

Under section 14 of the Act rights advisors are required:

- to offer advice and assistance in accordance with the Act to:
  - a person who is detained in or admitted to a psychiatric unit;
  - a person who is residing in the community under a community treatment order or its renewal; and
  - the representative;
- to meet in person or by other means, as soon as possible and no later than within 24 hours of the person's detention in or admission to the psychiatric unit or the issuance of a CTO, with the individuals referred to above and meet after that at the request of the person;
- to explain the significance of the issuance of a certificate of involuntary admission or a community treatment order or the renewal of a certificate of involuntary admission or a community treatment order to the person who is subject to the certificate or order;
- to communicate information in a neutral, non-judgmental manner;
- to meet as soon as is practicable in person or by other means with the representative and after that at the request of the representative;
- to, at the request of the person or his representative, assist the person in making application to the board in accordance with this Act and regulations;
- to, at the request of the person or his representative, assist the person in obtaining legal counsel;
- to, at the request of the person or his or her representative, accompany the person to board meetings;
- to maintain confidentiality; and
- to perform other functions prescribed by the regulations.

#### **3.20 Disclosure of Information to the Rights Advisor**

The administrator must ensure that the rights advisor is:

- given notice of: (*Section 15(1)*)
  - a decision to admit or detain a person in a psychiatric unit;
  - the filing of each certificate in respect of an involuntary patient;

- the cancellation or expiration of a certificate of involuntary admission and the release of an involuntary patient from a psychiatric unit;
- the change in status of a voluntary patient to an involuntary patient; and
- applications to the Board for an automatic review of detention.

The administrator or attending psychiatrist shall ensure the rights advisor is given notice of: (*Section 15(2)*)

- an application to the board; and
- the issuance, renewal, expiry, termination or revocation of the CTO;

The RHA must ensure the rights advisor is provided with:

- a notice of transfer where an involuntary patient is transferred to another psychiatric unit because it is in his or her best interest to be treated in another psychiatric unit or because he or she requires hospital treatment or other services that cannot be provided in a psychiatric unit. (*Section 77*)

The administrator must ensure that the rights advisor (CTO) is:

- provided with a copy of the issued or renewed CTO by either the administrator or psychiatrist; (*Section 43*)
- provided with written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO; (*Section 44(3)*)
- provided with written notice the CTO has expired and is not renewed by either the administrator or psychiatrist; (*Section 47(2)*)
- provided with written notice of any variation in the community treatment plan by the psychiatrist who issued the CTO; (*Section 49(2)*) and
- be given a copy of a written notice by the psychiatrist that the order is no longer in effect and that the person may live in the community without being subject to the order. (*Section 50(3)(c)*)

Please note that the certificate, renewals, orders and patient file contents are not to be disclosed to a Rights Advisor. However, there are no limits on with whom a patient can share information from his or her file.



#### **4.0 Health Professionals, Persons and Organizations named in a Community Treatment Plan**

The Community Treatment Order (CTO) will identify the health professionals, persons and organizations who have agreed in writing to provide treatment and support services to a person who is the subject of the CTO. In order for the Act to be implemented in a consistent manner Health Professional, Persons and Organizations named in a Community Treatment Plan shall be aware of his or her responsibilities and rights according to the Act

##### **4.10 Responsibilities of the Health Professional, Persons and Organizations named in a Community Treatment Plan**

The Health Professionals, Persons and Organizations named in a Community Treatment Plan shall have the following responsibilities under the Act: (*section 45*)

- implement the community treatment plan to the extent described in the order;
- provide reports (if required) to the psychiatrist who issued the CTO on the condition of the person who is the subject of the order;
- advise the patient from the start of the CTO of their right to continue to “voluntarily” access the community mental health services and supports provided under the CTO for an indeterminate period of time even though the CTO may expire;
- working to engage with the patient, while subject to the CTO, towards voluntary acceptance of treatment beyond the CTO;
- educating the patient about the benefits of continued treatment beyond the CTO and the risks of treatment discontinued;
- not denying the patient access to continued treatment or place the patient on a waitlist for the same treatment because they no longer are subject to a CTO.

##### **4.20 Rights of the Health Professional, Persons and Organizations named in a Community Treatment Plan**

The Health Professionals, Persons and Organizations named in a Community Treatment Plan shall have the following rights under the Act. They shall be given:

- a copy of the issued or renewed CTO by either the administrator or psychiatrist; (*section 43*)

- written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO; *section 44(3)*
- written notice that the CTO has expired and is not renewed by either the administrator or psychiatrist; *(section 47(2))*
- written notice of any variation in the community treatment plan by the psychiatrist who issued the CTO; *(section 49(2))*
- a copy of a written notice by the psychiatrist that the order is no longer in effect and that the person may live in the community without being subject to the order.*(section 50(3)(c))*

## **5.0 Mental Health Care and Treatment Review Board**

The Mental Health Care and Treatment Review Board is a 13 member board appointed by the Lieutenant-Governor in Council to hear and decide applications under the Mental Health Care and Treatment Act.

### **5.10 Decision Making**

Three member panels, comprised of a lawyer, physician and a community representative will hear applications for review. Each panel member has one vote. Decisions of the panel will be made by a majority vote.

### **5.20 Jurisdiction**

The Board will review:

- applications by the administrator made via automatic review pursuant to Section 33 and 53(3) of the Act;
- applications by involuntary patients to review the issuance of certificates of involuntary admission or certificates of renewal;
- applications by a person who is the subject of a Community Treatment Order to review the issuance or renewal of the order; and
- applications by a person detained in a facility alleging a denial of a right set out in section 11 or 12 of the Act.

### **5.30 Powers**

A panel has all the powers, duties and immunities of a commissioner appointed under the Public Inquiries Act. It may:

- require a witness to appear before it;
- require the RHA to produce documents or records;
- arrange for an involuntary patient or person subject to a Community Treatment Order to be examined by a psychiatrist;
- engage independent medical, psychiatric or other professional persons to present evidence and make submissions; and
- invite input from any other person who, in the opinion of the panel, has a material interest in or knowledge of matters relevant to the application.

DEPARTMENT OF HEALTH AND COMMUNITY SERVICES	
Mental Health Care and Treatment Act, 2006 – Provincial Policy Manual	
Section 6.0. Peace Officers	Policy: 6.10
Effective Date: October 1, 2007	Revised

## 6.0 Peace Officers

### 6.10 Powers and Duties of the Peace Officer

- The completion and signing of the first certificate of involuntary admission under *Section 18* is authority for the peace officer (if acting under the authority of the certificate) to:
  - apprehend the person who is named in the certificate within seven days of the date of the signing of the certificate and convey him/her without his/her consent to a facility for a second involuntary assessment; and
  - to observe, detain, and control the person during apprehension and conveyance.
- Where a judge issues an order (expires 7 days after it is made) for an involuntary psychiatric assessment under *Section 19*) a peace officer shall:
  - apprehend and convey the person to a facility for an involuntary psychiatric assessment;
  - observe, detain, and control the person during apprehension and conveyance
- Where a peace officer has reasonable grounds to believe a person meets the criteria set out in *Section 20* of the Act, and it is not feasible in the circumstances to make an application for a judge’s order, the peace officer may:
  - immediately apprehend and convey the person to a facility for an involuntary psychiatric assessment.
- Where a peace officer apprehends a person under *Subsection 18(2) or 19(4) or Section 20* of the Act , the peace officer shall inform the person:
  - of the reasons for his/her apprehension;
  - that he/she is being taken to a facility for an involuntary psychiatric assessment; and
  - that he/she has the right to retain and instruct counsel without delay.
- Where a peace officer apprehends and conveys a person to a facility for an involuntary psychiatric assessment under *Section 18, 19 or 20* of the Act the peace officer:
  - may take reasonable measures, including the entering of premises and the use of physical restraint to apprehend the person and to take him/her into custody;

- the conveyance shall be made as soon as practicable and by the least intrusive means possible without compromising the safety of the person or public;
  - shall provide the person at the facility conducting the assessment with:
    - the first certificate of involuntary admission where the person is apprehended and conveyed under *Subsection 18(2)*;
    - the judicial order where the person is apprehended and conveyed under *Subsection 19(4)*;
    - a written statement from the peace officer who apprehended and conveyed the person under *Section 20*. This written statement shall set out :
      - the name of the person conveyed , if known;
      - the date, time and place the person was apprehended;
      - the grounds on which the peace officer formed his or her belief and any other information relating to the circumstances which led to the taking of the person into custody.
  - shall remain at the facility and retain custody of the person who has been apprehended until the psychiatric assessment is completed or the person conducting the assessment advises that continuing custody is not required.
- Where an administrator issues an order to a peace officer under *Subsection 38(2)* of the Act to apprehend a patient who is absent from a psychiatric unit (unauthorized leave), the order is authority for the peace officer to:
    - apprehend the person named or described in the order and return him/her to the psychiatric unit; and
    - observe, detain and control the person during his/her apprehension and return to a psychiatrist or a psychiatric unit.
  - Where a psychiatrist issues an order to a peace officer under *Subsection 51(1)* of the Act to apprehend and convey a person who failed to comply with the conditions of the CTO, the order is authority for the peace officer to:
    - apprehend the person named in the order and convey him or her to a facility named in the order for a psychiatric assessment;
    - observe, detain and control the person during his or her apprehension and conveyance to the facility;
    - take reasonable measures, including the entering of premises and the use of physical restraint to apprehend the person and to take him or her into custody.

## **7.0 The Department of Health and Community Services**

### **7.10 Distribution of Manual and Forms**

The DHCS will ensure this policy manual and the associated forms are up to date and displayed on the departmental website. Forms in the manual are approved forms as required by the Act. The manual include the following forms in Appendix I.

- MHCTA-1 Certificate of Involuntary Admission
- MHCTA-2 Certificate of Renewal
- MHCTA-3 Community Treatment Order
- MHCTA-4 Community Treatment Plan
- MHCTA-5 Authorized Patient Pass
- MHCTA-6 Order for the Apprehension and Conveyance of an Involuntary Patient due to Unauthorized Leave.
- MHCTA-7 Notification Advising a Patient that the Community Treatment Order is No Longer in Effect
- MHCTA-8 Order for the Apprehension, Conveyance and Examination of a Person who Failed to Comply to CTO
- MHCTA-9 Authorization to Transfer to Another Psychiatric Unit
- MHCTA-10 Authorization to Transfer to Another Jurisdiction
- MHCTA-11 Authorization to Transfer into the Province
- MHCTA-12 Involuntary Certification/Communication Checklist
- MHCTA-13 Application / Withdrawal of Application for Review by the Mental Health Care and Treatment Review Board

### **7.20 Review of Manual**

- The DHCS will ensure the manual is reviewed at least once every three years. Specific issues will be reviewed as they arise. Upon review and consultation, any changes and additions will be forwarded to the RHAs for inclusion in the manual and updated on the website.

### **7.30 Evaluation of Act**

- The DHCS will ensure the Act is monitored on a yearly basis as per evaluation criteria with a view to preparing for the ministerial review that must be conducted every five years.

# Appendix A – Mental Health Care and Treatment Act

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## **Important Information**

(Includes disclaimer and copyright information and details about the availability of printed and electronic versions of the Statutes.)

### SNL2006 CHAPTER M-9.1 **MENTAL HEALTH CARE AND TREATMENT ACT**

Amended:

## **CHAPTER M-9.1**

### **AN ACT RESPECTING MENTAL HEALTH CARE AND TREATMENT**

*(Assented to December 12, 2006 )*

*Analysis*

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

**Short title**

1. This Act may be cited as the *Mental Health Care and Treatment Act* .

[2006 cM-9.1 s1](#)

## Interpretation

### 2. (1) In this Act

- (a) "administrator" means the person in charge of administrative functions within a psychiatric unit and includes his or her designate;
- (b) "attending physician" means the physician who is given responsibility for the observation, care and treatment of a person during the period that a certificate or order in respect of the person is in effect and includes an attending psychiatrist;
- (c) "board" means the Mental Health Care and Treatment Review Board established under section 56;
- (d) "certificate" means a certificate issued under this Act and includes a certificate of involuntary admission and a certificate of renewal;
- (e) "community treatment order" means an order issued under subsection 40(2);
- (f) "community treatment plan" means the plan referred to in paragraph 40(2)(c) that is a required part of a community treatment order;
- (g) "court" means, unless the context indicates otherwise, the Provincial Court of Newfoundland and Labrador and includes a judge of the Provincial Court whether sitting in court or in chambers;
- (h) "facility" means a place where a psychiatric assessment may be conducted and includes a physician's office;
- (i) "involuntary patient" means a person who is the subject of 2 certificates of involuntary admission issued in accordance with section 17 or a certificate of renewal issued in accordance with paragraph 30(2)(a);
- (j) "judge" means, unless the context indicates otherwise, a Provincial Court judge appointed under the *Provincial Court Act, 1991* and includes the chief judge;
- (k) "mental disorder" means a disorder of thought, mood, perception, orientation or memory that impairs
  - (i) judgment or behaviour,
  - (ii) the capacity to recognize reality, or
  - (iii) the ability to meet the ordinary demands of life,and in respect of which psychiatric treatment is advisable;
- (l) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (m) "next of kin" means the first named person or a member of the category of person on the following list who has reached the age of 19 years and is mentally competent and available:
  - (i) a spouse or cohabiting partner,

- (ii) son or daughter,
  - (iii) father or mother,
  - (iv) brother or sister,
  - (v) grandson or granddaughter,
  - (vi) grandfather or grandmother,
  - (vii) uncle or aunt, and
  - (viii) nephew or niece;
- (n) "nurse practitioner" means a nurse practitioner as defined in the *Registered Nurses Act* ;
- (o) "peace officer" means
- (i) a member of the Royal Canadian Mounted Police,
  - (ii) a member of the Royal Newfoundland Constabulary, and
  - (iii) a sheriff, sub-sheriff, bailiff and deputy sheriff appointed under the *Sheriff's Act, 1991* ;
- (p) "physician" means a person who is licensed to engage in the practice of medicine in the province or is otherwise lawfully engaged in the practice of medicine in the province;
- (q) "psychiatric unit" means a facility which is a hospital or part of a hospital and that has been designated by the minister for the observation, assessment, detention, custody, restraint, treatment, care and supervision of a person with a mental disorder;
- (r) "psychiatrist" means a physician who holds a specialist's certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualification acceptable to the minister;
- (s) "psychosurgery" means a procedure that by direct access to the brain removes, destroys or interrupts the normal connections of the brain for the primary purpose of treating a mental disorder but does not include neurosurgical procedures designed to treat reliably diagnosed organic brain conditions or epilepsy;
- (t) "representative" means a person, other than a rights advisor, who has reached the age of 19 years and who is mentally competent and available who has been designated by, and who has agreed to act on behalf of, a person with a mental disorder and, where no person has been designated, the representative shall be considered to be the next of kin, unless the person with the mental disorder objects;
- (u) "rights advisor" means a person appointed under section 13; and
- (v) "voluntary patient" means a person who remains in a psychiatric unit with his or her consent or with the consent of a substitute decision-maker.

