MENTAL HEALTH AMENDMENT ACT, 2007

Chapter 35

(Assented to December 7, 2007)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cM-13

1 The Mental Health Act is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (c):

(c.1) “community treatment order” means a community treatment order issued under section 9.1;

(b) by adding the following after clause (f):

(f.1) “health professional” means a health professional or a member of a class of health professionals as set out in the regulations or designated by a board or a regional health authority under section 9.7(1) or by the Minister under section 49(2);

(c) in clause (i) by striking out “with respect to a formal patient,” and substituting “with respect to a formal patient or a person who is subject to a community treatment order;”;

(d) in clause (i)(ii) by striking out “in the best interest of the formal patient” and substituting “in the best interest of the formal patient or the person who is subject to a community treatment order”;
(e) by renumbering section 1 as section 1(1) and adding the following after subsection (1):

(2) A health professional may carry out the duties, functions and responsibilities of a physician or a psychiatrist respecting a community treatment order when authorized to do so in accordance with a regulation made under section 53(1)(h) or a designation under section 9.7(1) or 49(2).

4 Section 5 is amended by adding the following after subsection (3):

(4) Notwithstanding subsections (1) and (2), if a person who is subject to a community treatment order is conveyed to a facility under section 10 or 12, the person shall be dealt with in accordance with section 9.6(4).

8 The following is added after section 9:

Community treatment order

9.1(1) Two physicians, one of whom must be a psychiatrist, may, in accordance with the regulations, issue a community treatment order with respect to a person if

(a) in the opinion of the 2 physicians, the person is suffering from a mental disorder,

(b) one or more of the following apply:

(i) within the immediately preceding 3-year period the person has on 2 or more occasions, or for a total of at least 30 days,

(A) been a formal patient in a facility,

(B) been in an approved hospital or been lawfully detained in a custodial institution where there is evidence satisfactory to the 2 physicians that, while there, the person would have met the criteria set out in section 2(a) and (b) at that time or those times, or

(C) both been a formal patient in a facility and been in an approved hospital or lawfully detained in a custodial institution in the circumstances described in paragraph (B);
(ii) the person has within the immediately preceding 3-year period been subject to a community treatment order;

(iii) in the opinion of the 2 physicians, the person has, while living in the community, exhibited a pattern of recurrent or repetitive behaviour that indicates that the person is likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,

(c) the 2 physicians, after separate examinations of the person by each of them within the immediately preceding 72 hours, are both of the opinion that the person is likely to cause harm to the person or others or to suffer substantial mental or physical deterioration or serious physical impairment if the person does not receive continuing treatment or care while living in the community,

(d) the treatment or care the person requires exists in the community, is available to the person and will be provided to the person,

(e) in the opinion of each physician, the person is able to comply with the treatment or care requirements set out in the community treatment order, and

(f) either

   (i) consent to the issuing of the community treatment order has been obtained,

      (A) if the person is competent, from the person, or

      (B) if the person is not competent, in accordance with section 28(1),

   or

   (ii) consent to the issuing of the community treatment order has not been obtained but in the opinion of the issuing physicians
(A) the person has, while living in the community, exhibited a history of not obtaining or continuing with treatment or care that is necessary to prevent the likelihood of harm to others, and

(B) a community treatment order is reasonable in the circumstances and would be less restrictive than retaining the person as a formal patient.

(2) A community treatment order must

(a) be in the prescribed form,

(b) identify the issuing physicians,

(c) set out the dates on which and the places where the examinations referred to in subsection (1) took place,

(d) set out the facts on which the issuing physicians formed the opinions referred to in subsection (1),

(e) set out the treatment or care referred to in subsection (1)(c),

(f) identify the person who is responsible for the supervision of the community treatment order and any reporting obligations in respect of the community treatment order in accordance with the regulations,

(g) satisfy any other requirement provided for in the regulations, and

(h) be signed by the issuing physicians.

(3) The certificates of admission or renewal for a formal patient are cancelled on the issuance of a community treatment order.

**Duration of order**

9.2 A community treatment order expires 6 months after the day it is issued unless

(a) it is renewed in accordance with section 9.3, or

(b) it is cancelled under section 9.5 or 9.6 before its expiry.
Renewal of order

9.3(1) A community treatment order may be renewed at any time before its expiry for a period of 6 months in accordance with the regulations.

(2) There is no limit on the number of renewals under subsection (1).

(3) The requirements of section 9.1 apply, with the necessary changes, to the renewal of a community treatment order.

