The Alberta Mental Health Act

A Guide for Mental Health Service Users and Caregivers

Apprehension, Detention, Treatment

2nd Edition
Although we have tried to ensure that the information in this booklet is accurate and current, because of the changing nature of the law and legislation we make no warranty or guarantee concerning the accuracy or reliability of the contents of this publication.

You may read or order a current copy of the Mental Health Act at www.qp.alberta.ca.

A copy of the Act may also be purchased through:

**Queen’s Printer Bookstore**
Main Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: (780) 427-4952 in Edmonton
Outside of Edmonton, call toll free:
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# TABLE OF CONTENTS

**PLEASE NOTE:** COMMUNITY TREATMENT ORDERS (PARTS 4 AND 4A) ARE NOT COVERED IN THIS VERSION OF THE MENTAL HEALTH ACT GUIDE. TO READ ABOUT COMMUNITY TREATMENT ORDERS, PLEASE SEE THE ALBERTA MENTAL HEALTH ACT GUIDE: COMMUNITY TREATMENT ORDERS, OR THE FULL VERSION OF THE GUIDE AT WWW.CMHA.CALGARY.AB.CA/MENTALHEALTH/MENTALHEALTHACT.ASPX

## INTRODUCTION
What will this guide tell me? ................................................................. 5

## PART 1: THE MENTAL HEALTH ACT
What is the Mental Health Act? ........................................................... 6
What changes were made to the Act? .................................................... 6
What does the Act allow? ................................................................... 6
What do apprehension and detention mean? ....................................... 7
What do admission and treatment mean? .......................................... 7
What is a community treatment order? ............................................. 7

## PART 2: APPREHENSION AND DETENTION
How can I be apprehended and detained? ...................................... 8
If someone apprehends me, can I be restrained? ............................ 9

## PART 2A: WHAT ARE MY RIGHTS IF I AM APPREHENDED AND DETAINED?

## PART 3: ADMISSION AND TREATMENT
Who can be admitted and treated involuntarily? ............................ 11
How long can I be kept? ................................................................. 11
Can I be kept longer? .................................................................... 11
What if I don't want to be treated? .................................................. 11
What if I'm not competent and doctors want to treat me? .................. 11
If I'm not competent, who can make treatment decisions on my behalf? .................................................. 12
What is a Treatment Order? .......................................................... 12
When am I no longer considered to be a formal patient? ............... 13
What happens when I am no longer a formal patient? ................. 13
Who is informed when I am discharged? ....................................... 13

## PART 3A: WHAT ARE MY RIGHTS IF I AM ADMITTED AS A FORMAL PATIENT?

## PART 5: THE REVIEW PANEL
What is the purpose of the Review Panel? .................................... 17
What issues can I apply to the Review Panel to review? .................. 17
How do I apply for a hearing? ....................................................... 17
When must the Review Panel hold a hearing? ............................. 17
Can I take part in my hearing? .................................................................18
Can a lawyer help me? ..........................................................................18
How do I know what the Panel has decided? ...........................................18
What if I disagree with a Review Panel decision? .....................................18

PART 6: THE MENTAL HEALTH ACT AND FAMILY MEMBERS OR CAREGIVERS ........................................19
Who is informed if a person is admitted to hospital as a formal patient? ..........19
Who is informed if a formal patient is discharged from hospital? .....................19
Who is informed if a person is issued a community treatment order? ...............19
Who is informed if a person's CTO expires or is cancelled? ..............................19
What can I do if I think someone is in need of examination or care under the Act? 20
Who decides what actions may be taken under the Act? .................................20
What if the treatment or care ordered in a CTO isn't available? .........................20
What if I'm concerned someone is not following a CTO? .................................20
If I'm concerned about the treatment of someone who is receiving treatment or care under the Act, what can I do? ........................................................................................................21

GLOSSARY .................................................................................................................23
MENTAL HEALTH ACT FORMS .................................................................................24
HELPFUL CONTACT INFORMATION AND WEBSITES ..............................................25
INTRODUCTION

What will this guide tell me?

- The Alberta Mental Health Act: A Guide for Mental Health Service Users and Caregivers was written to help you understand some of the main actions permitted under the Act, how the Act might affect you, as well as your rights within the Act. It is intended to provide you with information to use in order to advocate for yourself or another person affected by the Act.

- This Guide gives an overview of the Act in plain language. For actual wording of the Act, you can read the Mental Health Act at www.qp.alberta.ca or order a copy from the Alberta Queen's Printer (see page 2 for address).

- The first time a word or term that is in the glossary occurs in a section, it is typed in bold print. Certain terms that have longer or more detailed definitions are included in boxes in the right-hand column on some pages as well.

- Many of the actions described in the Act are linked to specific legal forms that must be completed for the action to be legally valid. These forms are referred to in the text where appropriate and there is a list of them at the back of the Guide. You can see the forms at www.albertahealthservices.ca/1256.asp.

- Other useful information and contacts related to the Act are listed at the back of the Guide.

- Although the information in this booklet is about legal issues, it should not be seen as giving legal advice. If you are looking for specific legal advice or assistance you should always contact a lawyer. You can call Legal Aid's Alberta Law Line at 1-866-845-3425 to find out what kind of legal help is available, or visit www.legalaid.ab.ca.