(2) A person who has a duty to inform or to advise under this Act satisfies that duty by informing or advising another to the best of his or her ability and in a manner that addresses the special needs of the person receiving the information or advice, whether or not that person understands the information or advice.

(3) For the purpose of this Act, except where otherwise indicated, a reference to "approved form" means a form approved by the minister.

[2006 cM-9.1 s2](#)

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### **Purpose**

3. (1) The purpose of the Act is as follows:

- (a) to provide for the treatment, care and supervision of a person with a mental disorder that is likely to result in dangerous behaviour or in substantial mental or physical deterioration or serious physical impairment;
- (b) to protect a person with a mental disorder from causing harm to himself or herself or another and to prevent a person with a mental disorder from suffering substantial mental or physical deterioration or serious physical impairment;
- (c) to provide for the apprehension, detention, custody, restraint, observation, assessment, treatment and care and supervision of a person with a mental disorder by means that are the least restrictive and intrusive for the achievement of the purpose set out in paragraphs (a) and (b); and
- (d) to provide for the rights of persons apprehended, detained, restrained, admitted, assessed, treated and cared for and supervised under this Act.

(2) Nothing in this Act shall be considered to affect the rights or privileges of a person except as specifically set out in this Act.

[2006 cM-9.1 s3](#)

## **PART I GENERAL**

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### **Powers of minister**

4. (1) The minister may, by order published in Part I of the *Gazette*, designate a facility or a part of a facility, a class or classes of facilities, a hospital or part of a hospital, or other place as a psychiatric unit for the assessment, treatment, care, supervision, custody or other purpose relating to persons having a mental disorder and upon publication of the order the facility, part of the facility, class or classes of facility, hospital or part of a hospital or other place described in the order shall operate and be used for the purpose specified in that order.

(2) The minister may approve forms for the purpose of this Act.

[2006 cM-9.1 s4](#)

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## **Agreements**

5. The minister may enter into agreements with the Government of Canada or another province or territory of Canada or with a person, entity or organization with respect to

- (a) the provision and funding of mental health services;
- (b) the transfer, reception, observation, assessment, detention, custody, restraint, treatment, care and supervision of persons with a mental disorder in a psychiatric unit;
- (c) the assumption of all or part of the charges incurred by a resident of the province detained in or admitted to a hospital, mental health facility, psychiatric unit or treatment facility in another province or territory of Canada; and
- (d) the sharing of costs, the provision of services, and treatment, care and supervision of persons with a mental disorder.

[2006 cM-9.1 s5](#)

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## **Review of Act**

6. The minister shall, every 5 years, conduct a review of this Act and the regulations and the principles upon which this Act is based and consider the areas in which improvements may be made and report his or her findings to the Lieutenant-Governor in Council.

[2006 cM-9.1 s6](#)

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## **Protection from liability**

7. (1) An action shall not be brought against, and an administrator, a physician, a psychiatrist, a rights advisor, a nurse practitioner, a health care professional, the board, a panel appointed by the chairperson of the board, a member of the board, or another person or organization shall not be liable for an act or failure to act, or for a proceeding initiated or carried out or purportedly initiated or carried out in good faith under this Act, or for carrying out duties or obligations under this Act or for an application, decision, order, certificate, notice or other authorization made or enforced or purported to be made or enforced in good faith under this Act.

(2) An action shall not be brought against, and a facility, a psychiatric unit, a hospital authority, a peace officer or the Crown or an officer, employee, servant or agent of a facility, a psychiatric unit, a hospital authority, a peace officer or the Crown shall not be liable for a tort committed by a person who is subject to a certificate or order issued under this Act while that certificate or order is in effect.

[2006 cM-9.1 s7](#)

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## **Regulations**

8. The Lieutenant-Governor may make regulations

- (a) prescribing the duties, functions and powers of rights advisors in addition to the duties, functions and powers prescribed by this Act;
- (b) respecting appeals to the Trial Division from a decision of the board;
- (c) prescribing the duties of the board and panels appointed under this Act and of the chairperson and members of the board, in addition to the requirements of this Act;
- (d) respecting the assessment, admission, detention, custody, treatment, authorized leave, transfer, discharge and placement of persons having a mental disorder, including the specification of the contents of a certificate, order or other authorization or documentation in relation to the assessment, admission, detention, custody, treatment, leave, transfer or discharge of a person, in addition to the requirements of this Act;
- (e) respecting the annual report of the board;
- (f) respecting the proceedings of the board and of panels of the board, including the form and content of applications to the board, the conduct of hearings, the reception of evidence, the disposition of applications, the internal rules and procedures of the board and panels and the provision of notice and other communications to parties to an application and witnesses;
- (g) respecting and governing community treatment orders and community treatment plans, including the contents of orders and their administration and enforcement;
- (h) prescribing persons or classes of persons, in addition to physicians and nurse practitioners, who may complete and sign a certificate of involuntary admission;
- (i) prescribing a place or classes of place at which a person may be detained pending conveyance to a psychiatric unit as provided for in section 25 and the powers and duties of persons in charge of that place or class of place with respect to the detained person;
- (j) respecting the exercise of the rights set out in Part II of this Act;
- (k) defining a word or expression used but not defined in this Act;
- (l) re-defining or further defining a word or expression defined in this Act; and
- (m) generally to give effect to the purpose of this Act.

[2006 cM-9.1 s8](#)

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## **Offence**

**9.** (1) A person who, for the purpose of obtaining a certificate, a renewal of a certificate, an order or other authorization under this Act, wilfully supplies an administrator, physician, nurse practitioner, psychiatrist or other person authorized by the regulations, a peace officer or another person having the custody, care, control or supervision of a person with a mental disorder, with untrue or incorrect information, is guilty of an offence.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine of not more than \$2,000.

[2006 cM-9.1 s9](#)

**PART II  
RIGHTS AND RIGHTS ADVISORS**

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**Duties of peace officer on apprehension or detention**

**10.** Where a person is apprehended by a peace officer under the authority of subsection 18(2) or 19(4) or section 20, the peace officer shall promptly inform the person

- (a) of the reasons for his or her apprehension or detention;
- (b) that he or she is being taken to a facility for an involuntary psychiatric assessment; and
- (c) that he or she has the right to retain and instruct counsel without delay.

[2006 cM-9.1 s10](#)

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**Duties of facility on apprehension or detention**

**11.** (1) Where a person is conveyed to a facility for the purpose of an involuntary psychiatric assessment under the authority of subsection 18(2) or 19(4) or section 20, or is detained in a psychiatric unit under the authority of section 34 or 74 or subsection 81(4), upon arrival at the facility or at the time of detention, as the case may be, or if the person is apparently not able to understand, as soon as the person appears able to understand the information, the attending physician or his or her designate shall ensure that the person

- (a) is informed
  - (i) where he or she is being detained,
  - (ii) the purpose of the detention, and
  - (iii) that he or she has the right to retain and instruct counsel without delay; and
- (b) is provided with a copy of the certificate, order or other authorization under which he or she is apprehended or detained as soon as is reasonably practicable.

(2) The person in charge of a facility shall make best efforts to determine whether a person referred to in subsection (1) has a representative and, where a representative has been ascertained,

- (a) ensure that the representative is informed as soon as is practicable following the person's arrival at or detention in the facility that
  - (i) the person is being detained in the facility for the purpose of an involuntary psychiatric assessment, and
  - (ii) the person detained has the right to retain and instruct counsel without delay; and
- (b) provide the representative with a copy of the certificate, order or other authorization under which the person has been apprehended or detained.

(3) A person who is detained in a facility for the purpose of an involuntary psychiatric assessment under section 18, 19, 20, 34, 74 or subsection 81(4) shall not be denied



- (a) access at any time to the person's legal counsel and the right to consult with legal counsel in private either in person or by other means;
- (b) access to a telephone to make or receive calls;
- (c) access to the person's representative and the right to meet in private with the representative either in person or by other means; and
- (d) where applicable, access to visitors during scheduled visiting hours.

(4) The rights referred to in paragraphs (3)(b) to (d) may be subject to the reasonable limits that are prescribed in the regulations.

[2006 cM-9.1 s11](#)

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### **Procedural rights of involuntary patient**

**12.** (1) A person who is an involuntary patient shall not be denied

- (a) the right to consult and instruct his or her legal counsel in private at any time either in person or by other means;
- (b) access to a telephone to make or receive calls;
- (c) access to visitors during scheduled visiting hours;
- (d) access to the rights advisor;
- (e) access to his or her representative; and
- (f) access to materials and resources necessary to write and send correspondence, and reasonable access to correspondence that has been sent to the person.

(2) The rights referred to in paragraphs (1)(b) to (f) may be subject to the reasonable limits that are prescribed in the regulations.

(3) The administrator shall ensure that an involuntary patient is provided, at the time of admission, with an oral explanation of, and a written statement setting out, the rights referred to in subsection (1) and that a notice of those rights is prominently displayed in all wards and in public reception areas of the psychiatric unit.

(4) Where a person is admitted as an involuntary patient, or where the person's status as an involuntary patient is renewed, the attending physician shall ensure that he or she is

- (a) informed of the reasons for the issuance of the certificates of involuntary admission or certificate of renewal;
- (b) provided with a copy of the certificates of involuntary admission or certificate of renewal;
- (c) advised of his or her right
  - (i) to retain and instruct counsel without delay, and

- (ii) to meet with the rights advisor as provided for in paragraph 14(2)(a); and
- (d) provided with a written statement setting out
  - (i) the functions of the board,
  - (ii) the address of the board, and
  - (iii) the right of the person or his or her representative acting on behalf of the person to apply to the board for a review of the certificates of involuntary admission or certificate of renewal.

(5) Where the person does not appear able to understand the information provided under subsection (4) at the time it is provided, the attending physician shall ensure that the information is repeated at the request of the person and again as soon as the person appears able to understand it.

(6) Where an involuntary patient does not understand or speak the language in which the information referred to in subsection (4) is provided, the attending physician shall advise the administrator and the administrator shall ensure that the involuntary patient is provided with the assistance of an interpreter.

(7) As soon as is practicable following the admission of a person as an involuntary patient or the renewal of a person's status as an involuntary patient, the administrator shall ensure that the involuntary patient's representative is informed

- (a) of the person's status as an involuntary patient and the reasons for the issuance of the certificates of involuntary admission or the certificate of renewal;
- (b) that the involuntary patient has the right to retain and instruct counsel without delay in private either in person or by other means;
- (c) that the involuntary patient or his or her representative acting on his or her behalf may apply to the board for a review of the certificates of involuntary admission or the certificate of renewal; and
- (d) that the representative has the right to meet with the rights advisor.

(8) The administrator shall provide a copy of all notices and other information required to be given to the involuntary patient to the representative.

[2006 cM-9.1 s12](#)

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### **Rights advisor**

- 13.** (1) The minister may appoint one or more rights advisors in accordance with the regulations.
- (2) A rights advisor shall not be a person who is
    - (a) involved in the direct clinical care of the person to whom the rights advice is to be given; or
    - (b) providing treatment or care and supervision under a community treatment plan.

[2006 cM-9.1 s13](#)

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### **Functions of rights advisor**

- 14.** (1) The rights advisor may offer advice and assistance in accordance with this Act to
- (a) a person who is detained in or admitted to a psychiatric unit; or
  - (b) a person who is residing in the community under a community treatment order or its renewal;  
and
  - (c) the representative of a person referred to in paragraph (a) or (b).
- (2) The rights advisor shall
- (a) meet in person or by other means as soon as possible with a person referred to in paragraph (1)(a) or (b) and in any event within 24 hours of the person's detention in or admission to the psychiatric unit or the issuance of a community treatment order and meet after that at the request of the person referred to in paragraph (1)(a) or (b) or as required by this Act or the regulations;
  - (b) explain the significance of a certificate of involuntary admission or a community treatment order or the renewal of a certificate of involuntary admission or a community treatment order to the person who is subject to the certificate or order;
  - (c) communicate information in a neutral, non-judgmental manner;
  - (d) meet as soon as is practicable in person or by other means with the representative of a person referred to in paragraph (1)(a) or (b) and after that at the request of the representative or as required by this Act or the regulations;
  - (e) at the request of the person or his or her representative, assist the person in making application to the board in accordance with this Act and the regulations;
  - (f) at the request of the person or his or her representative, assist the person in obtaining legal counsel;
  - (g) at the request of the person or his or her representative, accompany the person to board hearings;
  - (h) maintain confidentiality; and
  - (i) perform other functions prescribed by the regulations.

[2006 cM-9.1 s14](#)

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### **Notice to rights advisor**

- 15.** (1) The administrator shall ensure that the rights advisor is given notice of
- (a) a decision to admit or detain a person in a psychiatric unit;
  - (b) the filing of each certificate in respect of an involuntary patient;

- (c) the cancellation or expiration of a certificate of involuntary admission and the release of an involuntary patient from a psychiatric unit;
- (d) the change in status of a voluntary patient to an involuntary patient; and
- (e) an application to the board under section 33.

(2) The administrator or attending psychiatrist, as appropriate, shall ensure that the rights advisor is given notice of

- (a) the issuance, renewal, expiry, termination or revocation of a community treatment order; and
- (b) an application to the board under subsection 53(3).

[2006 cM-9.1 s15](#)

### **PART III ASSESSMENT, ADMISSION, TREATMENT AND DISCHARGE**

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#### **Admission only on certificates**

**16.** Except as otherwise provided in subsection 82(1), but notwithstanding another provision of this Act, a person may only be admitted to and detained in a psychiatric unit as an involuntary patient under the authority of 2 certificates of involuntary admission or a certificate of renewal completed in accordance with this Part.