Amendment of order

9.4 A community treatment order may be amended by a psychiatrist in accordance with the regulations.

Cancellation of order

9.5 A psychiatrist may at any time cancel a community treatment order in accordance with the regulations if any of the criteria set out in section 9.1(1)(b) to (d) cease to apply.

Apprehension for non-compliance

9.6(1) If a psychiatrist has reasonable grounds to believe that a person who is subject to a community treatment order has failed to comply with the community treatment order, the psychiatrist may issue an order in the prescribed form to a peace officer that authorizes the peace officer

(a) to apprehend the person who is named in the order and to convey the person to a facility named in the order for an examination,

(b) to take reasonable measures, including the entering of premises and the use of physical restraint, to apprehend the person who is named in the order and to take the person into custody for the purpose of conveying the person to the facility, and

(c) while the person is being conveyed, to care for, observe, detain and control the person.

(2) An order shall not be issued under subsection (1) unless the issuing psychiatrist is satisfied that efforts that are reasonable in the circumstances have been made to

(a) inform the person that the person has failed to comply with the community treatment order,
(b) inform the person of the possibility that the psychiatrist may issue an order for apprehension and assessment of the person if the person continues to fail to comply with the community treatment order, and of the possible consequences of that assessment, and

(c) provide reasonable assistance to the person to comply with the community treatment order.

(3) An order under this section expires 30 days after the date it is issued.

(4) If a person who is subject to a community treatment order is conveyed to a facility under the authority of an order under this section or section 10 or 12, as soon as practicable, but in any case within 72 hours after the person's arrival at the facility, an examination of the person must be conducted by 2 physicians, one of whom must be a psychiatrist, to determine whether

(a) the community treatment order should be cancelled 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 amendments, or

(c) the community treatment order should be cancelled and admission certificates issued in accordance with sections 2 and 6.

Designated physician or health professional

9.7(1) Notwithstanding sections 9.1, 9.3, 9.4, 9.5 and 9.6 but subject to the regulations, where no psychiatrist is available to issue, renew, amend or cancel a community treatment order, a board or a regional health authority may designate a physician or health professional for the purpose of issuing, renewing, amending or cancelling a community treatment order.

(2) If a board or a regional health authority designates a physician or health professional under subsection (1), the designated physician or health professional may issue, renew, amend or cancel a community treatment order only after consultation with a psychiatrist.

9 Section 10 is amended
(b) by adding the following after subsection (1):

(1.1) Anyone who has reasonable and probable grounds to believe that a person who is subject to a community treatment order is not complying with the community treatment order may bring an information under oath before a judge of the Provincial Court.

11 Section 14 is amended

(a) by adding the following after subsection (1):

(1.1) When a community treatment order is issued, amended or renewed, a person designated in accordance with the regulations

(a) shall prepare a written statement of

(i) the reason, in simple language, for the issuance, amendment or renewal of the community treatment order,

(ii) the authority for the issuance, amendment or renewal of the community treatment order,

(iii) information regarding the function of review panels,

(iv) the name and address of the chair of the appropriate review panel, and

(v) the right of the person who is subject to the community treatment order to apply to the review panel for cancellation of the community treatment order,

and

(b) shall give the written statement and a copy of the issued, amended or renewed community treatment order

(i) to the person who is subject to the community treatment order,

(ii) to any person who exercises authority under section 28(1) to make treatment decisions on behalf of the
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person who is subject to the community treatment order,

(iii) to any persons providing treatment or care to the person pursuant to the community treatment order, and

(iv) to any other person prescribed in the regulations.

(b) by repealing subsection (2) and substituting the following:

(2) In the event of language difficulty, the board or the designated person referred to in subsection (1.1), as the case may be, shall obtain a suitable interpreter and provide the information and the written statement referred to in subsection (1) or (1.1),

(a) in the case of a formal patient, in the language spoken by the formal patient or the patient’s guardian, or

(b) in the case of a person who is subject to a community treatment order, in the language spoken by the person or the person’s guardian.

(c) by repealing subsections (3) and (4) and substituting the following:

(3) In addition to giving a written statement pursuant to this section, the board or the designated person referred to in subsection (1.1), as the case may be, shall do any other things the board or the designated person considers expedient to facilitate the submission of an application.

(4) If a formal patient or a person who is subject to a community treatment order has designated another person to receive notices, the board or the designated person referred to in subsection (1.1), as the case may be, shall also mail a copy of all notices and information required to be given to the patient or the person who is subject to a community treatment order to the person designated at the address provided by the patient or the person who is subject to a community treatment order.