- This guide does not include information specific to situations of involuntary detention and admission under the Criminal Code (Canada) or the Youth Criminal Justice Act. If you have questions about these situations, you should get more information from a lawyer.
PART 1: THE MENTAL HEALTH ACT

What is the Mental Health Act?
The Mental Health Act (the Act) is a provincial statute or law that applies to individuals with a mental disorder in some particular situations. The Act talks about how a person with a mental disorder can be apprehended, detained and/or given treatment in a hospital or in the community under specified conditions. It also explains people's rights in these circumstances.

The Act has existed since 1990, but very important changes were made that came into effect in September, 2009 and January, 2010.

What changes were made to the Act?
The basic rules and rights that apply to apprehension, detention and treatment are the same as before, but there are several key changes to the Act:

- One of the criteria that allow someone to be admitted to a facility involuntarily has been changed. The change means people with a mental disorder who doctors believe are likely to cause harm to themselves or others, to seriously deteriorate mentally or physically, or to become physically impaired without treatment may be admitted. The Act used to apply only to people who appeared to be a danger or likely to become a danger to themselves or someone else.

- When a patient is discharged (released) from a hospital, the doctor's written report on the patient's assessment, diagnosis and treatment and any treatment recommendations (suggestions) must now be sent to the person's family doctor, if known.

- A new option, called a community treatment order (CTO), has been added to the Act that allows for people to be supported and treated in the community under certain circumstances, instead of having to stay in a hospital or other designated facility.

- In the past, the Mental Health Patient Advocate (MHPA) could only assist individuals held under two admission or renewal certificates. Now, the MHPA can also serve people held under only one admission certificate or who have been issued a CTO.

What does the Act allow?
The Mental Health Act describes actions the health system and/or legal system can take in certain serious or critical situations to protect and/or treat individuals with a mental disorder. In some situations, actions taken under the Act may also help protect the health and safety of other people in the community. The Act also describes the rights individuals have to apply for a review, appeal their detention and state their case (with or without legal representation) if they are unhappy with what is happening to them under the Act.
There are three main actions that can be enforced or taken in certain situations:

- Apprehension and detention
- Admission and treatment
- Community treatment orders

### What do apprehension and detention mean?

**Apprehension**: In certain situations a doctor, judge or police officer may order a person with a mental disorder to be picked up by the police and taken to a hospital (designated facility) to be examined. Being transported to the hospital is called **conveyance**.

**Detention**: This is when a person is kept at the hospital against his or her will.

See Part 2 for more information.

### What do admission and treatment mean?

**Admission**: If two doctors separately examine someone and both decide it is very important for him or her to stay in hospital to get help, they can admit the person to hospital involuntarily as a **formal patient**. To be admitted, the person must meet the three criteria (see next page) for issuing two **admission certificates**.

If the person doesn't meet all three criteria, the doctors may ask him or her to stay in hospital voluntarily. If the person agrees to stay, he or she can then be admitted as a **voluntary patient**. If the person doesn't agree to stay and doesn't meet the admission certificate criteria, then he or she must be released.

**Treatment**: Once a person is admitted, doctors will recommend care and treatment to help his or her recovery. The patient or a **substitute decision-maker** should discuss treatment options with the doctor. See Part 3 for more information.

### What is a community treatment order?

A community treatment order (CTO) is a doctor's order to follow a supervised mental health treatment and care plan for a certain period of time while staying in the community rather than being admitted to a hospital or other facility.

CTOs are meant to prevent the cycle of being admitted to hospital as a formal patient for treatment, being released, getting ill while in the community, and then having to go back to the hospital. If a person can follow a treatment and care plan in the community, he or she may be able to stay out of hospital. See Part 4 for more information.
PART 2: APPREHENSION AND DETENTION

How can I be apprehended and detained?

In certain situations, a doctor, judge, or the police may have a person picked up by the police and taken to a hospital (designated facility) for help. This is called being apprehended and conveyed by the police.

If you are apprehended, once you arrive at the hospital, you may be detained (kept there involuntarily) for up to 24 hours to be examined. During this time you can be cared for, controlled and examined (these terms are discussed in the next section) with or without consent. You may be treated only if you give consent.

Only certain hospitals called mental health facilities or designated facilities can be used for these examinations and treatments.

Here are the conditions where a medical doctor, judge, or police officer is allowed to order your apprehension:

**Doctor** (physician)

If a doctor examines you and finds you meet all three of the following conditions, he or she can fill out an admission certificate (Form 1):

1. You have a mental disorder
2. You are likely to cause harm to yourself or others or suffer significant mental or physical deterioration or serious physical impairment
3. There is no other way to arrange for a hospital admission (usually this means you do not agree to be admitted as a voluntary patient)

The admission certificate is a legal document and allows for your apprehension, conveyance and detention. The certificate ends if you have not been taken to a hospital within 72 hours of the certificate being made. If the certificate ends, you can't be picked up unless another certificate is made out.

**Provincial Judge**

A provincial judge can also order that you be taken to a hospital for examination. Anyone who believes you

- are suffering from a mental disorder;
- are likely to harm yourself or others;
- may suffer serious mental or physical deterioration or impairment; or
- are not complying with (following) a community treatment order

can tell this information under oath to a judge of the Provincial Court.
If the judge believes the information the person presents is true and there is no other way to arrange an examination (by your going voluntarily to a doctor or hospital, for example), the judge can issue a warrant (Form 8). If you are named in a warrant, it allows a peace officer/police officer to take you to a facility for examination. A judge’s warrant lasts for seven days, and can be renewed (Form 9) by the judge for a second seven-day period as long as the judge renews it before the first seven-day period runs out.