[2006 cM-9.1 s16](#)

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#### **Certificate of involuntary admission**

**17.** (1) A certificate of involuntary admission shall be in the approved form and shall contain the following information:

- (a) a statement by a person described in subsection 17(2) that he or she has personally conducted a psychiatric assessment of the person who is named or described in the certificate within the immediately preceding 72 hours, making careful inquiry into all of the facts necessary for him or her to form an opinion as to the nature of the person's mental condition;
- (b) a statement by the person who has conducted the psychiatric assessment referred to in paragraph (a) that, as a result of the psychiatric assessment, he or she is of the opinion that the person who is named or described in the certificate
  - (i) has a mental disorder, and
  - (ii) as a result of the mental disorder
    - (A) is likely to cause harm to himself or herself or to others or to suffer substantial mental or physical deterioration or serious physical impairment if he or she is not admitted to and detained in a psychiatric unit as an involuntary patient,

- (B) is unable to fully appreciate the nature and consequences of the mental disorder or to make an informed decision regarding his or her need for treatment or care and supervision, and
  - (C) is in need of treatment or care and supervision that can be provided only in a psychiatric unit and is not suitable for admission as a voluntary patient;
- (c) a description of the facts upon which the person who has conducted the psychiatric assessment has formed the opinion described in subparagraphs (b)(i) and (ii), distinguishing between the facts observed by him or her and those that have been communicated by another person;
  - (d) the time and date on which the psychiatric assessment was conducted;
  - (e) the dated signature of the person completing the certificate of involuntary admission; and
  - (f) another matter required by the regulations.
- (2) A certificate of involuntary admission shall be completed and signed as follows:
- (a) the first certificate of involuntary admission may be completed and signed by a physician, nurse practitioner or other person authorized by the regulations; and
  - (b) the second certificate of admission shall be completed by a psychiatrist or, where a psychiatrist is not readily available to assess the person and complete and sign a second certificate, by a physician who is a person other than the person who completed and signed the first certificate.

[2006 cM-9.1 s17](#)

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### **Effect of one certificate of admission**

**18.** (1) Where a person has been the subject of a psychiatric assessment by a person described in paragraph 17(2)(a) and the person conducting the psychiatric assessment is of the opinion that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are met, he or she shall complete and sign a first certificate of involuntary admission in accordance with subsection 17(1).

(2) The completion and signing of the first certificate of involuntary admission under subsection (1) is sufficient authority

- (a) for a person acting under the authority of the certificate of involuntary admission
  - (i) to apprehend the person who is named or described in the certificate and to convey him or her without his or her consent to a facility for an involuntary psychiatric assessment by a person described in paragraph 17(2)(b), and
  - (ii) to observe, detain and control the person during his or her apprehension and conveyance to a facility;
- (b) for the person who completed the first certificate of involuntary admission to authorize treatment for the person who is named or described in the certificate during apprehension and conveyance;
- (c) for the person who is named or described in the certificate of involuntary admission to be detained, restrained, treated and assessed without his or her consent following his or her arrival at the facility for a period not to exceed 72 hours; and

(d) for a person described in paragraph 17(2)(b) to conduct an involuntary psychiatric assessment.

(3) The authority to apprehend and convey a person to a facility for a psychiatric assessment under subsection (2) shall expire 7 days after the date on which the first certificate of involuntary admission is completed and signed.

[2006 cM-9.1 s18](#)

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### **Judge's order for involuntary psychiatric assessment**

**19.** (1) Anyone who has reasonable grounds to believe that a person

- (a) has a mental disorder;
- (b) as a result of the mental disorder has caused or is likely to cause harm to himself or herself or others or is likely to suffer substantial physical or mental deterioration or serious physical impairment; and
- (c) refuses to submit to a psychiatric assessment

may apply to a judge for an order for a psychiatric assessment of the person.

(2) An application under subsection (1) shall be in writing and under oath or affirmation and state reasons in support and may be made without notice to another person.

(3) A judge, after considering the allegations of the person making the application and the evidence of any witnesses, may issue an order for an involuntary psychiatric assessment of a person where the judge is satisfied that

- (a) the allegations of the applicant are founded; and
- (b) the person who is the subject of the application
  - (i) has a mental disorder,
  - (ii) requires a psychiatric assessment to determine whether he or she should be admitted to a psychiatric unit as an involuntary patient, and
  - (iii) has refused or is likely to refuse a psychiatric assessment.

(4) An order granted under this section

- (a) shall direct a peace officer to apprehend and convey the person who is named or described in the order to a facility for an involuntary psychiatric assessment; and
- (b) is sufficient authority
  - (i) for the peace officer to observe, detain and control the person named or described in the order during the apprehension and conveyance, and
  - (ii) for a person described in paragraph 17(2)(a) to conduct an involuntary psychiatric assessment.

(5) An order under subsection (3) shall expire 7 days after the date on which it is made.

(6) The procedures respecting an application for an order, the hearing of the application, the making of an order under this section and any forms shall be in accordance with rules made under the *Provincial Court Act, 1991* .

[2006 cM-9.1 s19](#)

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### **Apprehension by a peace officer**

**20.** Where a peace officer has reasonable grounds to believe that a person

- (a) has a mental disorder;
- (b) as a result of the mental disorder has caused or is likely to cause harm to himself or herself or another or is likely to suffer substantial physical or mental deterioration or serious physical impairment; and
- (c) refuses to submit to a psychiatric assessment

and it is not feasible in the circumstances to make an application for an order under section 19, the peace officer may immediately apprehend that person and convey him or her to a facility for an involuntary psychiatric assessment.

[2006 cM-9.1 s20](#)

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### **Powers and duties of person apprehending and conveying**

**21.** (1) Where a person is apprehended and conveyed to a facility for an involuntary psychiatric assessment under section 18, 19 or 20,

- (a) the person effecting the apprehension and detention may take reasonable measures, including the entering of premises and the use of physical restraint, to apprehend the person and to take him or her into custody; and
- (b) the person who is apprehended and detained shall be conveyed to a facility for a psychiatric assessment as soon as practicable and by the least intrusive means possible without compromising the safety of that person or the public.

(2) Where a person is apprehended and conveyed to a facility for an involuntary psychiatric assessment under section 18, 19 or 20, the person conducting the assessment shall be provided with

- (a) the first certificate of involuntary admission, where the person is apprehended and conveyed under subsection 18(2);
- (b) the judicial order made under subsection 19(3), where the person is apprehended and conveyed under subsection 19(4); or
- (c) a written statement from a peace officer, where the person is apprehended and conveyed under section 20, setting out

- (i) the name of the person conveyed, if known,
- (ii) the date, time and place at which the person was apprehended, and
- (iii) the grounds on which the peace officer formed his or her belief and any other information relating to the circumstances which led to the taking of the person into custody.

(3) A person who has effected an apprehension under section 18, 19 or 20 shall remain at the facility and retain custody of the person who has been apprehended until the involuntary psychiatric assessment is completed.

(4) Subsection (3) does not apply where the person conducting the involuntary psychiatric assessment advises that continuing custody is not required.

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### **Assessment of detained person**

**22.** (1) Where a person is conveyed to or detained in a facility under section 18, 19 or 20, a psychiatric assessment shall be conducted as soon as possible and in any event within 72 hours of the arrival of the person at the facility.

(2) A person who is detained at a facility for a psychiatric assessment under subsection (1) may be treated without his or her consent during the period of detention.

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### **No assessment or no admission**

**23.** (1) Where a person has been conveyed to a facility under section 18, 19 or 20 and

- (a) a psychiatric assessment has not been conducted within 72 hours of arrival at the facility; or
- (b) a psychiatric assessment has been conducted within 72 hours of arrival at the facility and it is the conclusion of the person conducting the assessment that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are not met,

the person in charge of the facility or other responsible person shall ensure that the person is promptly informed that he or she has the right to leave the facility, subject to a detention that is lawfully authorized otherwise than under this Act.

(2) Where a person is released from the facility under subsection (1), the person who brought the person to the facility or another person who has assumed custody shall, unless the detained person otherwise requests, arrange for the return of the person to the place where the person was when taken into custody or to another appropriate place.

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### **Admission on 2 certificates**

24. Where 2 certificates of involuntary admission have been completed in accordance with section 17, the person named in the certificates shall be promptly admitted to a psychiatric unit as an involuntary patient and, where the second certificate has been completed at a facility other than a psychiatric unit, the person shall be immediately conveyed to a psychiatric unit for admission as an involuntary patient.

[2006 cM-9.1 s24](#)

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### **Detention pending conveyance**

25. Notwithstanding section 24, where 2 certificates of involuntary admission have been completed but it is not practicable to immediately convey the person who is the subject of the completed certificates to a psychiatric unit for admission as an involuntary patient, the person may be held at an appropriate place in accordance with the regulations for a period not exceeding 7 days, pending conveyance to the psychiatric unit.

[2006 cM-9.1 s25](#)

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### **Admission to a treatment facility**

26. (1) Notwithstanding section 24, where 2 certificates of involuntary admission have been completed but the attending physician is of the opinion that the person who is named in the certificates requires medical treatment or other health care services that cannot be supplied in a psychiatric unit, the person may be detained and treated at another place and shall be admitted to the psychiatric unit when the treatment is concluded, provided that the period of detention authorized by the certificates of involuntary admission has not expired.

(2) Where a person is detained in another place under subsection (1), the person in charge of the place where the person is detained has, in addition to the powers conferred upon him or her by the Act respecting that place, the powers and duties of an administrator under this Act in respect of the custody and control of the person and the person shall be considered to continue as an involuntary patient of the psychiatric unit in the same manner and to the same extent as if he or she were detained in the psychiatric unit.

[2006 cM-9.1 s26](#)

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### **Certificates of involuntary admission to be filed**

27. Where 2 certificates of involuntary admission have been completed and signed in accordance with section 17 and the person named in the certificates has been admitted as an involuntary patient, the original of each certificate of involuntary admission shall be placed in the patient's chart and a copy filed with the administrator of the psychiatric unit.

[2006 cM-9.1 s27](#)

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## **Length of detention**

**28.** Where a person has been admitted as an involuntary patient under section 24, he or she may be detained in the psychiatric unit for a period not to exceed 30 days from the date of the completion and signing of the first certificate of involuntary admission.

[2006 cM-9.1 s28](#)

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## **Ongoing assessment**

**29.** (1) During the period of detention referred to in section 28, the attending physician shall

- (a) assess an involuntary patient on an ongoing basis; and
- (b) conduct an assessment of the involuntary patient at the patient's request, except where an assessment has been conducted in the immediately preceding 48 hours,

in order to determine whether the criteria set out in subparagraphs 17(1)(b)(i) and (ii) continue to be met.

(2) Where, as a result of an assessment referred to in subsection (1), the attending physician is satisfied that the criteria referred to in subparagraphs 17(1)(b)(i) and (ii) do not continue to be met,

- (a) the certificates of involuntary admission shall be cancelled and the patient's status as an involuntary patient shall be terminated; and
- (b) the administrator shall advise the person of his or her change in status and of his or her right to leave the psychiatric unit, subject to a detention that is lawfully authorized other than under this Act.

[2006 cM-9.1 s29](#)

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## **Renewal or discharge**

**30.** (1) Where a person's status as an involuntary patient has not been terminated under subsection 29(2), within 72 hours immediately preceding the expiration of the 30 day period of detention referred to in section 28 the attending physician shall conduct a psychiatric assessment of the person in order to determine if the criteria set out in subparagraphs 17(1)(b)(i) and (ii) continue to be met.

(2) Where a psychiatric assessment of a person has been conducted under subsection (1) and the attending physician is satisfied

- (a) that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) continue to be met, he or she shall sign and complete a certificate of renewal; or
- (b) that the criteria referred to in subparagraphs 17(1)(b)(i) and (ii) are not met, the person shall be advised that his or her status as an involuntary patient has been terminated and that he or she has the right to leave the psychiatric unit subject to any detention that is lawfully authorized otherwise than under this Act.

(3) The requirements of section 17 respecting a certificate of involuntary admission apply, with the necessary changes, to a certificate of renewal referred to in paragraph (2)(a), and, where a certificate of

renewal has been completed and signed in accordance with this section, the original of the certificate of renewal shall be placed in the patient's chart and a copy filed with the administrator of the psychiatric unit.

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### **Detention under certificate of renewal**

**31.** (1) Where a certificate of renewal has been completed and filed under subsection 30(2), an involuntary patient may be detained in a psychiatric unit according to the following:

- (a) not more than 30 days under the first certificate of renewal;
- (b) not more than 60 additional days under a second certificate of renewal; and
- (c) not more than 90 additional days under a third or subsequent certificate of renewal.

(2) There are no limits upon the number of certificates of renewal which may be issued in respect of an involuntary patient.

(3) The requirements of sections 29 and 30 apply, with the necessary changes, to the assessment of an involuntary patient detained under a certificate of renewal.

[2006 cM-9.1 s31](#)

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### **Discharge**

**32.** Where an authorized period of detention has expired and a certificate of renewal has not been issued in respect of the involuntary patient, the administrator shall ensure that the person is promptly informed that his or her status as an involuntary patient is terminated and that he or she has the right to leave the psychiatric unit, subject to a detention that is lawfully authorized otherwise than under this Act.

[2006 cM-9.1 s32](#)

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### **Automatic review of detention**

**33.** (1) On the filing of a second certificate of renewal and on the filing of each second certificate of renewal after that, the administrator shall apply to the board for a review of the person's status as an involuntary patient.

(2) An application by an administrator under subsection (1) shall be considered to be an application by the patient and may be determined by the board as if it were an application made under paragraph 64(1)(a).

[2006 cM-9.1 s33](#)

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### **Change in status of a voluntary patient**

**34.** (1) A member of the nursing staff of a psychiatric unit may detain and where necessary restrain a voluntary patient requesting to be discharged if the staff person believes on reasonable grounds that the patient

- (a) has a mental disorder;
- (b) as a result of the mental disorder is likely to cause harm to himself or herself or another, or to suffer substantial mental or physical deterioration or serious physical impairment if he or she leaves the psychiatric unit; and
- (c) requires a psychiatric assessment.

(2) Where a psychiatric assessment of the voluntary patient has been conducted and the person conducting the assessment is of the opinion that the criteria set out in subparagraphs 17(1)(b) (i) and (ii) are met, that person shall complete and sign a certificate of involuntary admission in accordance with subsection 17(1) and sections 18, 22, 23 and 24 shall apply, with the necessary changes, to the person who is named in the certificate.