(d) by adding the following after subsection (4):

(5) When a community treatment order expires or is cancelled, the designated person referred to in subsection (1.1) shall give
notice of the expiry or cancellation, along with any recommendations for treatment,

(a) to the person who was subject to the community treatment order,

(b) to the persons who were given a written statement under section 14(1.1)(b), and

(c) to the person’s family doctor, if known.

13 Section 28 is repealed and the following is substituted:

Treatment decisions on behalf of formal patient or person subject to community treatment order

28(1) For the purposes of this Act other than section 29(5), treatment decisions may be made on behalf of a formal patient or a person who is subject to a community treatment order, where the patient or person is a minor or is not mentally competent, by a person who is apparently mentally competent, is available and is willing to make the decisions and is

(a) the agent of the formal patient or the person who is subject to a community treatment order,

(b) the guardian of the formal patient or the person who is subject to a community treatment order,

(c) in a case where the formal patient or the person who is subject to a community treatment order does not have an agent or guardian or the agent or guardian is not available or not willing or cannot be contacted after every reasonable effort has been made, the patient’s or person’s nearest relative as defined in section 1(i)(i), or

(d) in a case where the formal patient or the person who is subject to a community treatment order does not have a person referred to in this section, a Public Guardian.

(2) A person referred to in subsection (1)(a) or (c) shall not exercise the authority given by that subsection unless the person

(a) has been in personal contact with the formal patient or the person who is subject to a community treatment order over the preceding 12-month period,
(b) is willing to assume the responsibility of making treatment decisions, and

(c) makes a statement in writing certifying the person’s relationship to the formal patient or the person who is subject to a community treatment order and the facts set out in clauses (a) and (b).

(3) A person authorized by subsection (1)(a) or (c) shall make the treatment decisions in accordance with what the person believes to be the best interest of the formal patient or the person who is subject to a community treatment order.

(4) In order to determine the best interest of the formal patient or the person who is subject to a community treatment order, a person referred to in subsection (1)(a) or (c) shall have regard to the following:

(a) whether the mental condition of the patient or the person will be or is likely to be improved by the treatment;

(b) whether the patient’s or person’s condition will deteriorate or is likely to deteriorate without the treatment;

(c) whether the anticipated benefit from the treatment outweighs the risk of harm to the patient or person;

(d) whether the treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

(5) If the attending physician is of the opinion that a formal patient is not mentally competent to make treatment decisions and the patient objects to treatment, the treatment shall not be given pursuant to a treatment decision made by a person referred to in subsection (1)(a) or (c) unless a 2nd physician is also of the opinion that the patient is not mentally competent to make treatment decisions.

(6) In the case of a person who is subject to a community treatment order, the community treatment order must be issued in accordance with section 9.1.

(7) If treatment decisions are made by a person referred to in subsection (1)(a) or (c) on behalf of a formal patient or a person who is subject to a community treatment order, that person’s
statement under subsection (2)(c) can be relied on unless it is not reasonable to believe the statement.

(8) If a person acting on a treatment decision makes reasonable inquiries for persons entitled to make the decisions, the person so acting is not liable for failure to request the decision from the person entitled to make the decision on behalf of the formal patient or the person who is subject to a community treatment order.

2007 c35 s13;2008 cA-4.2 s143

15 Section 38 is amended

(a) by adding the following after subsection (1):

(1.1) A person who is subject to a community treatment order, the person’s agent, the person’s guardian or a person on behalf of the person who is subject to a community treatment order may apply to a review panel for cancellation of the community treatment order by sending a notice of application to the chair of the appropriate review panel in the prescribed form.

(b) in subsection (2) by adding “or person who is subject to a community treatment order” after “formal patient” wherever it occurs;

(c) in subsection (3)

(i) by adding “person who is subject to a community treatment order,” after “a formal patient,;”;

(ii) by adding “or on behalf of the person who is subject to a community treatment order” after “patient’s behalf”;

(iii) by striking out “or 2 renewal certificates” and substituting “, 2 renewal certificates or a community treatment order”;

(iv) by striking out “those certificates” and substituting “those certificates or that order”;

(d) in subsection (4)

(i) by adding “person who is subject to a community treatment order,” after “a formal patient,;”
(ii) by adding “or on behalf of the person who is subject to a community treatment order” after “patient’s behalf”.

16 Section 39 is amended by renumbering it as section 39(1) and adding the following after subsection (1):

(2) When a community treatment order is renewed for the first time, and at the time of every 2nd renewal after that until the community treatment order expires or is cancelled, unless the person, the person’s agent, the person’s guardian or another person on the person’s behalf has made an application for review within the month preceding any of those renewals, the person who is subject to the community treatment order is deemed to have applied to the chair of the appropriate review panel, who shall cause the review panel to hear and consider cancellation of the community treatment order.