**Police Officer**

If you are named in a doctor's admission certificate or a judge's warrant, a police officer can apprehend you and take you to a designated facility.

Also, if you aren't willing to go voluntarily, any police officer may take you to a hospital for examination **without** a warrant if he or she has reasonable grounds to believe

- you have a mental disorder; and
- you are likely to cause harm to yourself or others or suffer serious mental or physical deterioration or physical impairment, or you are not obeying a CTO; and
- you need to be examined for your own safety or that of others; and
- it would be dangerous to you or others to wait for a judge to issue a warrant under the Act.

The officer must complete a written statement describing why your apprehension is necessary (Form 10).

**If someone apprehends me, can I be restrained?**

Under the Act, you may be controlled to prevent serious injury to yourself or others. Control can be through the minimal use of force, **mechanical** means or medication. Control must be as minimal as is **reasonable**, and must have regard for your physical and mental condition.

**Note:** *Control* is different from *treatment*. You can be controlled without your consent, but not treated without your consent. For example, you could be given an injection against your will for control purposes. Treatment can only be given in certain circumstances (*see Part 3*).
PART 2A: WHAT ARE MY RIGHTS IF I AM APPREHENDED AND DETAINED?

- Before a doctor, judge, or police officer decides you can be picked up and taken to a hospital, you must meet the conditions or criteria.

- Whether you're apprehended through a doctor's admission certificate (Form 1) or a judge's warrant (Form 8), these papers must tell you the reason for your apprehension, who is issuing it, and when.

- If a judge's warrant has been issued, you must be taken to a hospital within seven days. After seven days the warrant expires and you can't be apprehended unless a new warrant is issued or the first one is extended.

- If you're apprehended under a peace/police officer's power (Form 10), the officer must take you to a facility for examination right away.

- If you're apprehended and detained at a facility, you must be examined by a medical doctor within 24 hours. If you are not seen by a doctor within 24 hours, you must be discharged (released).

- Unless two admission certificates are issued by the end of 24 hours, you will be free to leave the hospital. A doctor may ask you to remain at the hospital as a voluntary patient if he or she thinks staying would help you.

- If a doctor examines you and issues one admission certificate, you have the right to contact the Mental Health Patient Advocate for support and information. Visit the Mental Health Patient Advocate's website at www.mhpa.ab.ca for more information.
PART 3: ADMISSION AND TREATMENT

If you have been apprehended and detained at a hospital, the only person who can decide to admit you for more examination and treatment is a medical doctor. Your family cannot admit you.

If you have been brought to the hospital under a doctor’s admission certificate (Form 1), in order to be admitted, a second doctor on staff (not the one who filled out the first admission certificate) must examine you and agree that you meet all three admission certificate criteria.

If you were brought to the hospital under a judge’s warrant or under a police officer’s power, two doctors must separately examine you and agree that you meet all three criteria and need to be admitted. At least one of the doctors must be a staff member at the hospital. In all cases, two admission certificates are required for you to be held longer than 24 hours.

If two admission certificates are issued, you must be told the reason why and be told that you have the right to apply to the Review Panel (see Part 5) for cancellation of the certificates. You also have the right to call the Mental Health Patient Advocate for information and support. See Part 3A for more information about your rights.

Who can be admitted and treated involuntarily?

Having a mental disorder alone is not enough for involuntary admission. It is important to stress that if doctors have assessed you and decide you need to be admitted to hospital, you must meet all three of the following conditions (criteria) to be admitted without your consent:

1. Mental disorder - you must have a mental disorder or appear to be suffering from a mental disorder.

2. Likely to cause harm to yourself or others, or to suffer serious mental or physical deterioration or serious physical impairment - once the doctor examines you, he or she comes to the opinion if you’re not admitted, you’re likely to become seriously more mentally or physically ill or to hurt yourself or someone else in some way.

3. Unsuitable for admission to a facility other than as a formal patient - this is generally understood to mean that you refuse to be admitted voluntarily.

How long can I be kept?

The first admission certificate (Form 1) expires within 24 hours from the time you get to the hospital unless another doctor sees you and completes a second admission certificate within that time. Two admission certificates allow the hospital to keep you as a formal patient for up to one month from the date of the second certificate.

Examine - This means being checked or assessed by the doctor. The term “examined” does not necessarily mean a physical examination. It may just involve talking to you and asking certain questions that help the doctor assess your mental condition.

Formal patient - A formal patient is someone who has been admitted to a hospital under two admission certificates (Form 1) or two renewal certificates (Form 2).
Can I be kept longer?
While you're in the hospital, you must be assessed regularly to see if you still meet the conditions of the admission certificates. *At any point when you no longer meet all three of the criteria, the certificates are cancelled.*

If at the end of one month the doctor feels you should stay in hospital, you may be kept longer under two renewal certificates (Form 2). To qualify for renewal certificates, two doctors must separately examine you again and decide if you still meet all the criteria. At least one of the doctors must be a staff member of the hospital, and at least one must be a psychiatrist. If you still meet all three criteria, the doctors each fill out a renewal certificate to extend your stay.