(3) The psychiatric assessment referred to in subsection (2) shall be completed as soon as practicable and in no case more than 4 hours following the request for discharge by the voluntary patient.

[2006 cM-9.1 s34](#)

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### **Treatment**

**35.** (1) Where a person is an involuntary patient, the attending physician or other person may, taking into account the best interests of the involuntary patient, perform or prescribe diagnostic procedures that he or she considers necessary to determine the existence or nature of a mental disorder, and administer or prescribe medication or other treatment relating to the mental disorder without the consent of the involuntary patient during the period of detention.

(2) For the purpose of subsection (1), in taking into account the best interests of the involuntary patient, the attending physician or other person shall consider

- (a) whether the mental condition of the involuntary patient will be or is likely to be improved by the specified treatment;
- (b) whether the mental condition of the patient will improve or is likely to improve without the specified treatment;
- (c) whether the anticipated benefit from the specified treatment and other related medical treatment outweighs the risk of harm to the patient;
- (d) whether the specified treatment is the least restrictive and least intrusive treatment that meets the requirements of paragraphs (a), (b) and (c); and
- (e) the wishes of the involuntary patient expressed when the involuntary patient was competent.

(3) In the course of the application of diagnostic procedures or the administration of treatment, the attending physician and another health care professional involved in the treatment of the involuntary patient shall, where appropriate,

- (a) consult with the involuntary patient and his or her representative;
- (b) explain to the involuntary patient and his or her representative the purpose, nature and effect of the diagnostic procedure or treatment; and
- (c) give consideration to the views of the involuntary patient and his or her representative with respect to the diagnostic procedure or treatment and alternatives and the manner in which diagnostic procedures or treatment may be provided.

[2006 cM-9.1 s35](#)

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### **Prohibition on treatment**

**36.** Psychosurgery shall not be performed on or administered to an involuntary patient.

[2006 cM-9.1 s36](#)

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### **Authorized leave**

**37.** (1) The attending physician or his or her designate may issue a pass, in the approved form, to an involuntary patient, permitting the patient to be absent from a ward or a psychiatric unit for a specified period of time, subject to the conditions specified in the pass and in the regulations.

(2) A copy of a pass issued under subsection (1) shall be in the approved form and filed with the administrator and the original shall be placed on the patient's chart.

(3) The provisions of this Act respecting an involuntary patient continue to apply, with the necessary changes, to an involuntary patient who has been issued a pass under subsection (1).

[2006 cM-9.1 s37](#)

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### **Unauthorized leave**

**38.** (1) Where an involuntary psychiatric patient is absent from a psychiatric unit and

(a) a pass has not been issued under subsection 37(1); or

(b) the period of leave authorized by the pass under subsection 37(1) has expired,

the administrator may issue an order, in writing, in the approved form and in accordance with the regulations, to a peace officer or other person designated by the administrator to apprehend the patient and return him or her to the psychiatric unit.

(2) An order under subsection (1) is sufficient authority for the peace officer or other person designated by the administrator to

(a) apprehend the person who is named or described in the order and to return him or her to the psychiatric unit; and

(b) observe, detain and control the person during his or her apprehension and return to a psychiatrist or a psychiatric unit.

(3) An order under subsection (1) expires 30 days after the day it is issued and where an involuntary patient has not been returned to the psychiatric unit within that time he or she shall be considered to have been discharged from the psychiatric unit.

(4) A person who is returned to a psychiatric unit under this section may

(a) be detained for the remainder of the authorized period of detention to which the person was subject when the person's absence was discovered; or

(b) where the authorized period of detention has expired during the period the person was absent from the psychiatric unit,

(i) be subject to a psychiatric assessment in order to determine whether a first certificate of involuntary admission should be completed in accordance with subsection 17(1); or

(ii) be discharged from the psychiatric unit, subject to a detention that may be authorized otherwise than under this Act.

(5) Where, as a result of a psychiatric assessment referred to in subparagraph (4)(b)(i), a certificate of involuntary admission is completed in accordance with subsection 17(1), sections 18, 22, 23 and 24 shall apply with respect to the admission of the person who is the subject of the certificate as an involuntary patient.

[2006 cM-9.1 s38](#)

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### **Part does not apply**

**39.** Nothing in this Part authorizes the granting of a pass under subsection 37(1) to an involuntary patient who is subject to a detention lawfully authorized under this Act.

[2006 cM-9.1 s39](#)

## **PART IV COMMUNITY TREATMENT ORDERS**

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### **Community treatment order**

**40.** (1) For purpose of this Part, "in the community" means outside a psychiatric unit.

(2) A psychiatrist may issue or renew a community treatment order with respect to a person where the following criteria are met:

(a) he or she has examined the person named in the order within the immediately preceding 72 hours and on the basis of the examination and other pertinent facts respecting the person or the person's condition that are known by or have been communicated to the psychiatrist, he or she is of the opinion that

- (i) the person is suffering from a mental disorder for which he or she is in need of continuing treatment or care and supervision in the community,
  - (ii) if the person does not receive continuing treatment or care and supervision while residing in the community, he or she is likely to cause harm to himself or herself or another, or to suffer substantial mental or physical deterioration or serious physical impairment,
  - (iii) as a result of the mental disorder, the person is unable to fully appreciate the nature and consequences of the mental disorder and is therefore unlikely to voluntarily participate in a comprehensive community treatment plan,
  - (iv) the services that the person requires in order to reside in the community so that he or she will not be likely to cause harm to himself or herself or to others, or to suffer substantial mental or physical deterioration or serious physical impairment,
    - (A) exist in the community,
    - (B) are available to the person, and
    - (C) will be provided to the person, and
  - (v) the person is capable of complying with the requirements for treatment or care and supervision set out in the community treatment order;
- (b) during the immediately preceding 2 year period the person
- (i) has been detained in a psychiatric unit as an involuntary patient on 3 or more separate occasions, or
  - (ii) has been the subject of a prior community treatment order;
- (c) the person, the psychiatrist who is considering issuing the community treatment order or his or her designate and another health professional, person or organization involved in the person's treatment or care and supervision have developed a community treatment plan for the person; and
- (d) the psychiatrist who is considering issuing the community treatment order or his or her designate has consulted with the health professionals, persons and organizations proposed to be named in the community treatment plan and each has agreed in writing to be named in the plan.

[2006 cM-9.1 s40](#)

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### **Form and contents of community treatment order**

**41.** (1) A community treatment order shall be in the approved form and shall be signed by the attending psychiatrist who issues the order.

- (2) A community treatment order shall
  - (a) set out the date on which the examination referred to in paragraph 40(2)(a) took place;
  - (b) set out the facts on which the psychiatrist has formed the opinion referred to in paragraph 40(2)(a);

- (c) identify the psychiatrist who has issued the order and who is responsible for its general supervision and management;
- (d) describe the community treatment plan referred to in paragraph 40(2)(c);
- (e) identify the person who has agreed to accept responsibility for the general supervision and management of the community treatment plan and set out the reporting obligations of that person;
- (f) identify the health professionals, persons and organizations referred to in paragraph 40(2)(d) who have agreed to provide treatment and support services and set out the reporting obligations of those persons;
- (g) contain an undertaking by the person who is the subject of the order to
  - (i) attend appointments with the psychiatrist who issued the community treatment order, or with another health care professional, person or organization referred to in the community treatment plan at the time and places scheduled from time to time, and
  - (ii) comply with the community treatment plan described in the community treatment order; and
- (h) satisfy another requirement prescribed by the regulations.

(3) In addition to the information required under subsection (1), a community treatment order shall also contain a notice in writing to the person who is the subject of the order advising him or her that

- (a) he or she has the right to retain and instruct counsel without delay in person or by other means;
- (b) he or she has the right to meet with a rights advisor as provided for in paragraph 14(2)(a); and
- (c) he or she or his or her representative has the right to apply to the board for a review of the issuance, renewal or revocation of the community treatment order, including in this notice the functions and address of the board.

[2006 cM-9.1 s41](#)

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### **Community treatment plan**

**42.** A community treatment plan referred to in paragraph 40(2)(c) shall contain

- (a) a plan of treatment for the person subject to the community treatment order that describes the necessary medical and other supports, including income and housing, required for the person to live in the community;
- (b) conditions relating to the treatment or care and supervision of the person;
- (c) the obligations of the person who is the subject of the community treatment order;
- (d) the name of the psychiatrist who has issued the order and who is responsible for its general supervision and management;
- (e) the name of the person who has agreed to accept responsibility for the general supervision and management of the community treatment plan;



- (f) the names of the health care professionals, persons and organizations who have agreed to provide treatment or care and supervision under the community treatment plan and their obligations under the plan; and
- (g) another requirement prescribed by the regulations.

[2006 cM-9.1 s42](#)

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### **Notice of issue or renewal**

**43.** Where a community treatment order is issued or renewed, a copy of the issued or renewed order shall be provided to the person who is the subject of the order, the person's representative, the rights advisor and each health care professional, person and organization named in the community treatment plan by

- (a) the administrator, where the person who is the subject of the community treatment order was an involuntary patient at the time the order was issued; or
- (b) by the psychiatrist who issued the order, where the person who is the subject of the order was not an involuntary patient at the time the order was issued.

[2006 cM-9.1 s43](#)

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### **Responsibility of attending psychiatrist**

**44.** (1) Except as otherwise provided in subsection (2), the psychiatrist who issues a community treatment order is responsible for its general supervision and management.

(2) Where the psychiatrist who issues a community treatment order is unable to carry out his or her responsibilities under the order, he or she may designate another psychiatrist to act in his or her place with the consent of that psychiatrist, and the order shall be amended to reflect the transfer of responsibilities.

(3) Where, under subsection (2), responsibility for the general supervision and management of a community treatment order is transferred to another psychiatrist and the order is amended, written notice of the transfer of supervision and management responsibilities shall be provided to the person who is the subject of the community treatment order, that person's representative, the rights advisor and each health care professional, person and organization named in the community treatment plan by

- (a) the administrator, where the person who is the subject of the community treatment order was an involuntary patient at the time the order was issued; or
- (b) the psychiatrist who issued the order, where the person who is the subject of the order was not an involuntary patient at the time the order was issued.

[2006 cM-9.1 s44](#)

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### **Responsibilities of persons named in the order**

**45.** (1) The psychiatrist who is responsible for the general supervision and management of a community treatment order may require reports on the condition of the person who is the subject of the order from the

health care professionals, persons and organizations who are responsible for providing treatment or care and supervision under the community treatment plan.

(2) A health care professional, person or organization providing treatment or care and supervision to the person who is the subject of the order is responsible for implementing the community treatment plan to the extent described in the order.

[2006 cM-9.1 s45](#)

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### **Treatment**

46. Sections 35 and 36 apply, with the necessary changes, to the diagnostic procedures and treatment that a person is required to submit to under a community treatment order.

[2006 cM-9.1 s46](#)

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### **Duration of order**

47. (1) A community treatment order expires 6 months after the day it is made unless

- (a) it is renewed in accordance with section 48; or
- (b) before its expiry it is terminated under section 50 or revoked under section 51.

(2) Where a community treatment order expires and is not renewed, written notice that the order is no longer in effect shall be provided to the person who is the subject of the order, his or her representative, the rights advisor and each health care professional, person and organization named in the community treatment plan by

- (a) the administrator, where the person who is the subject of the community treatment order was an involuntary patient at the time the order was issued; or
- (b) by the psychiatrist responsible for the management and supervision of the community treatment order, where the person was not an involuntary patient at the time the order was issued.

[2006 cM-9.1 s47](#)

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### **Renewal of community treatment order**

48. (1) A community treatment order may be renewed at any time before its expiry for a period of 6 months.

(2) There are no limits on the number of renewals under subsection (1).

(3) The requirements of sections 40, 41 and 42 apply, with the necessary changes, to the renewal of a community treatment order.

[2006 cM-9.1 s48](#)

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## **Variation**

**49.** (1) A community treatment plan may be varied by

- (a) the psychiatrist who is responsible for the general supervision and management of the community treatment order; or
- (b) by a health care professional, person or organization named in the community treatment plan, with the approval of the psychiatrist who is responsible for the general supervision and management of the community treatment order.

(2) Where a community treatment plan has been varied under subsection (1), the psychiatrist who is responsible for the management and supervision of the community treatment order shall provide written notice of the variation to the person who is the subject of the order, his or her representative, the rights advisor and each health care professional, person and organization named in the community treatment plan who is affected by the variation.

[2006 cM-9.1 s49](#)

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## **Termination**

**50.** (1) While a community treatment order is in effect, the psychiatrist who is responsible for the management and supervision of the order may at any time and shall, at the request of the person who is the subject of the order, conduct a psychiatric assessment to determine if the person is able to continue to live in the community without being subject to the order.

(2) A psychiatrist may refuse to conduct the psychiatric assessment referred to in subsection (1) upon the request of the patient at any time during the 3 months following the date of the last psychiatric assessment.

(3) Where, as a result of the assessment conducted under subsection (1), the psychiatrist determines that the criteria referred to in subparagraphs 40(2)(a)(i), (ii) and (iii) no longer continue to be met, he or she shall

- (a) terminate the community treatment order;
- (b) provide written notice to the person who is the subject of the order that the order is no longer in effect and that he or she may live in the community without being subject to the order; and
- (c) provide a copy of the notice referred to in paragraph (b) to the administrator, where appropriate, and to the person's representative, the rights advisor and each health care professional, person and organization named in the community treatment plan.

(4) A notice referred to in paragraph (3)(b) shall be in the approved form.

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## Revocation of order

**51.** (1) Where the psychiatrist who is responsible for the management and supervision of a community treatment order has reasonable grounds to believe that the person who is the subject of the order has failed to comply with a condition of the community treatment order, he or she may issue an order in the approved form to a peace officer.

(2) The psychiatrist shall not issue an order under subsection (1) unless

- (a) he or she has reasonable grounds to believe that the criteria set out in subparagraphs 40(2)(a)(i), (ii) and (iii) continue to be met;
- (b) the person who is the subject of the community treatment order refuses to submit to a psychiatric assessment; and
- (c) reasonable efforts have been made to
  - (i) inform the person of his or her failure to comply with the community treatment order,
  - (ii) inform the person of the possibility that the psychiatrist may issue an order for an involuntary psychiatric assessment and the possible consequences of that assessment, and
  - (iii) provide reasonable assistance to the person to comply with the terms of the community treatment order.