17 Section 40 is amended

(a) by repealing subsection (1)(a) to (c) and substituting the following:

(a) to the patient or the person who is subject to a community treatment order, the patient’s or person’s agent and the patient’s or person’s guardian or another person referred to in section 28(1), if any,

(b) to one person designated by the patient or the person who is subject to a community treatment order, to the nearest relative, unless the patient or the person objects, and to any other person that the chair considers may be affected by the application and should be notified,

(c) in the case of a person who is subject to a community treatment order, to the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, and to the person responsible for the supervision of the community treatment order,

(d) in the case of a formal patient, to the board of the facility in which the patient is detained, and

(e) to the applicant.
(b) by repealing subsection (5) and substituting the following:

(5) The chair may adjourn a hearing under section 33, 38 or 39 for any period up to 21 days and, if the patient or the patient’s representative, or the person who is subject to a community treatment order or that person’s representative, as the case may be, requests the adjournment, for a further period or periods.

18 Section 41 is amended

(a) in subsection (1) by adding the following after clause (a):

(a.1) with respect to an application for cancellation of a community treatment order,

(i) cancel the community treatment order, or

(ii) refuse to cancel the community treatment order;

(b) in subsection (2)(b) by adding “or the person who is subject to a community treatment order and the person’s guardian, if any,” after “if any,”;

(c) in subsection (3) by adding “, a community treatment order” after “renewal certificates”;

(d) in subsection (4) by adding “or a community treatment order” after “renewal certificates”.

19 Section 42 is amended

(a) by renumbering it as section 42(1);

(b) in subsection (1) by striking out “In a hearing” and substituting “Subject to subsection (2), in a hearing”;

(c) by adding the following after subsection (1):

(2) In a hearing before a review panel or the Court of Queen’s Bench under this Act in respect of a community treatment order, the onus is on the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, or the person
supervising the community treatment order, to show that the person meets the criteria set out in section 9.1(1).

20 **Section 43 is amended**

(a) by adding the following after subsection (3):

(3.1) In the case of an appeal in respect of a community treatment order, in addition to being served on the persons set out in subsection (3) the notice shall be served on

(a) the psychiatrist or designated physician or health professional who issued, amended or renewed the community treatment order, as the case may be, and

(b) the person responsible for the supervision of the community treatment order.

(b) in subsection (7)(a) by striking out “or renewal certificates” and substituting “, renewal certificates, a community treatment order”.

21 **Section 45(1) is amended by adding** “or persons who are subject to community treatment orders” after “formal patients”.

22 **Section 49 is amended by renumbering it as section 49(1) and adding the following after subsection (1):**

(2) The Minister may

(a) designate an individual as a health professional for the purposes of this Act in circumstances where no psychiatrist or physician is available to issue, renew, amend or cancel a community treatment order if in the opinion of the Minister the individual is competent to carry out those functions, and

(b) designate classes of health professionals for the purposes of this Act.

(3) A designation by the Minister under subsection (2)(b) expires 3 months after the date on which it is made.
23 Section 53(1) is amended by adding the following after clause (d):

(e) respecting community treatment orders;

(f) respecting examinations for the purposes of sections 9.1 and 9.6 and the manner in which, or the means by which, they may be conducted;

(g) respecting persons who may be responsible for the supervision of community treatment orders and the qualifications required for that purpose;

(h) respecting health professionals and classes of health professionals for the purposes of this Act, including the qualifications required of health professionals in respect of the issuing, supervision, renewal, amendment or cancellation of community treatment orders and the circumstances in which health professionals may issue, supervise, renew, amend or cancel community treatment orders;

(i) respecting designating physicians or health professionals for the purposes of section 9.7(1);

(j) respecting the reporting obligations in respect of community treatment orders;

(k) respecting the issuing, renewal, amendment or cancellation of community treatment orders;

(l) respecting requirements for notice respecting community treatment orders;

(m) respecting the designating of persons for the purposes of section 14(1.1);

(n) defining any terms used but not defined in this Act;

(o) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

24 The following is added after section 53:
Review by committee of Legislative Assembly
54 Within 5 years after the coming into force of section 8 of the Mental Health Amendment Act, 2007, a committee of the Legislative Assembly must begin a comprehensive review of the amendments made by that Act and must submit to the Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

25 The Health Information Act is amended in section 104(1)(h)
(a) by striking out “if the individual is a formal patient as defined in the Mental Health Act,”;
(b) by striking out “defined in that Act” and substituting “defined in the Mental Health Act”.

26 This Act comes into force on Proclamation.