The first two times you are issued two renewal certificates, your stay is extended for up to one month. The third time and any time after that, each set of renewal certificates allows you to be kept for up to six months.

What if I don’t want to be treated?
If you are in the hospital because of admission or renewal certificates, you can be treated only if you consent or your substitute decision-maker has given consent. The Act allows for your doctor to decide whether or not you are competent to make decisions about your own treatment.

If you are considered competent and you accept treatment, you will be treated. If you refuse treatment,

- the health care team may try to work with you to make a treatment plan you are willing to try;
- your doctor may decide to respect your decision and not order treatment. He or she will decide if the certificates should be cancelled and if you should be discharged from hospital;
- or your doctor may request a Treatment Order (Form 15) from the Review Panel that allows for you to be treated against your will.

If you are considered incompetent (not able to make treatment decisions), a substitute decision-maker such as your agent (if you have chosen one), your guardian (if you have one), your nearest relative, or the Public Guardian will be asked to consent to treatment on your behalf.

What if I’m not competent and doctors want to treat me?
If it is determined you are not competent, you can’t legally consent to treatment. The doctor must complete a Form 11 certificate *even if you have a legal guardian who can provide consent for treatment.* The Form 11 certificate will state reasons why you are considered (deemed) to be not competent. A copy of the Form 11 certificate must be given to you. It must also be given to either your guardian or agent (if there is one) and, unless you object, your nearest relative. The guardian, agent or relative will be asked to make treatment decisions for you.

If you have been deemed incompetent by one doctor and refuse treatment, a second physician must also examine you (this step is not needed if you already have a legal
guardian). If the second doctor also finds you to be not competent, you may apply to the Review Panel to review the Form 11 certificate. If you apply for a review, your doctor can't treat you until the Review Panel considers your application, even if your substitute decision-maker has given consent.

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

**If I'm not competent, who can make treatment decisions on my behalf?**

Someone who makes decisions for you must have had contact with you in the past 12 months, must be willing to take on the responsibility of making treatment decisions for you and must make a written statement stating their relationship to you. Doctors will ask either a guardian, an agent, or your nearest relative who meets these requirements.

Before agreeing to a treatment, this person must also consider whether your mental condition will likely get worse without treatment, is likely to improve with treatment, whether the treatment benefits outweigh the possible risks and whether the treatment is the least intrusive option that will make a positive difference in your life.

**What is a Treatment Order?**

If you are competent to make decisions about your treatment but refuse to be treated, or, if you are not competent and your substitute decision-maker refuses to consent, the doctor may fill out a Form 12 to request that the Review Panel order treatment for you. Until the doctor gets a Treatment Order (Form 15), he or she may not go ahead with treatment. Once a Treatment Order is issued, you may be treated against your will.

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

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

The Review Panel may also ask for an outside opinion from a psychiatrist who is not on staff at the hospital to see if the proposed treatment is in your best interests. If the Review Panel decides that the doctor’s treatment plans are in your best interest, the Panel will issue a Treatment Order, which allows you to be treated without your consent.

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

Guardian - a guardian is a person who has legally been given authority to make decisions on your behalf through either the Child, Youth and Family Enhancement Act (if you're under 18), or the Adult Guardianship and Trusteeship Act.

Agent - an agent is someone you trust to make important decisions for you when you are not able to make decisions for yourself. Legally, the agent is named in a Personal Directive. The person may or may not be a family member.

Nearest Relative - under the Act, your nearest relative is an adult who is a spouse or common law partner, a son or daughter, a parent, a brother or sister, a grandparent, a grandchild, aunt or uncle, or nephew or niece.

Public Guardian - if there is no agent, nearest relative or guardian under the Adult Guardianship and Trusteeship Act, the Office of the Public Guardian makes decisions as the decision-maker of last resort for someone who is deemed incompetent.

Psychosurgery - is surgery done on the brain to change behaviour or treat mental disorders.

Note: Electro-Convulsive Therapy (ECT) is not considered psychosurgery and may be given without a Treatment Order. ECT is not usually considered as a first or usual treatment. It is most often an alternative of last resort.
When am I no longer considered to be a formal patient?
You are no longer a formal patient when
- you no longer meet any of the criteria for the two admission or renewal certificates and your doctor cancels the certificates; or
- the Review Panel reviews your case and cancels the admission or renewal certificates; or
- your admission or renewal certificates expire. This means they are not renewed in the time allowed under law and are no longer valid.

What happens when I am no longer a formal patient?
When your admission or renewal certificates are no longer valid, you can’t be kept as a formal patient and must be told you are a voluntary patient. This means that you are free to leave if you want to and the hospital may discharge (release) you. However, if your doctor feels more treatment will still help your recovery, he or she may
- ask you to stay in hospital as a voluntary patient; or
- transfer you to a different facility for treatment as a voluntary patient; or
- if you meet the criteria, issue you a community treatment order for treatment and care in the community (see Part 4).

If the doctor feels that staying in the hospital as a voluntary patient would be in your best interest, but you decide to leave anyway, the hospital may ask you to sign a form saying you are leaving against medical advice.

Who is informed when I am discharged?
When you are discharged, the hospital will notify your guardian (if you have one), your nearest relative (unless you object), and your family doctor (if known). Your family doctor will also receive information about your stay in hospital and recommendations for treatment and care.