(3) An order under subsection (1) is sufficient authority for a peace officer to

- (a) apprehend the person who is named in the order and to convey him or her to a facility named in the order for involuntary psychiatric assessment;
- (b) observe, detain and control the person during his or her apprehension and conveyance to the facility; and
- (c) take reasonable measures, including the entering of premises and the use of physical restraint, to apprehend the person who is the subject of the order and to take him or her into custody.

(4) The authority to apprehend and convey the person under subsection (3) shall expire 30 days after the date of the issuance of the order.

(5) Where a person is conveyed to a facility under the authority of an order under subsection (1), as soon as practicable, and in any event within 72 hours after arrival, a psychiatric assessment of the person shall be conducted to determine whether

- (a) the community treatment order should be terminated and the person should be released without being subject to a community treatment order;
- (b) the community treatment order should be continued, with any necessary variations; or
- (c) where the person conducting the assessment is of the opinion that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are met, the community treatment order should be revoked and a first certificate of involuntary admission completed in accordance with subsection 17(1).

(6) Sections 10 and 11 apply to a person who has been apprehended by a peace officer and conveyed to a facility for an involuntary psychiatric assessment under the authority of an order issued under subsection (1).

(7) Where a first certificate of involuntary admission is completed under paragraph (5)(c), sections 18, 22, 23 and 24 shall apply with respect to the admission of the person who is the subject of the certificate as an involuntary patient.

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### **Protection from liability**

**52.** (1) Where the psychiatrist who is responsible for the management and supervision of a community treatment order believes on reasonable grounds and in good faith that a health care professional, other person or organization that is responsible for providing treatment or care and supervision under a community treatment plan is doing so in accordance with the plan, an action shall not be brought against the psychiatrist and he or she is not liable for a failure by that health care professional, other person or organization to provide treatment or care and supervision or for a default or neglect by that health care professional, person or organization in providing the treatment or care and supervision.

(2) Where a health care professional, other person or organization that is responsible for providing an aspect of treatment or care and supervision under a community treatment plan believes on reasonable grounds and in good faith that the psychiatrist who is responsible for the management and supervision of the community treatment order, or a psychiatrist designated under subsection 44(2) or another health care professional, person or organization named in the community treatment plan, is providing treatment or care and supervision in accordance with the plan, an action shall not be brought against, and the health care professional, person or organization person is not liable for, a failure by the psychiatrist or his or her designate or another health care professional, person or organization to provide treatment or care and supervision or for a default or neglect by that psychiatrist, designate, health care professional, person or organization in providing the treatment or care and supervision.

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### **Board review of order**

**53.** (1) A person who is the subject of a community treatment order or his or her representative may apply to the board to review whether the criteria for issuing or renewing an assisted community treatment order are met.

(2) An application under subsection (1) may be made each time a community treatment order is issued or renewed.

(3) Where a community treatment order is renewed, and on the occasion of each second renewal after that, an application shall be made to the board for a review of the order by

- (a) the administrator, where the person who is the subject of the community treatment order was an involuntary patient at the time the community treatment order was made; or
- (b) the psychiatrist responsible for the management and supervision of the order, where the person who is the subject of the order was not an involuntary patient at the time the order was made,

except where application for review has been made by the person who is the subject of the order in the preceding month.

(4) An application under subsection (3) shall be considered to be an application by the patient and may be determined by the board as if it were an application made under paragraph 64(1)(b).

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### **No limitation**

**54.** Nothing in this Part prevents a physician, nurse practitioner, other person authorized by the regulations, a peace officer or a judge from taking an action that he or she may take under Part III .

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## **PART V MENTAL HEALTH CARE AND TREATMENT REVIEW BOARD**

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### **Parties defined**

**55.** For the purpose of this Part, the following shall be considered to be parties to an application to the board under section 64:

- (a) where an application is made to review the issuance of certificates of involuntary admission or a certificate of renewal, the involuntary patient and the administrator;
- (b) where an application is made to review the issuance or renewal of a community treatment order, the person who is subject to the community treatment order and
  - (i) the administrator, where the person who is the subject of the community treatment order was an involuntary patient at the time the order was issued, or
  - (ii) the psychiatrist who is responsible for the management and supervision of the community treatment order, where the person who is the subject of the order was not an involuntary patient at the time the order was issued; and
- (c) where an application is made alleging a violation of a right provided to a person under section 11 or 12, the person alleging the violation of the right and the person in charge of the facility.

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### **Mental Health Care and Treatment Review Board**

**56.** (1) There shall be a Mental Health Care and Treatment Review Board to hear and decide applications under this Act.

(2) The board shall report annually to the minister on its operations and on another matter as required by the minister and perform the other functions that may be prescribed by the regulations.

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## **Appointment**

**57.** (1) The board shall comprise 13 members appointed by the Lieutenant-Governor in Council and consist of

- (a) a chairperson, who is a member in good standing of the Law Society of Newfoundland and Labrador ;
- (b) 4 persons, each of whom is a member in good standing of the Law Society of Newfoundland and Labrador and who expresses an interest in mental health issues;
- (c) 4 persons, each of whom is a physician; and
- (d) 4 persons, each of whom is neither a member of the Law Society of Newfoundland and Labrador nor a physician and each of whom expresses an interest in mental health issues, with preference being given to a person who is or has been a consumer of mental health services.

(2) A person appointed to the board shall have knowledge or experience that will assist the board to achieve its mandate and the composition of the board shall reflect the cultural, ethnic and regional diversity of the province.

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## **Term of appointment**

**58.** (1) A member of the board shall be appointed for a term of 3 years.

(2) Notwithstanding subsection (1), members of the first board appointed under this Act shall be appointed to the following terms:

- (a) the chairperson and 2 persons referred to in each of paragraphs 57(1)(b), (c) and (d) shall be appointed for a term of 4 years; and
- (b) 2 persons referred to in each of paragraphs 57(1)(b), (c) and (d) shall be appointed for a term of 3 years.

(3) A member of the board is eligible for reappointment for an additional single term of 3 years immediately upon the expiry of his or her initial term of office.

(4) Where a member has served 2 consecutive terms of office, that member shall not be eligible for reappointment to the board until one calendar year has elapsed from the date of expiry of his or her second term of office.

(5) Where a vacancy occurs on the board, the Lieutenant-Governor in Council shall appoint a replacement member from the same group as that of the member whose leaving created the vacancy, to serve out the unexpired portion of the term.

(6) The exercise of the powers of the board or of a panel shall not be impaired because of a vacancy in membership.

(7) All acts done by the board or by a member of the board shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment or qualification of a person purporting to be a member of the board, be as valid as if that defect had not existed.

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## **Remuneration**

**59.** The remuneration, benefits and expenses of the members of the board shall be determined by the Lieutenant-Governor in Council.

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## **Chairperson of board**

**60.** (1) The chairperson of the board shall

- (a) prepare the annual report of the board referred to in subsection 56(2);
- (b) manage and plan the conduct of applications to the board and matters referred to it, including the assignment of members of the board to panels and the referral of applications to a panel; and
- (c) exercise the powers and perform the functions that may be conferred on him or her under this Act or the regulations.

(2) The chairperson may delegate, in writing, his or her powers under this Act to a member of the board who is appointed under paragraph 57(1)(b), except the power to make an annual report.

(3) A delegation under subsection (2) may be made subject to those conditions and restrictions as the chairperson considers appropriate.

(4) Where the chairperson becomes permanently incapable of performing his or her responsibilities under this Act, the Lieutenant-Governor in Council shall appoint a new chairperson to serve out the unexpired portion of the chairperson's term.

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## **Panels**

**61.** (1) A panel of 3 members of the board shall be appointed by the chairperson to hear and decide an application under section 64 as follows:

- (a) 3 members of the board, one of each of whom shall be a person referred to in paragraphs 57(1)(b), (c) and (d); or
- (b) the chairperson of the board and 2 other members, one of each of whom shall be a person referred to in paragraph 57(1)(c) and (d).



(2) A panel

(a) appointed under paragraph (1)(a) shall be chaired by a member of the board who is a person referred to in paragraph 57(1)(b); and

(b) appointed under paragraph (1)(b) shall be chaired by the chairperson of the board.

(3) Where, as result of absence, incapacity or for another reason, a member of the board appointed to a panel under subsection (1) is unable to continue his or her participation on the panel, the chairperson of the board may appoint as a replacement member of the board a person who is of the same class as that of the member whose leaving created the vacancy on the panel.

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### **Decision making procedure of panel**

**62.** (1) A quorum for a panel of the board is the 3 members referred to in subsection 61(1).

(2) A decision of a panel shall be made by majority vote.

(3) Each member of a panel is entitled to one vote.

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### **Ineligibility to participate on panel**

**63.** A member of the board shall not sit as a member of a panel where

(a) his or her participation in the panel would give rise to a reasonable apprehension of bias; or

(b) he or she has sat on a *Criminal Code* review board hearing in respect of a patient who is a party to an application under section 64.

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### **Jurisdiction of board**

**64.** (1) In addition to the automatic reviews provided for in section 33 and subsection 53(3), the following applications may be made to the board:

(a) an application by an involuntary patient to review the issuance of certificates of involuntary admission or a certificate of renewal;

(b) an application by a person who is the subject of a community treatment order to review its issuance or renewal; and

(c) an application by a person detained in a facility alleging a denial of a right set out in section 11 or 12.

(2) An application by a person under subsection (1) may be made by the person's representative.

(3) Where an application is made under paragraph (1)(a) or (b) to review the issuance of certificates of involuntary admission or a certificate of renewal or the issuance or renewal of a community treatment order, and the certificate or order expires before a decision is made, the application shall be considered to have been withdrawn whether or not the certificate or order is renewed.

(4) An application to the board may be withdrawn at any time before a decision is made by serving a notice of withdrawal in the approved form on the chairperson of the panel and the other party to the application.

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### **Power to dismiss an application**

**65.** (1) The chairperson of the board may summarily dismiss an application without referring it to a panel where

(a) the application, in the opinion of the chairperson, is vexatious, frivolous or is not made in good faith; or

(b) a review of the matter has been considered by the board in the preceding 30 days.

(2) A decision of the chairperson of the board under subsection (1) is not subject to appeal or review.

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### **Application**

**66.** (1) An application under section 64 shall be made to the board in accordance with the regulations.

(2) Except where an application is dismissed under subsection 65(1), within 2 clear days of receipt of an application the chairperson of the board shall appoint a panel and designate a chairperson of the panel and refer the application to the chairperson of the panel.

[2006 cM-9.1 s66](#)

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### **Referral of application**

**67.** (1) A panel shall hear and determine an application as soon as is reasonably possible and in any event no more than 10 clear days after receipt of the referral under subsection 66(2).

(2) Within 2 clear days of receipt of the referral of the application under subsection 66(2), the chair of the panel shall give notice of the date, time, place and purpose of the hearing to the parties to the application.

(3) The notice of application under subsection (2) shall

- (a) include a copy of the application; and
- (b) advise a party that he or she may make representations to the panel either in person or in writing and submit evidence relevant to the application by a date to be set out in the notice.

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### **Powers of panel**

**68.** (1) A panel shall hear and consider applications in accordance with this Act and the regulations and for that purpose a member of the panel has all the powers, duties and immunities of a commissioner appointed under the *Public Inquiries Act*, and the panel shall be considered to be an investigating body for the purpose of the *Public Investigations Evidence Act* .

(2) It is the duty of a panel to inform itself fully of the facts by means of the hearing, and for this purpose, a panel may

- (a) require the attendance of witnesses and the production of documents and records, in addition to the witnesses called and the documents and records produced by a party;
- (b) arrange for the patient to be examined by a psychiatrist; and
- (c) engage independent medical, psychiatric or other professional persons to present evidence and make submissions with regard to a matter before the board and invite submissions from any other person who, in the opinion of the panel, has a material interest in or knowledge of matters relevant to the application.

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### **Conduct of proceedings**

**69.** (1) Every proceeding before a panel shall be conducted in private and in as informal a manner as is appropriate in the circumstances and as is consistent with the regulations.

(2) Notwithstanding subsection (1), the panel may permit a person who is not a party to be present during all or part of a hearing where the patient requests or consents to the attendance of that person and where the chairperson of the panel is of the opinion that there is no risk of harm or injustice to a person.

- (3) In a proceeding before the panel
  - (a) all evidence shall be given under oath or affirmation, and for this purpose, an oath or affirmation may be administered by electronic or other means;
  - (b) a record shall be made of all evidence received or adduced in support of the application, and for this purpose, the record may be created in writing or by electronic recording; and
  - (c) the standard of proof is on the balance of probabilities and the onus of proof shall be on the administrator, the person in charge of the facility or the attending psychiatrist, as the case may be.

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### **Rights of parties**

**70.** (1) A party to the proceedings has the right to

- (a) be personally present during the presentation of evidence to the panel;
- (b) be represented by counsel or another person;
- (c) examine documentary evidence placed before the panel;
- (d) present evidence; and
- (e) cross-examine witnesses.

(2) Notwithstanding paragraph (1)(a), the person making an application may not be compelled to attend a hearing of the panel but the panel or a member of the panel may interview that person in private for the purpose of assisting it in reaching a decision.

(3) For the purpose of paragraph (1)(b), an involuntary patient or a person who is the subject of a community treatment order is considered to have the capacity to retain and instruct counsel for the purpose of a hearing before a panel and an appeal from the decision of a panel.

(4) Notwithstanding paragraphs (1)(a) and (c), where a panel is of the opinion that disclosure of the information to the person making the application would seriously endanger the health or safety of that person or another person, the panel shall disclose the information to the legal counsel or representative of the person making the application but may refuse to disclose the information to the person making the application.

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### **Decision of the board**

**71.** (1) Except in the case of a replacement member appointed under subsection 61(3), a member of a panel shall not participate in a decision unless he or she was present throughout the period the application was under review and heard the evidence of the parties.

(2) Within 3 clear days following the conclusion of its review, the chairperson of the panel shall deliver

- (a) to each party, its decision, in writing, signed by the members of the panel, together with reasons in support of the decision, and where the decision of the panel is not unanimous, any dissenting opinion; and
- (b) to the chairperson of the board, a copy of its decision, together with reasons, and any dissenting opinions, and a record of all evidence presented to the panel.

(3) The record of evidence referred to in paragraph (2)(b) shall be retained by the board for a period of 7 years and shall be available for examination upon the request of a party.

(4) In addition to the information referred to in paragraph (2)(a), the chairperson of the panel shall also advise each party of his or her right to appeal the decision of the panel in accordance with this Act and the regulations.

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## **Order of the panel**

**72.** (1) In its decision, a panel may

- (a) with respect to an application under paragraph 64(1)(a), confirm the person's status as an involuntary patient if it determines that the criteria for admission as an involuntary patient set out in subparagraphs 17(2)(b)(i) and (ii) were met at the time of the hearing of the application, notwithstanding a technical defect or error in a certificate of involuntary admission or certificate of renewal, or cancel the certificate, where it determines that the criteria for admission as an involuntary patient were not met at the time of the hearing of the application, and order the person to be released from the psychiatric unit, subject to a detention that is lawfully authorized otherwise than under this Act;
- (b) with respect to an application under paragraph 64(1)(b), confirm the issuance or renewal of a community treatment order, where the panel determines that the criteria set out in subsection 40(2) were met at the time of the hearing of the application, notwithstanding a technical defect or formal error in the community treatment order, or cancel the order, where it determines that the criteria were not met at the time of the hearing of the application, and allow the person to live in the community without being subject to the community treatment order; and
- (c) with respect to an application under paragraph 64(1)(c), determine whether the person's rights were violated and recommend appropriate corrective action to the person in charge of the facility.

(2) A recommendation under paragraph (1)(c) is not binding on the person in charge of the facility and a failure or refusal by that person to comply with the recommendation may not be appealed or reviewed.

(3) A decision of the board confirming or cancelling a certificate or order applies to the certificate or order in force immediately before the making of the order by the board.

(4) Nothing in this section shall permit the discharge or release of a person who is subject to detention otherwise than under this Act.

(5) A decision of the panel shall be considered to be a decision of the board and may be appealed in accordance with section 73, except that the findings of the panel on questions of fact are final and are not subject to appeal.

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## **Appeal**

**73.** (1) A party to an application may, within 30 days after receiving notice of a decision of the board, appeal the decision on a question of law to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.

(2) An appeal under this section shall be conducted in accordance with the regulations.

(3) An appeal under this section does not stay the decision being appealed unless the Trial Division orders otherwise.

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## PART VI CRIMINAL CODE AND TRANSFERS

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### **Detention under** *Criminal Code*

**74.** (1) Where a person

(a) is found not criminally responsible on account of mental disorder or unfit to stand trial under Part XX.1 of the *Criminal Code* ; and

(b) is detained in a psychiatric unit by a disposition or order under the *Criminal Code*,

within 72 hours of arrival at the psychiatric unit the person shall be assessed without his or her consent by 2 persons, one of whom shall be a person described in paragraph 17(2)(a) and the other of whom shall be a person described in paragraph 17(2)(b), and where each is of the opinion that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are met, each shall sign and complete a certificate of involuntary admission and the person shall be admitted to the psychiatric unit as an involuntary patient in accordance with section 24.

(2) A person referred to in subsection (1) who is admitted to a psychiatric unit as an involuntary patient under subsection (1) is subject to the provisions of this Act respecting involuntary patients, except as follows:

(a) there shall be no review under this Act of the order or disposition under the *Criminal Code* authorizing the detention;

(b) the provisions of this Act respecting the transfer of patients shall not apply where the terms of the committing order or disposition under the *Criminal Code* conflict with those provisions;

(c) the person may not be the subject of a community treatment order, including a renewal, while the detention under the *Criminal Code* is in effect; and

(d) the person may leave or be discharged from the psychiatric unit only in accordance with part XX.1 of the *Criminal Code* .

(3) Where a person has been detained under part XX.1 of the *Criminal Code* as unfit to stand trial or not criminally responsible on account of mental disorder or has been found not guilty by reason of insanity and the person's detention under the *Criminal Code* is about to expire, within 72 hours before the expiration of the detention the person shall be assessed without his or her consent by 2 persons, one of whom shall be a person described in paragraph 17(2)(a) and the other of whom shall be a person described in paragraph 17(2)(b), and where each is of the opinion that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are met, each shall sign and complete a certificate of involuntary admission and the person shall be admitted to the psychiatric unit as an involuntary patient in accordance with section 24 and the provisions of this Act respecting involuntary patients shall apply to that person.

[2006 cM-9.1 s74](#)

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### **Transfer to another psychiatric unit**

75. (1) Except as otherwise provided by the terms of an order or disposition under the *Criminal Code*, where an administrator believes that it is in the best interests of an involuntary patient to be treated in a psychiatric unit other than the psychiatric unit the patient is currently in, the administrator may authorize the transfer of the patient upon the agreement of the administrator of the other psychiatric unit.

(2) Where a patient is transferred to another psychiatric unit under subsection (1), the psychiatric unit receiving the patient has the same authority to detain or treat the patient as the psychiatric facility from which the patient was transferred had.

(3) An authorization to transfer shall be in the approved form.

[2006 cM-9.1 s75](#)

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### **Temporary removal or transfer**

76. (1) Where an involuntary patient requires hospital treatment or other services that cannot as appropriately be provided in a psychiatric unit, the attending physician, may, if otherwise permitted by law and with the consent of a physician in the other facility, transfer the patient to that treatment facility and return him or her to the psychiatric unit on the conclusion of the treatment, in accordance with the regulations.

(2) Where an involuntary patient is transferred under subsection (1),

(a) the administrator and the attending physician of the facility to which the patient is transferred have, in addition to the powers and duties conferred by another Act, the powers and duties under this Act in respect of the custody and control of the patient; and

(b) the patient shall be considered to continue as an involuntary patient of the psychiatric unit in the same manner and to the same extent and is subject to the same control as if he or she were in the psychiatric unit.

[2006 cM-9.1 s76](#)

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### **Notice of transfer**

77. Notice of a transfer under subsection 75(1) or 76(1) shall be given to the involuntary patient, his or her representative and the rights advisor.

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### **Adult offenders**

78. (1) Where 2 certificates of involuntary admission have been signed and completed in accordance with section 17 respecting a person imprisoned or detained in a

- (a) correctional institution as defined in the *Adult Corrections Act* ; or
- (b) prison, jail or lockup operated by a police force,

the Minister of Justice or his or her deputy may order the removal of the person to a psychiatric unit.

(2) Where an order is made under subsection (1), the person in charge of the correctional institution, prison, jail or lockup, shall in accordance with the order, cause the person to be transported to the psychiatric unit named in the order and provide the administrator with the completed certificates of involuntary admission and a copy of the order.

(3) A person transported to a psychiatric unit under subsection (2) shall be detained in the psychiatric unit until the attending physician certifies that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) do not continue to be met and the Minister of Justice or his or her deputy may then order the person to be

- (a) returned to the correctional institution, prison, jail or lockup, as the case may be, where the person continues to be liable to imprisonment or detention; or
- (b) discharged from custody.

(4) An order under subsection (1) or (3) shall be in the form approved by the Minister of Justice.

(5) Except for the purpose of returning the patient to his or her place of imprisonment, nothing in this section authorizes the discharge of a person who is imprisoned for an offence and whose sentence has not expired.

(6) A person transferred under the authority of subsection (1) shall be considered to be an involuntary patient admitted under section 24 of this Act and all the provisions respecting involuntary patients shall apply to that person except that legal custody over the person shall remain with the Minister of Justice.

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### **Young offenders**

**79.** (1) Where 2 certificates of involuntary admission have been signed and completed in accordance with section 17 in respect of a young person who is detained in a youth custody facility, the provincial director may authorize the removal of the young person to a psychiatric unit.

(2) Upon the issuance of an authorization under subsection (1), the provincial director shall, in accordance with that authorization, cause the young person to be transported to the psychiatric unit named in the order and provide the administrator with the completed certificates of involuntary admission and a copy of the order.

(3) A young person transported to a psychiatric unit under subsection (2) shall be detained in the psychiatric unit until the attending physician certifies that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) do not continue to be met and the provincial director may then order the person to be

- (a) returned to a custody facility in accordance with the provisions of the *Youth Criminal Justice Act* (Canada), where the person continues to be liable to a period of custody or detention; or
- (b) discharged from custody.



(4) An order under subsection (3) shall be in the approved form and in accordance with the regulations.

(5) Except for the purpose of returning the young person to his or her place of custody, nothing in this section authorizes the discharge of a person who is subject to detention or who has been sentenced to custody for an offence and whose custodial portion of the sentence has not expired.

(6) A young person transported to a psychiatric unit under the authority of subsection (1) shall be considered to be an involuntary patient admitted under section 24 of this Act and all the provisions respecting involuntary patients shall apply to that person except that legal custody over the person shall remain with the provincial director.

(7) For the purpose of this section, the terms "young person", "youth custody facility" and "provincial director" have the meaning ascribed to them in the *Youth Criminal Justice Act* ( Canada ).

[2006 cM-9.1 s79](#)

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### **No appeal or review**

**80.** Notwithstanding another provision of this Act, a decision to transfer a person under section 75, 76, 78 or 79 is not subject to appeal or to review.

[2006 cM-9.1 s80](#)

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### **Transfer of patients to and from the province**

**81.** (1) Where it appears to a physician

- (a) that an involuntary patient in a psychiatric unit has come or been brought into the province and that the patient's care and treatment is the responsibility of another jurisdiction; and
- (b) that it would be in the best interests of that patient to be cared for in another jurisdiction,

the attending physician may authorize the transfer of the patient to the other jurisdiction where the physician is satisfied that the patient will be the subject of a psychiatric assessment in the receiving jurisdiction.

(2) Notwithstanding another provision of this Act, no review or appeal lies from a decision to transfer a person under subsection (1).

(3) Where it appears to a physician

- (a) that there is in another jurisdiction an involuntary patient in a psychiatric facility and the province is responsible for the patient's care and treatment; and
- (b) that it would be in the best interests of the involuntary patient in the other jurisdiction to be removed to a psychiatric unit in the province,

the physician may, where satisfied that suitable arrangements have been made for the transport, care and custody of the involuntary patient, authorize in writing the transfer of the person into the province.

(4) Where a person has been transferred to the province under subsection (2), he or she may be detained and treated without his or her consent in a psychiatric unit for a period not to exceed 72 hours and shall be the subject of 2 psychiatric assessments in order to determine whether he or she should be admitted as an involuntary patient under section 24.

(5) An authorization referred to in subsections (1) and (2) shall be in the approved form.

[2006 cM-9.1 s81](#)

## PART VII TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND REPEAL

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### Transitional

**82.** (1) Except as otherwise provided in this section, the repeal of the *Mental Health Act* and the coming into force of this Act shall not affect or invalidate an application, order, warrant, certificate or decision made under the authority of the *Mental Health Act* or other predecessor legislation.

(2) Where, on the day before the day on which this Act comes into force, a person is detained in a psychiatric unit as an involuntary patient under the *Mental Health Act*, a certificate of involuntary admission issued under that Act shall continue in force notwithstanding the repeal of that Act, but the provisions of this Act respecting involuntary patients shall apply to the person and, when the period of detention authorized under the *Mental Health Act* expires, the person shall be discharged unless he or she is admitted to the psychiatric unit as an involuntary patient in accordance with Part III of this Act.

(3) Where, immediately before the coming into force of this Act, a person

(a) has been found not criminally responsible on account of mental disorder or unfit to stand trial under Part XX.1 of the *Criminal Code* or not guilty by reason of insanity; and

(b) is detained in a psychiatric unit by a disposition or order under the *Criminal Code*

and, upon the coming into force of this Act, the person continues to be detained in a psychiatric unit by a disposition or order under the *Criminal Code*, within 30 days of the coming into force of this Act the person shall be assessed without his or her consent by 2 persons, one of whom shall be a person described in paragraph 17(2)(a) and the other of whom shall be a person described in paragraph 17(2)(b) and, where each is of the opinion that the criteria set out in subparagraphs 17(1)(b)(i) and (ii) are met, each shall sign and complete a certificate of involuntary admission in accordance with section 17 and the person shall be admitted to the psychiatric unit as an involuntary patient under section 24.

(4) Notwithstanding the repeal of the *Mental Health Act* and the abolition of the Mental Health Review Board established under that Act, that board is continued for the purpose of hearing and determining an application which was made to it before the coming into force of this Act.

(5) An application referred to in subsection (4) shall be determined within 30 days after the day this Act comes into force and a person aggrieved by the decision of that board may, within 30 days of the decision, appeal from or against that decision as if the *Mental Health Act* had not been repealed.

(6) Where a person's status as an involuntary patient under the *Mental Health Act* continues in force under subsection (1), the person may apply to the board established under this Act for a review of his or her status under paragraph 64(1)(a) except where an application in relation to this matter has been continued under subsection (4).

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### Consequential amendments

**83. (1) Subparagraph 2(g)(iv) of the *Access to Information and Protection of Privacy Act* is amended by striking out the words "the Mental Health Review Board" and substituting the words "the Mental Health Care and Treatment Review Board".**

**(2) Paragraph 2(b) of the *Advance Health Care Directives Act* is repealed and the following substituted:**

- (b) "health care decision" means a consent, refusal to consent, or withdrawal of consent of any care, treatment, service, medication, or procedure to maintain, diagnose, treat, or provide for an individual's physical or mental health or personal care and includes
  - (i) life-prolonging treatment,
  - (ii) psychiatric treatment for a person other than a person admitted to a psychiatric unit as an involuntary patient under section 24 or detained in a psychiatric unit under subsection 81(4) or released into the community under a community treatment order under subsection 40(2) of the *Mental Health Care and Treatment Act* ,
  - (iii) the administration of nutrition and hydration, and
  - (iv) admission to treatment facilities and removal from those institutions, other than the admission, transfer, removal or discharge of a person admitted as an involuntary patient under section 24 or detained in a psychiatric unit under subsection 81(3) or released into the community under an assisted community treatment order under subsection 40(2) of the *Mental Health Care and Treatment Act* ;

**(3) The Schedule to the *Child and Youth Advocate Act* is amended by striking out the words "Mental Health Review Board" and substituting the words "Mental Health Care and Treatment Review Board".**

**(4) The Schedule to the *Citizens' Representative Act* is amended**

**(a) by adding immediately after the words "Insurance Adjusters, Agents and Brokers Appeal Board" the words "Mental Health Care and Treatment Review Board"; and**

**(b) by striking out the words "Mental Health Review Board".**

**(5) Paragraph 7(b) of the *Fatalities Investigations Act* is amended by striking out the words "*Mental Health Act* " and substituting the words "*Mental Health Care and Treatment Act* ".**

**(6) Paragraphs 2(c) and (f) of the *Mentally Disabled Persons' Estates Act* are amended by striking out the words "*Mental Health Act* " where they twice occur and substituting the words "*Mental Health Care and Treatment Act* ".**

**(7) Subsection 20(1) of the *Mentally Disabled Persons' Estates Act* is amended by striking out the words "who has been committed to the hospital under and in accordance with the *Mental Health Act* " and substituting the words "who has been admitted to the hospital as an involuntary patient under the *Mental Health Care and Treatment Act* ".**

**(8) Subsection 20(6) of the *Mentally Disabled Persons' Estates Act* is repealed and the following substituted:**

(6) Where, while a patient of the hospital, a person who is voluntarily a patient of the hospital is admitted as an involuntary patient under the *Mental Health Care and Treatment Act* , the date of admission for purpose of this section is the date on which the first certificate of involuntary admission was completed and signed.