PART 3A: WHAT ARE MY RIGHTS IF I AM ADMITTED AS A FORMAL PATIENT?
- You can’t be admitted unless two doctors examine you and issue two admission certificates stating you meet all three criteria for admission as a formal patient.
- If your admission certificates are cancelled or expire, you are no longer a formal patient. You must be told you are now a voluntary patient and are free to leave if you want.

The Act directly states many other rights. You have the right to
- information
- legal representation
- confidentiality
- refuse treatment (in most cases)
• communications  • apply to a Review Panel for cancellation
• receive visitors  • contact the Mental Health Patient Advocate

Your Right to Information
If two admission or renewal certificates are issued, you must be told the reasons the certificates were written (i.e. why you are being detained). Also, you must be told about your right to apply to the Review Panel for cancellation of the certificates (Form 12). The hospital must try to give this information to your nearest relative (unless you object) and to your guardian (if you have one).

You, any one person you choose, your nearest relative (unless you object) and your guardian (if you have one) must also be given the following:

• a written statement of the reasons for the certification and how long it will last;
• copies of the certificates;
• a written description of the function of the Review Panel, along with the name and address of the chairperson of the Panel;
• written information about your right to apply to the Panel for cancellation of the certificates;
• information about your other rights.

If there is a language barrier, the hospital must provide an interpreter to give you this information in your own language or your guardian's language.

Your Right to Confidentiality
Information in your hospital record is private and is protected by the Health Information Act (HIA). Section 35 of the HIA describes specific situations where your records may be shared without your consent, such as allowing information to be shared with Review Panels and/or someone who is providing you continuing treatment and care. To learn about other reasons your health information might be shared, you can read the HIA by typing Health Information Act in the Search box at www.qp.alberta.ca. The Mental Health Patient Advocate or a lawyer may also assist you in understanding when your health information might be shared.

Your Right to Communications
You have the right to have your written communication, such as personal mail, to remain private. Hospital staff cannot open, examine or hold back your mail.

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

Your Right to a Lawyer
If you are admitted as a formal patient, you have the right to contact a lawyer and receive visits from a lawyer at any time. You can also ask a lawyer to represent you at Review Panel hearings. Contact Legal Aid Alberta (www.legalaid.ab.ca) for information about legal representation. If you choose to appeal a Review Panel decision, this
appeal is heard at the Court of Queen’s Bench. You do not need to be represented by a lawyer to go to Queen’s Bench, but it is encouraged.

**Your Right to Refuse Treatment**

If you are competent, you have the right to refuse treatment. If you’re deemed incompetent, you may object to treatment by applying to the Review Panel to review the doctor’s opinion about your competence (Form 11). No treatment will be given while you are waiting for a Review Panel decision; however, the Review Panel may agree that treatment is necessary and refuse to cancel the Form 11 despite your objections.

Psychosurgery can *never* be performed without your consent.

**Your Right to Apply to a Review Panel**

You have the right to request that the Review Panel cancel your admission or renewal certificates or the Form 11 Certificate of Incompetence to Make Treatment Decisions.

If you’re not satisfied with the results of the Review Panel hearing, you have the right to appeal the Panel’s decision to the Court of Queen’s Bench. (There are legal fees and a waiting period to do this.) You must file notice to begin this appeal within 14 days of the Review Panel’s decision.

The appeal to the Court of Queen’s Bench is not part of the Review Panel process, so all information must be presented again to the judge. The decision of this Court cannot be appealed.

**Your Right to Advocacy**

The Mental Health Patient Advocate ([www.mhpa.ab.ca](http://www.mhpa.ab.ca)) can give you information about your rights and look into questions or complaints about your rights, detention, treatment, care, or any other issues regarding being an involuntary patient under one or two admission or renewal certificates. The Advocate will provide you with information, help you advocate for yourself, or may investigate your complaint.

The Advocate’s information could include how to get a lawyer, how to apply to a Review Panel or the Court of Queen’s Bench, or how to deal with care-related concerns. Investigations into your complaints could include reviewing your records and asking questions of you, your doctor and the hospital staff or care providers.

These investigations may result in the Mental Health Patient Advocate making recommendations to the hospital, the psychiatrist who issued your certificates, or other officials.

Informal advocates are not mentioned in the Act, but you are allowed to give information about yourself to any person you choose. Although non-appointed advocates such as a family member or friend could help you by getting information for you or by representing your interests, they will not have the same authority as the Mental Health Patient Advocate who has certain powers under the Act to access information and records or to interview management, doctors and staff and make recommendations.
PART 5: THE REVIEW PANEL

The Review Panel is a group of people who specialize in how the Mental Health Act works. Panel members are appointed by the Minister of Alberta Health and Wellness. This group is made up of one lawyer (who is the chairperson or the vice-chair), a medical doctor, a psychiatrist, and a member of the general public.

What is the purpose of the Review Panel?

The Panel is intended to be a way of getting certain decisions made (see below) based on a fair and objective review of your situation. The Review Panel is independent from the health care service providers if you are under a community treatment order, or from any facility if you are being detained. None of the people on the Panel can be directly involved in providing service to you.

What issues can I apply to the Review Panel to review?