**(9) Subparagraph 2(i)(ii) of the *Neglected Adults Welfare Act* is amended by striking out the words "*Mental Health Act* " and substituting the words "*Mental Health Care and Treatment Act* ".**

[2006 cM-9.1 s83](#)

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**RSNL1990 cM-9 Rep.**

**84. The *Mental Health Act* is repealed.**

[2006 cM-9.1 s84](#)

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**Commencement**

**85. This Act shall come into force on October 1, 2007 , except for Part IV which shall come into force on January 1, 2008 .**

[2006 cM-9.1 s85](#)

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## **Appendix B – Rights of the Patient**

### **Person awaiting psychiatric assessment**

Where a person is conveyed to a facility or is detained in a psychiatric unit for the purpose of an involuntary psychiatric assessment under the authority of the Act, he or she must be: (*Section 11(1) and (3)*)

- informed where he or she is being detained and why;
- informed that he or she has the right to retain and instruct counsel without delay; and
- provided with a copy of the certificate, order or other authorization under which he or she is apprehended and detained as soon as reasonably practicable.

The person cannot be denied:

- access, at any time, to legal counsel or the right to consult with legal counsel in private, either in person or by other means;
- access to a telephone to make or receive calls;
- access to his or her representative or the right to meet in private with the representative either in person or by other means; or
- access to visitors, where applicable, during scheduled visiting hours.

Where a person is released from a facility either because a psychiatric assessment has not been conducted within 72 hours of arrival at the facility or the person was deemed not certifiable after an assessment, the person has the right to: (*Section 23*)

- be promptly informed that he or she has the right to leave the facility, subject to a detention that is lawfully authorized otherwise than under the Act;
- assistance in returning to the place where he or she was taken into custody or to another appropriate place. (See policy 1.70)

### **At Admission or Renewal**

At the time of admission, the involuntary patient must be provided with an oral explanation of and written statement setting out the patients' rights. (*Section 12(1)*)

At the time of admission or where the person's status as an involuntary patient is renewed, the patient must be:

- informed of the reasons for the issuance of the certificate of involuntary admission or certificate of renewal;
- provided with a copy of the certificate of involuntary admission or certificate of renewal;

- advised of his or her right to retain and instruct counsel without delay;
- advised of his or her right to meet with the rights advisor;
- provided with a written statement setting out the function and address of the board, and the right of the person or his or her representative acting on behalf of the person to apply to the board for a review of the certificate of involuntary admission or certificate of renewal; and
- provided with the assistance of an interpreter if required.

Where a person is the subject of 2 certificates of involuntary psychiatric admission and has been admitted as an involuntary patient, the person shall not be denied: (*Section 12 (1),(3),(4),(6)*)

- the right to consult and instruct his or her legal counsel in private at any time either in person or by other means;
- access to a telephone to make or receive calls;
- access to visitors during scheduled visiting hours;
- access to the rights advisor;
- access to his or her representative; or
- access to materials and resources necessary to write and send correspondence, and reasonable access to correspondence that has been sent to him or her.

While under a certificate, the patient has the right to:

- a psychiatric assessment, in order to determine whether he or she still meets the criteria for involuntary admission, upon request, except where an assessment has been conducted in the immediately preceding 48 hours. (*Section 29(1)(b)*)

During the application of diagnostic procedures or treatment the involuntary patient has the right to: (*Section 35(3) and 36*)

- be consulted, where appropriate, by the attending physician or other health care professional;
- be given an explanation of the purpose, nature, and effect of the procedure or treatment; and
- have his or her views on the procedure, treatment, any alternatives and the manner in which it is to be provided given consideration by the attending physician.

When an authorized period of detention has expired and a certificate of renewal has not been signed, the patient must be promptly informed that his or her status as an involuntary patient has ended and that he or she has the right to: (*Section 32*)

- leave the psychiatric unit, subject to a detention that is lawfully authorized otherwise than under the Act.

### **Transfer to another Psychiatric Unit**

Where an involuntary patient is transferred to another psychiatric unit because it is in his or her best interest to be treated there or because he or she requires hospital treatment or other services that cannot be provided in a psychiatric unit he or she shall:

- be given a notice of transfer (*Section 77*).

### **Review Board**

It is the responsibility of the Board, not the RHA to ensure the patient is aware of the following rights.

Where an involuntary patient applies for a review he or she has the right to: (*Section 70(1)*)

- be personally present during the presentation of evidence to the panel;
- be represented by counsel or another person;
- examine documentary evidence placed before the panel;
- present evidence;
- upon request following the review, examine the record of evidence placed before the panel;
- cross-examine witnesses;
- receive a written copy of the decision of the panel within 3 clear days following the review; and
- appeal the decision of the board on a question of law to the Trial Division of the Supreme Court within 30 days after receiving notice of a decision of the board. (*Section 73(1)*)

### **Person under Community Treatment Order**

Where a person is the subject of a community treatment order the person has the right to:

- retain and instruct counsel without delay in person or by other means; (*section 41(2)*)
- meet with a rights advisor; (*section 41(2)*)

- apply to the board for a review of the issuance, renewal or revocation of the CTO; (*section 41(2)*)
- be given a copy of the issued or renewed CTO by either the administrator or psychiatrist; (*section 43*)
- be advised from the start of the CTO of his/her right to continue to “voluntarily” access the community mental health services and supports provided under the CTO (such as assertive community treatment or case management) for an “indeterminate” period of time even though the CTO may expire;
- be educated about the benefits of continued treatment beyond the CTO and the risks of treatment discontinued;
- not be denied access to continued treatment or placed on a wait list for the same treatment because they are no longer subject to a CTO;
- be given written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO by either the administrator or psychiatrist; (*section 44(3)*)
- be given written notice that the CTO has expired and is not renewed by either the administrator or psychiatrist; (*section 47(2)*)
- be given written notice of any variation in the community treatment plan by the psychiatrist who issued the CTO. (*section 49(2)*)

During the application of diagnostic procedures or treatment that a person is required to submit to under a CTO the person has the right to: (*section 35(3) and 36*)

- be consulted by the attending physician or other health care professional;
- be given an explanation of the purpose, nature, and effect of the procedure or treatment;
- give his/her view on the procedure, treatment, any alternatives and the manner it is provided;
- no psychosurgery performed.

While the CTO is in effect, the patient has the right to: (*section 50(1)*)

- request a psychiatric assessment to determine if he/she is able to live in the community without being subject to the order. This request may be refused if the request is during the 3 months following the date of the last psychiatric assessment.

Once the patient no longer meets the criteria with respect to being a subject of a CTO the patient has the right to: (*section 50(3)(b)*)

- be given written notice in the approved form (MHCTA-7) by the psychiatrist that the order is no longer in effect and that he/she may live in the community without being subject to the order

Where a person who is subject of a CTO is a party to the proceedings of the Mental Health Care and Treatment Review Board the person has the right to: (*section 70(1) and 73(1)*)

- be personally present during the presentation of evidence to the panel;



- be represented by counsel or another person;
- examine documentary evidence placed before the panel;
- present evidence;
- cross-examine witnesses;
- appeal the decision of the board on a question of law to the Trial Division of the Supreme Court within 30 days after receiving notice of a decision of the board.

## Appendix C – Certification Process

- A person may undergo an involuntary psychiatric assessment because:
  - a judge issues an order that he or she undergo a psychiatric assessment; (*Section 19*); or
  - a peace officer, based on reasonable grounds, has determined there is a need for an assessment and apprehended the person and brought them to a facility (*Section 20*); or
  - he or she is already the subject of one certificate (*Section 18*).
- A person may only be admitted to and detained in a psychiatric unit as an involuntary patient under the authority of two certificates of involuntary admission or a certificate of renewal.
- The first certificate of involuntary admission may be completed and signed by a physician or nurse practitioner within 72 hours of conducting the psychiatric assessment.
- The first certificate is completed and signed when a person has had a psychiatric assessment by one of the persons mentioned above and it is his or her opinion that the person meets the criteria for involuntary admission as set out in the Act. This assessment must be completed in a period not to exceed 72 hours following the arrival at the facility.
- When a person arrives for the first assessment, the person conducting the assessment must be provided with, if it exists, :
  - the judicial order or
  - a written statement from a peace officer.
- The person who apprehended the person for assessment must stay at the facility until the assessment is complete unless advised by the facility that continuing custody is not required.
- When the first certificate is completed, it allows the person who signed it to :
  - authorize treatment during apprehension and conveyanceAnd a person acting under the authority of the certificate (this can also be someone other than the person who signed the first certificate, i.e. police) to:
  - apprehend the person and convey him or her, without consent, to a facility for a second involuntary psychiatric assessment as soon as practicable by the least intrusive means possible without compromising the safety of that person or the public; and to
  - observe, detain and control the person during the apprehension and conveyance to a facility.
- The authority to apprehend expires 7 days after the date on which the first certificate was completed and signed.
- Once the person arrives at the facility for the second assessment the assessment must be conducted as soon as possible, and no later than 72 hours, after the person's arrival at the facility.
- When the person arrives at the facility for the second assessment, the person conducting the assessment shall be provided with the first certificate of involuntary assessment.

- The first certificate is authority to detain, restrain, treat and assess for 72 hours following arrival at the facility for the second assessment.
- The person who apprehended the person for assessment must stay at the facility until the second assessment is complete unless advised by the facility that continuing custody is not required.
- The second assessment shall be completed by a psychiatrist. In the event that it is impossible to obtain the services of a psychiatrist, a physician other than the person who signed the first certificate, can conduct the second assessment.
- When two certificates are completed the person must be promptly admitted to a psychiatric unit as an involuntary patient. If the second certificate is completed at a facility other than a psychiatric unit the person must be immediately conveyed to a psychiatric unit for admission. If this is not practicable, the person may be held at an appropriate place, as designated in the regulations, for a period not to exceed seven days pending conveyance to the psychiatric unit. If the person requires medical treatment that cannot be supplied in a psychiatric unit, the person may be detained and treated in another place and admitted to the psychiatric unit when the treatment is concluded, provided the period of detention under the Act has not expired.
- When two certificates of involuntary admission have been completed and signed and the person admitted, the original of each certificate shall be placed in the patient's chart and a copy filed with the administrator of the psychiatric unit.
- Where a person has been admitted as an involuntary patient he or she may be detained in the psychiatric unit for a period not to exceed 30 days from the date of the completion and signing of the first certificate of involuntary admission.
- The certificates of involuntary admission are cancelled when the attending physician determines that the person no longer meets the criteria of involuntary admission.
- If after the assessment which is conducted within 72 hours immediately preceding the expiration of the 30 day period of detention, the criteria for involuntary admission continue to be met, the attending physician shall complete a certificate of renewal. The certificate of renewal must be placed in the patient's file and a copy filed with the administrator of the psychiatric unit.
- Under a certificate of renewal the involuntary patient may be detained in a psychiatric unit :
  - Not more than 30 days under the first certificate of renewal;
  - Not more than 60 additional days under a second certificate of renewal;
  - Not more than 90 additional days under a third or subsequent certificate of renewal.

There are no limits upon the number of certificates of renewal which may be issued.

- If a member of the nursing staff of a psychiatric unit feels that a voluntary patient has a:
  - mental disorder and as a result is likely to cause harm to him or herself or another or to suffer substantial mental or physical deterioration or physical impairment if he or she leaves the psychiatric unit, and
  - requires a psychiatric assessmenthe or she may detain and restrain a voluntary patient requesting to be discharged. The process for certification would apply. However, the psychiatric assessment must be completed no more than four hours following the request for discharge by the voluntary patient.

## **Appendix D – Duties**

### **A. Duties of Attending Physician**

### **B. Duties of the Administrator**

### **C. Duties of the Psychiatrist who issued a CTO**

#### **A. Duties of the Attending Physician**

Where a person undergoes an involuntary psychiatric assessment under the authority of Act, the attending physician or his or her designate must: (*Section 11(1)*)

- ensure that the person, if he or she appears to be able to understand what is happening, is informed:
  - where he or she is being detained;
  - the purpose of the detention; and
  - that he or she has the right to retain and instruct counsel without delay;
- ensure the person is provided with a copy of the certificate, order or other authorization under which he or she is being detained as soon as reasonably practicable.

Where a person is admitted as an involuntary patient, or where the person's status as an involuntary patient is renewed, the attending physician shall ensure that the involuntary patient is: (*Section 12(4)(5)(6)*)

- informed of the reasons for the issuance of the certificates of involuntary admission or certificate of renewal;
- provided with a copy of the certificates of involuntary admission or certificate of renewal;
- advised of his or her right to retain and instruct counsel without delay;
- advised of his or her right to meet with the rights advisor;
- provided with a written statement setting out the functions and address of the board, and the right of the person or his or her representative acting on behalf of the person to apply to the board for a review of the certificates of involuntary admission or certificate of renewal; and
- provided with the assistance of an interpreter where the patient does not understand or speak the language in which the information is given. The attending physician shall advise the administrator to ensure the patient receives this assistance.

NOTE: Where the patient does not seem able to understand the information provided above, the attending physician shall ensure that the information is repeated at the request of the person and again as soon as the person appears able to understand it.