You have the right to apply to the Review Panel to review your case and decide on these areas:

- admission or renewal certificates
- issuance of community treatment orders or renewals
- certificate of incompetence to make treatment decisions
- transfers back to a correctional facility (when a case involves the justice system)

You can apply to the Review Panel for a review as often as you wish, but the Chair of the Panel may not hear your case if he or she believes there has been no significant change or the request is frivolous.

How do I apply for a hearing?

To apply for a Review Panel hearing for cancellation of admission or renewal certificates or a community treatment order, you or your advocate must complete Form 12, the Application for Review Panel Hearing. This form must be mailed or faxed to the chair of the Review Panel.

When must the Review Panel hold a hearing?

- The Panel must review the admission or renewal certificates or CTO within 21 days after receiving the application (Form 12). The Review Panel chair schedules the hearing and must give you at least seven days’ notice of the date, time, place and purpose of the hearing. This seven days’ notice allows you time to get a lawyer to represent you. You may contact Legal Aid Alberta to help you at the panel hearing at no cost to you. If you prefer, you may hire your own lawyer, but there will be a cost to you.
• If you have been in hospital for six months *involuntarily* under a third or subsequent set of renewal certificates and your case has not yet been reviewed, it must automatically be reviewed by the Review Panel.

• If you are under a CTO, the first time it is renewed and every second time it is renewed after that, the Review Panel will automatically review the CTO to consider if it should be cancelled (unless an application for a Review Panel hearing has already been made within a month before any renewal).

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**Can I take part in my hearing?**

You have all the rights of a party (participant) to a hearing. You have the right to be present through the entire hearing and you can examine and cross-examine any witnesses. You have a right to examine information the Review Panel is given unless the Review Panel believes revealing particular information may seriously endanger the safety of another person.

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**Can a lawyer help me?**

You have the right to have a lawyer present at a Review Panel hearing. If you don't already have a lawyer or would like more information about how a lawyer can help, contact Legal Aid Alberta at 1-866-845-3425 or 780-644-4971 or visit [www.legalaid.ab.ca](http://www.legalaid.ab.ca).

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**How do I know what the Panel has decided?**

Once the Panel has made a decision, a copy of the order or decision must be given to you. The information includes the reasons for the Review Panel's decision.

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**What if I disagree with a Review Panel decision?**

You can appeal any Review Panel decision to the Court of Queen’s Bench. However, there is a strict deadline and you must start the appeal within 14 days after you get the Panel's decision. You must pay a fee for the appeal and there is usually a waiting period before your appeal will be heard.

You should speak to a lawyer immediately after the Panel's decision if you want to appeal. You are not automatically entitled to a lawyer from Legal Aid for the appeal, but if you wish to seek help from Legal Aid, you can contact them at 1-866-845-3425 or 780-644-4971 or visit [www.legalaid.ab.ca](http://www.legalaid.ab.ca).
PART 6: THE MENTAL HEALTH ACT AND FAMILY MEMBERS OR CAREGIVERS

Who is informed if a person is admitted to hospital as a formal patient?
If a person is issued two admission or renewal certificates, the person, the person’s guardian (if any) and the person’s nearest relative are told the reason for the certificates and about his or her right to apply to the Review Panel for cancellation of the certificates. However, if the person objects to information being given to his or her nearest relative, the nearest relative will not be told.

As well, the above individuals and one individual chosen by the person (if any) are given a written statement telling the reason for the certificates, copies of the certificates, the period the certificates are in effect, information about the function of the Review Panel, as well as the name, address and chair of the Review Panel and the right to apply for cancellation of the certificates.

If there is a language barrier, an interpreter will be provided to give the information and written statement in the person's language or of his or her guardian.

Who is informed if a formal patient is discharged from hospital?
If a formal patient’s admission or renewal certificates expire or are cancelled and he or she is discharged from hospital, the patient's guardian (if any) and his or her nearest relative are notified. If the patient objects, the nearest relative will not be notified. The patient's family doctor (if known) must also be notified and be provided with a discharge summary and any recommendations for treatment.

Who is informed if a person is issued a community treatment order?
If a person is issued a CTO or the CTO is renewed or changed, a copy of the order will be given to the person subject to the CTO, anyone who is making treatment decisions on behalf of the person (guardian, agent, or nearest family member), and anyone who is providing treatment or care to the person.

If a family member is not either legally making treatment decisions on behalf of the person, or designated under the CTO to receive notices, or considered as someone who is providing treatment or care to the person under the CTO, there is no obligation under the Act to inform the family member.

Who is informed if a person's CTO expires or is cancelled?
When a CTO expires or is cancelled, a notice of the expiry or cancellation as well as recommendations for treatment are given to the person subject to the CTO, anyone who is making treatment decisions on behalf of the person (guardian, agent, or nearest relative) and anyone who is providing treatment or care to the person. The person's family doctor (if known) will also be notified.
What can I do if I think someone is in need of examination or care under the Act?

- You can encourage and/or accompany the person to see a doctor at a hospital emergency ward, a clinic, or doctor's office. If the person is in crisis and the doctor decides admission to hospital is appropriate, he or she can recommend a voluntary admission to hospital; or, if the person meets the criteria, the doctor may issue a single admission certificate to have the person apprehended and conveyed to hospital for examination by a second physician.