During the period of detention of the involuntary patient the attending physician:

- shall assess the patient on an ongoing basis; (*Section 29(1)*)
- shall conduct an assessment of the involuntary patient at the patient's request except when an assessment has been conducted in the immediately preceding 48 hours in order to determine whether the patient still meets the criteria for involuntary admission; (*Section 29(1)*) and
- may issue a pass permitting the patient to be absent from the unit for a specified period of time subject to conditions. (*Section 37(1)*)

Within 72 hours immediately preceding the expiration of the 30 day detention period the attending physician must: (*Section 30(2)*)

- conduct a psychiatric assessment of the person to determine if the criteria for involuntary admission are still met. If so, a certificate of renewal has to be completed.

## **Treatment**

With regard to treatment, the attending physician: (*Section 35(1)*)

- may, taking into account the involuntary patient's best interests, perform or prescribe diagnostic procedures that he or she considers necessary to determine the existence or nature of a mental disorder and administer and prescribe medication or other treatment relating to the mental disorder without the consent of the involuntary patient.

In taking into account the best interests of the involuntary patient, the attending physician shall consider: (*Section 35(2)*)

- whether the mental condition of the involuntary patient will be or is likely to be improved by the specified treatment;
- whether the mental condition of the patient will improve or is likely to improve without the specified treatment;
- whether the anticipated benefit from the specified treatment and other related medical treatment outweighs the risk of harm to the patient;
- whether the specified treatment is the least restrictive and least intrusive treatment that meets the above requirements; and
- any wishes of the involuntary patient made known when he or she was competent.

During the application of a diagnostic procedure or treatment, the attending physician or other health care professional shall, where appropriate: (*Section 35(3)*)

- consult with the patient and his or her representative;
- explain the purpose, nature and effect of the procedure or treatment; and

- consider the views of the patient and his or her representative with respect to the procedure or treatment, and alternatives, and to the manner in which the procedures or treatment may be provided.

Where an involuntary patient requires hospital treatment or other services that cannot be appropriately provided in a psychiatric unit, the attending physician may, if otherwise permitted by law and with the consent of a physician in the other facility: *(Section 76(1))*

- transfer the patient to that treatment facility and return him or her to the psychiatric unit on the conclusion of the treatment.

Where an involuntary patient has come or been brought into the province and his or her care and treatment is the responsibility of another jurisdiction and it would be in the best interests of that patient to be cared for in another jurisdiction the attending physician may: *(Section 81(1))*

- authorize in writing in the approved form, the transfer of the patient to another jurisdiction where the physician is satisfied the patient will be the subject of a psychiatric assessment in the receiving jurisdiction

### **Other Physicians**

Where, in another jurisdiction, there is an involuntary patient and this province is responsible for the patient's care and treatment, and it would be in the best interests of the patient in the other jurisdiction to be transferred to a psychiatric unit in this province, a physician may: *(Section 81(3))*

- authorize in writing, on the approved form, the transfer of the person into the province where the physician is satisfied that suitable arrangements have been made for the transport, care and custody of the patient.

## **B. Duties of the Person in Charge of a Facility / Administrator**

Where a person is conveyed to or detained in a facility awaiting an involuntary psychiatric assessment, the person in charge of the facility shall: *(Section 11(2))*

- make best efforts to determine whether the person has a representative;
- ensure the representative is informed as soon as is practicable following the person's arrival at or detention in the facility that:
  - the person is being detained in the facility for the purpose of an involuntary psychiatric assessment;
  - the person has the right to retain and instruct counsel without delay;
- provide the representative with a copy of the certificate, order or other authorization under which the person has been apprehended or detained.

Where a person is released from the facility either because a psychiatric assessment has not been conducted within 72 hours of arrival at the facility or the person was deemed not

certifiable after an assessment, the person in charge of the facility or other responsible person shall: (*Section 23(1)*)

- ensure the person is promptly informed that he or she has the right to leave the facility, subject to a detention that is lawfully authorized otherwise than under the Act.

### **Notices to Rights Advisors**

The Administrator must ensure the rights advisor is given notice of: (*Section 15(1)*)

- a decision to admit or detain a person in a psychiatric unit;
- the detention of a person subject to 2 certificates in an appropriate place pending conveyance to a psychiatric unit; (*Section 25*)
- the filing of each certificate in respect of an involuntary patient;
- the cancellation or expiration of a certificate on involuntary admission;
- the release of an involuntary patient from a psychiatric unit;
- the change in status of a voluntary patient to an involuntary patient; and
- an application to the board;

The Administrator or attending physician shall ensure the rights advisor is given notice of: (*Section 15(2)*)

- the issuance, renewal, expiry, termination or revocation of a CTO;
- an application to the Board

### **On Admissions and Renewals**

Where a person has undergone an involuntary psychiatric assessment, has been certified and admitted as an involuntary patient, or is the subject of a certificate of renewal, the administrator must:

- ensure the involuntary patient is provided, at the time of admission, with an oral explanation and a written statement setting out the patients' rights; (*Section 12(3)*)
- ensure that notice of those rights is prominently displayed in all wards and in public reception areas of the psychiatric unit; (*Section 12(3)*)
- ensure the involuntary patient is provided with the assistance of an interpreter if required; (*Section 12(6)*)
- ensure the representative is informed ; (*Section 12(7)*)
  - of the person's status as an involuntary patient and the reasons for the issuance of the certificates of involuntary admission or the certificate of renewal;



- that the patient has the right to retain and instruct counsel without delay in private either in person or by other means;
- that the patient or representative may apply to the board for a review of the certificates of involuntary admission, the certificate of renewal, or an alleged breach of a section 11 or 12 right; and
- that the representative has the right to meet with the rights advisor.
- provide to the representative, a copy of all notices and other information required to be given the patient. (*Section 12(8)*)

Where a person is the subject of two certificates but it is not practicable to immediately convey him or her to a psychiatric unit, the person may be held at an appropriate place for a period not exceeding 7 days, pending conveyance to a psychiatric unit. In such cases, the administrator of the appropriate place must notify the rights advisor so the person can access a rights advisor.

### **Other**

Once the patient no longer meets the criteria of an involuntary patient (as assessed on an ongoing basis during detention or at the patient's request) the administrator shall: (*Section 29*)

- advise the person of his or her change in status and of his or her right to leave the psychiatric unit subject to a determination that is lawfully authorized otherwise than under the Act.

### **Review Board**

On the filing of a second certificate of renewal and each other second certificate of renewal after that the administrator shall: (*Section 33(1)*)

- apply to the board for a review of the person's status as an involuntary patient.

### **Orders for Return**

Where an involuntary patient is absent from the psychiatric unit and a pass was not issued or the period of leave authorized by the pass has expired the administrator may: (*Section 38(1)*)

- issue an order in writing in the approved form to a peace officer to apprehend the patient and return him/her to the psychiatric unit.

### **CTOs**

Where a person is a subject of a community treatment order and was an involuntary patient at the time the order was issued, the administrator shall provide the following to

the person, the representative, the rights advisor and each health care professional , person and organization named in the community treatment plan:

- a copy of the issued or renewed CTO; (*section 43(a)*)
- written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO; (*section 44(3)(a)*)
- written notice the CTO has expired and is not renewed; (*section 47(2)(a)*)

The administrator will also make application to the board for a review of a renewed CTO on the occasion of each second renewal and, (*Section 53(3)(a)*)

be given a copy of written notice by the psychiatrist that the order is no longer in effect and that the person may live in the community without being subject to the order. (*Section 50(3)(c)*)

### **Transfers**

Where an administrator believes that it is in the best interest of an involuntary patient to be treated in a psychiatric unit other than the psychiatric unit where the patient is currently admitted, the administrator may authorize the transfer of the patient upon the agreement of the administrator of the other psychiatric unit. The approved form must be used and the patient cannot be subject to a detention authorized otherwise than under the Act. (*Section 75(1)*)

### **C. Duties of the Psychiatrist who issued a CTO**

A psychiatrist who issues a community treatment order: (*section 44(1)*)

- is responsible for the general supervision and management of the CTO

Where a person is a subject of a community treatment order and the person was not an involuntary patient at the time the order was issued, the Psychiatrist who issued the order shall provide the following to the person, the representative, the rights advisor and each health care professional, person and organization named in the community treatment plan:

- a copy of the issued or renewed CTO; (*section 43(b)*)
- written notice of the transfer of supervision and management responsibilities from one psychiatrist to another related to the CTO; (*section 44(3)(b)*)
- written notice the CTO has expired and is not renewed; (*section 47(2)(b)*)
- written notice of any variation in the community treatment plan; (*section 49(2)*)

The psychiatrist shall also make application to the board for a review of a renewed CTO on the occasion of each second renewal. (*section 53(3)(b)*)

While the CTO is in effect the psychiatrist shall: (*section 50(1)*)

- at the request of the person who is the subject of the order conduct a psychiatric assessment to determine if the person is able to continue to live in the community without being subject to the order. The psychiatrist may refuse if the request is any time during the 3 months following the date of the last assessment.

Where the psychiatrist determines that the person who is subject to a CTO no longer meets the criteria he/she shall: (*section 50(3)*)

- terminate the CTO;
- provide a written notice to the person who is the subject of the order and a copy of this notice to the administrator where appropriate, the representative, the rights advisor and each health care professional, person and organization named in the community treatment plan that the order is no longer in effect and that he/she may live in the community without being subject to the order.

Where the psychiatrist has reasonable grounds to believe the person who is subject of a CTO failed to comply with conditions set out in Section 51(2) he/she may: (*section 51(1)*)

- issue an order in the approved form to a peace officer to apprehend and convey the person to a facility for an involuntary psychiatric assessment

Where a psychiatrist is a party to the proceedings of the board the psychiatrist has the right to: (*section 70(1) and 73*)

- be personally present during the presentation of evidence to the panel;
- be represented by counsel or another person;
- examine documentary evidence placed before the panel;
- present evidence;
- cross-examine witnesses.
- appeal the decision of the board on a question of law to the Trial Division within 30 days after receiving notice of a decision of the board.

## Appendix E – Specifications for Safe Room

### Specifications for “Safe Space”

- Dimensions may be between a minimum of 15 net square meters (NSM) to a maximum of 25 NSM.
- The room may serve a dual function such as an office or storage area however priority must be given for the assessment of persons with complex mental health needs.
- This room must be able to function as a seclusion room where required, in facilities that do not have designated inpatient psychiatric beds.
- The room should not contain objects that could be used as weapons or missiles.
- The room should be located in close proximity to the nursing station to ensure appropriate monitoring of individuals and the availability of immediate assistance.
- Any furniture to be used in this room must be removable so it can function as a seclusion room.
- Furniture should be positioned to allow a clear exit path to the door.
- Doors should:
  - open outwards or revolve;
  - not be lockable from the inside;
  - not be capable of being barricaded;
  - contain a window (Lexan) that allows staff to have the capability of viewing all surfaces of the room through the window or the room should have a functioning surveillance camera system;
  - have door-closer devices mounted on the outside of a door;
  - have door hinges of the continuous piano style.
- The environment should be clean, calming and comfortable with natural daylight ventilation and air-conditioning, if possible.
- Easily accessible functioning alarm system.
- Ceilings of a lay-in ceiling tile design should be avoided.
- Sprinkler heads should be a flush mounted design.

## **Appendix F**

### **Sample procedure for RHAs to use as a guide in developing procedures regarding issuing a patient pass.**

#### Procedure:

1. A physician's order shall be written/entered in the patient's chart specifying the time frame of the pass.
2. Physician orders may be for multiple passes with the specified time frame for each. For example: "May have one pass each day of one hour duration."
3. An authorized patient pass form (MHCTA-5) shall be completed each time the patient leaves the unit.
4. The assigned nurse shall explain to the patient the time frame and if she/he does not return on time, an order may be issued for a peace officer to apprehend and return the patient to the psychiatric unit.
5. The completed authorized patient pass form shall be filed on the patient's chart following her/his return to the unit. A copy will be placed in the administrative file.
6. On her/his return, the patient shall be assessed by the nurse regarding how the pass was tolerated. The nurse shall document this in the patient's chart.

## Appendix G

### **Sample procedure for RHAs to use as a guide in developing procedures regarding returning a person who was detained and released under the Act.**

#### Procedure

1. The person shall be notified by the RHA that assistance is available to return to the location where the person was taken into custody or another appropriate place.
2. If another place is requested by the person, the place should be appropriate (for example home or home of family/friend) and should not significantly increase the cost of the arrangements.
3. The attending physician who assessed the person for certifiability shall assess the person for ability to travel with/without escort
4. If an escort is advised by the physician but person refuses, the person shall be requested to sign a waiver that they have refused an escort.
5. If the person refuses to sign waiver that they don't want an escort, a facility staff person shall sign and document on form "person refused to sign".
6. The staff person shall notify the physician that the person has refused an escort and shall document this in the person's file.
7. Arrangements for return shall be made immediately. If delays due to flight times or weather occur, the person may stay in accommodations arranged by the facility.
8. If the person requests a delay in return, this may be accommodated up to seven (7) days. The person is responsible for all costs during the requested delay.
9. All reasonable costs, including meals, accommodation and transportation incurred to return the person to the agreed upon location shall be the responsibility of the RHA. Transportation, meal and accommodation costs will be reimbursed or provided in accordance with established RHA travel policies.

## **Appendix H**

### **Sample procedure for RHAs to use as a guide in developing procedures regarding an occurrence under the Act.**

Procedure:

1. Nurse/case manager shall immediately notify manager.
2. An occurrence report shall be completed according to RHA policy.
3. The occurrence shall be documented in the patient's file

## Appendix I – Forms

MHCTA-1	Certificate of Involuntary Admission
MHCTA-2	Certificate of Renewal
MHCTA-3	Community Treatment Order
MHCTA-4	Community Treatment Plan
MHCTA-5	Authorized Patient Pass
MHCTA-6	Order for the Apprehension and Conveyance of an Involuntary Patient due to Unauthorized Leave.
MHCTA-7	Notification Advising a Person that a Community Treatment Order is No Longer in Effect
MHCTA-8	Order for the Apprehension, Conveyance and Examination of a Person who Failed to Comply to Community Treatment Order (CTO)
MHCTA-9	Authorization to Transfer to Another Psychiatric Unit
MHCTA-10	Authorization to Transfer to Another Jurisdiction
MHCTA-11	Authorization to Transfer into the Province
MHCTA-12	Involuntary Certification Checklist
MHCTA-13	Application / Withdrawal of Application for Review by the Mental Health Care and Treatment Review Board



**APPENDIX I FORMS ARE SAVED SEPARATELY UNDER - >  
POLICY MANUAL – APPENDIX I – FORMS**

**NEED TO BE PRINTED SEPARATELY**