- If you believe a person has a mental disorder and is likely to cause harm to him or herself or someone else or to suffer serious mental or physical deterioration or physical impairment, you can present information to a judge of the Provincial Court. If the judge decides your information is valid and the person meets the necessary criteria, he or she can issue a warrant for the person's apprehension and conveyance so the person can be examined by a medical doctor at a designated facility.

- If you believe the person is imminently likely to cause harm to him or herself or to someone else, you can call the police to apprehend and convey the person to a hospital.

- If you are concerned about someone who is not in crisis, but is having difficulty with complying with a treatment plan in the community and is frequently readmitted to hospital, you and the person may wish to discuss the possibility of a community treatment order with the person's medical doctor or psychiatrist. A CTO is only issued when all the specified criteria are met (see Part 4). In most cases, the person's consent is necessary to issue a CTO and treatment can't be forced in the community, so discussion about CTOs should include the person it would affect.

Who decides what actions may be taken under the Act?

It is the responsibility of the examining physicians to determine if a person meets the criteria needed to be assessed and treated under the Act, be admitted to a hospital as a voluntary or involuntary patient, be issued a community treatment order, or be released into the community.

What if the treatment or care ordered in a CTO isn't available?

A doctor can only issue a CTO or CTO renewal if the recommended treatment and/or care are available in the community, will be provided to the person it is issued to, and the person is able to follow the treatment and care plan. If these conditions can't be met, a CTO can't be issued.

What if I'm concerned someone is not following a CTO?

If a person is not complying with a CTO, you may give information under oath to the judge at a Provincial Court support this claim. If the judge believes the information
presented and the person in question meets the criteria, the judge may issue a warrant for apprehension and conveyance to hospital for assessment.

If I'm concerned about the treatment of someone who is receiving treatment or care under the Act, what can I do?
Family members and caregivers may act as informal advocates on behalf of the person they are concerned about. They can present their concerns to treatment and care providers. They may also engage the Mental Health Patient Advocate on the patient's behalf. Anyone who wishes to be present at a Review Panel hearing may also do so with the permission of the Chair of the Panel.
GLOSSARY

Admission certificate - Form 1. A form filled out by a medical doctor that gives the authority for a person to be apprehended and taken to a facility and detained. If two admission certificates are issued, the person is admitted to a facility as a formal patient.

Advocate - to support or defend someone's cause or position to an influential person or someone in authority.

Agent - someone you trust to make important decisions for you when you are not able to make decisions for yourself. Legally, the agent is named in a Personal Directive. The person may or may not be a family member.

Apprehension and conveyance - under the Act, this means to be picked up by police and taken to a facility. A medical doctor, judge or police officer may order a person with a mental disorder to be apprehended and conveyed.

Competent - under the Act, this means being able to understand the information relating to treatment decisions and able to appreciate the consequences and effects of making these decisions. Only a basic level of understanding is expected. Competence can change from time to time and you may be competent to make decisions about some things, but not others.

Comply - to cooperate or obey.

Consent - to willingly give your permission once you have correct information about something you are asked to do or agree to and know and understand the consequences of agreeing to it or not agreeing to it.

Conveyance - to be taken (conveyed) to a facility.

Criteria - specific conditions that must exist and/or behaviours that must be observed (seen) in a person in order for him or her to be subject to actions described in the Act.

Detention - being held in a facility against your will.

Deteriorate/deterioration - for symptoms of illness to get worse, or to go from being healthy to being ill.

Facility or designated facility - hospitals named in the Mental Health Act, Mental Health Regulation that provide care and treatment to people with mental disorders. A list of designated facilities can be found at www.mhpa.ab.ca in the Resources section.

Formal patient - someone who is admitted to a hospital under two admission certificates (Form 1) or two renewal certificates (Form 2).

Frivolous - trivial, not serious or of much worth.

Guardian - a person who has legally been given authority to make decisions on your behalf through either the Child, Youth and Family Enhancement Act (if you're under 18), or the Adult Guardianship and Trusteeship Act.

Impaired or impairment - to have a limitation that negatively affects a person's ability to function. This term is not defined in the Act or Regulations.

Involuntarily - against your will, without consent or permission.
Glossary

**Mechanical restraint** - physical restraints, which could range from handcuffs during transportation to cloth bindings in bed.

**Mental disorder** - defined in the Act as “a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life.” *Perception* is awareness of the world through the senses, like seeing or hearing. *Orientation*, as used here, is awareness of who you are, where you are and what time you are living in.

**Mental health facility** - see Facility or designated facility, above.

**Mental health warrant** - an informal term used to describe the Form 8 warrant issued by a judge.

**Nearest relative** - under the Act, your nearest relative is an adult who is a spouse or common law partner, a son or daughter, a parent, a brother or sister, a grandparent, a grandchild, aunt or uncle, or nephew or niece.

**Psychosurgery** - the Act defines psychosurgery as "any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or that inserts indwelling electrodes for pulsed electric stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat intractable physical pain or epilepsy where those conditions are clearly demonstrable.” ECT is not considered psychosurgery under the Act.

**Public Guardian** - if there is no guardian, agent, or nearest relative to act as a substitute decision-maker (provide consent) under the *Adult Guardianship and Trusteeship Act*, the Office of the Public Guardian will make decisions for someone who is deemed incompetent under the *Mental Health Act*.

**Reasonable force** - a level of force appropriate to an particular situation. For example, the amount of force used against a frail elderly woman should be much less than that needed to control a strong, young man.

**Renewal certificate** - Form 2. A certificate that gives the authority to extend a person's detention in a facility. Two renewal certificates must be issued by two different doctors to extend the person's stay.

**Review Panel** - a group of people appointed by the Minister of Alberta Health and Wellness. It is made up of one lawyer (who is the chairperson the vice-chair), a medical doctor, a psychiatrist, and a member of the general public. The Panel gives decisions based on independent reviews of actions taken under the Act.

**Substitute decision-maker** - see Agent, Guardian, and Public Guardian, above.

**Treatment Order** - (Form 15) An order issued by the Review Panel that authorizes specific physician-proposed treatment to be given to a competent formal patient (under certain criteria) without the patient's consent.

**Without consent** - against your will, without permission.
MENTAL HEALTH ACT FORMS

You can view the complete set of Mental Health Act forms at http://www.albertahealthservices.ca/1256.asp.

The following forms are relevant to topics discussed in this Guide:

Form 1: Admission Certificate
- Issuance of one Form 1 gives authority for apprehension and conveyance
- Issuance of two Form 1s gives authority for admission as a formal patient

Form 2: Renewal Certificate
- Issuance of two Form 2s gives authority to extend detention in a facility as a formal patient

Form 8: Warrant
- A judge's authority to order apprehension and conveyance

Form 9: Extension of Warrant
- Extends the validity of the Form 8 warrant another 7 days

Form 10: Statement of Peace Officer on Apprehension
- Gives reasons a peace officer without a warrant has apprehended someone under the Act

Form 11: Certificate of Incompetence to Make Treatment Decisions
- Gives reasons a doctor believes the person named is not competent to make treatment decisions and notifies the person of his or her rights to apply for a review of the certificate to the Review Panel

Form 12: Application for Review Panel Hearing
- Filled by the applicant to request a Review Panel hearing

Form 15: Decision of Review Panel Regarding Treatment
- Authorizes or refuses to authorize treatment of a competent patient without patient consent (Treatment Order)

Form 19: Issuance of Community Treatment Order
- Authority for treatment and care to be provided in the community. States reasons for CTO (how the person meets the criteria), outlines the treatment and care plan, states treatment and care are available in the community, states who is supervising the CTO

Form 20: Renewal of Community Treatment Order
- Extends the period of time the CTO is in effect.

Form 22: Community Treatment Order Cancellation or Expiry
- States the CTO has been cancelled or expired and lists continued treatment recommendations, if any.

Form 23: Community Treatment Order Apprehension
- Authorizes the apprehension and conveyance of someone who is not complying with a CTO.
HELPFUL CONTACT INFORMATION AND WEBSITES

Information about the Alberta Mental Health Act:

Alberta Health Services
Community Treatment Orders Information Sheet:

Mental Health Act Forms:
http://www.albertahealthservices.ca/1256.asp

Mental Health Act Information
http://www.albertahealthservices.ca/mha.asp

Alberta Mental Health Patient Advocate
Phone: (780) 422-1812 in Edmonton;
outside of Edmonton, toll free at 310-0000 then (780) 412-1812
E-mail: info@mhpa.ab.ca Website: www.mhpa.ab.ca
Address:
12th Floor, Centre West Building
10035-108 Street
Edmonton, AB T5J 3E1

Alberta Queen's Printer
Phone: (780) 427-4952 in Edmonton
Outside of Edmonton, call toll free:
310-0000 and then dial (780) 427-4952
Address:
Main Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7

Mental Health Act: go to www.qp.alberta.ca/Laws_Online.cfm and look up Mental Health Act in the alphabetical list.

How to find a lawyer or learn how a lawyer may assist you:

Legal Aid Alberta
Phone:
Alberta Law Line: 1-866-845-3425
Provincial Legal Aid Alberta Office: (780) 644-4971
Website: www.legalaid.ab.ca
Click Contact Us on the home page to get contact information for all regional Legal Aid Alberta regional offices.
HELPFUL CONTACT INFORMATION AND WEBSITES

*Mental health information:*

Alberta Health Services Mental Health and Wellness Services:
http://www.albertahealthservices.ca/services.asp?pid=stype&type=25

In Calgary: Access Mental Health: (403) 943-1500

**Canadian Mental Health Association - Calgary Region**

CMHA provides a wide variety of community-based services for individuals with a mental disorder, their families and caregivers in the Calgary area, including advocacy and family support.

Phone: (403) 297-1700

E-mail: info@cmha.calgary.ab.ca  Website: www.cmha.calgary.ab.ca

Address:
Suite 400, 1202 Centre St. SE
Calgary, AB   T2G 5A5

**Canadian Mental Health Association - Alberta Division**

Mental health advocacy and information. Link to Alberta regional CMHA offices

Phone: (780) 482-6576

Website: www.cmha.ab.ca

Address:
320 Capital Place
9707-110 Street NW
Edmonton, AB  T5K 2L9
Vision
*Mentally healthy people in a healthy society*

Mission
*A leader in reducing the impact of mental disorders and in promoting mental health and wellness through community-based services.*

**For more information contact:**
The Canadian Mental Health Association - Calgary Region
(403) 297-1700
E-mail: info@cmha.calgary.ab.ca
www.cmha.calgary.ab.ca/

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

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