## LEGISLATIVE ASSEMBLY OF ALBERTA





# Standing Committee on Families and Communities

# Review of the Mental Health Amendment Act, 2007

Twenty-Ninth Legislature Second Session

July 2016



STANDING COMMITTEE ON FAMILIES AND COMMUNITIES

July 2016

To the Honourable Robert Wanner Speaker of the Legislative Assembly of the Province of Alberta

I have the honour of submitting, on behalf of the Standing Committee on Families and Communities, its

final report on the Review of the Mental Health Amendment Act, 2007.

Sincerely,

[original signed by Chair]

Nicole Goehring, MLA Chair, Standing Committee on Families and Communities

c. Mr. Robert Reynolds, Q.C. Clerk of the Legislative Assembly

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#### MEMBERS OF THE STANDING COMMITTEE ON FAMILIES AND COMMUNITIES

#### 29<sup>th</sup> Legislature

Nicole Goehring, MLA<sup>\*</sup> Chair Edmonton-Castle Downs (ND)

Heather Sweet, MLA<sup>†</sup> Chair Edmonton-Manning (ND)

Mark W. Smith, MLA Deputy Chair Drayton Valley-Devon (W)

Deborah Drever, MLA<sup>‡</sup> Calgary-Bow (ND)

Nicole Goehring, MLA§ Edmonton-Castle Downs (ND)

Bruce Hinkley, MLA Wetaskiwin-Camrose (ND)

Trevor A.R. Horne, MLA<sup>\*\*</sup> Spruce Grove-St. Albert (ND)

Sandra Jansen, MLA Calgary-North West (PC)

Jessica Littlewood, MLA<sup>++</sup> Fort Saskatchewan-Vegreville (ND)

> Robyn Luff, MLA Calgary-East (ND)

Annie McKitrick, MLA<sup>‡‡</sup> Sherwood Park (ND)

Karen M. McPherson, MLA<sup>§§</sup> Calgary-MacKay-Nose Hill (ND) Ronald Orr, MLA Lacombe-Ponoka (W)

Hon. Brandy Payne, MLA\*\*\* Calgary-Acadia (ND)

> Angela D. Pitt, MLA Airdrie (W)

Dave Rodney, MLA Calgary-Lougheed (PC)

David Shepherd, MLA Edmonton-Centre (ND)

Dr. David Swann, MLA Calgary-Mountain View (AL)

Cameron Westhead, MLA<sup>+++</sup> Banff-Cochrane (ND)

Tany Yao, MLA Fort McMurray-Wood Buffalo (W)

<sup>&</sup>lt;sup>\*</sup> Chair from March 9, 2016

<sup>&</sup>lt;sup>†</sup> Chair to March 9, 2016

<sup>&</sup>lt;sup>‡</sup> Committee Member from March 9, 2016

<sup>&</sup>lt;sup>§</sup> Committee Member to October 29, 2015, and again (Chair) from March 9, 2016

<sup>\*\*</sup> Committee Member from March 9, 2016

<sup>&</sup>lt;sup>++</sup> Committee Member to March 9, 2016

<sup>&</sup>lt;sup>‡‡</sup> Committee Member from June 2, 2016

<sup>&</sup>lt;sup>§§</sup> Committee Member from October 29, 2015

<sup>\*\*\*</sup> Committee Member to March 9, 2016

<sup>&</sup>lt;sup>+++</sup> Committee Member to June 2, 2016

#### Substitutions Pursuant to Standing Order 56(2.1-2.4):

Erin D. Babcock, MLA<sup>\*</sup> Stony Plain (ND)

Thomas Dang, MLA<sup>†</sup> Edmonton-South West (ND)

Prab Gill, MLA<sup>‡</sup> Calgary-Greenway (PC) Denise Woollard, MLA§ Edmonton-Mill Creek (ND)

Glenn van Dijken, MLA\*\* Barrhead-Morinville-Westlock (W)

Jessica Littlewood, MLA<sup>††</sup> Fort Saskatchewan-Vegreville (ND)

#### Members also in Attendance:

Denise Woollard, MLA<sup>‡‡</sup> Edmonton-Mill Creek (ND)

Wayne Anderson, MLA<sup>§§</sup> Highwood (W)

<sup>\*</sup> Substitution for Nicole Goehring on October 5, 2015, and for Hon. Brandy Payne on December 16, 2015

<sup>&</sup>lt;sup>†</sup> Substitution for Deborah Drever on June 13, 2016, and Bruce Hinkley on June 30, 2016

<sup>&</sup>lt;sup>‡</sup> Substitution for Dave Rodney on June 13, 2016

<sup>§</sup> Substitution for Karen M. McPherson on June 20 and 30, 2016

<sup>\*\*</sup> Substitution for Ronald Orr on June 20, 2016

<sup>&</sup>lt;sup>††</sup> Substitution for David Shepherd on June 30, 2016

<sup>&</sup>lt;sup>‡‡</sup> June 13, 2016

<sup>&</sup>lt;sup>§§</sup> June 30, 2016

## **1.0 EXECUTIVE SUMMARY**

The Standing Committee on Families and Communities makes the following recommendations, including suggested amendments to the *Mental Health Act* (the "Act") and the *Community Treatment Order Regulation*, AR 337/2009, where necessary to implement the recommendation.

#### Interpretation of the term "harm"

1. That s. 1 be amended to provide a definition of the term "harm," given that the term is currently interpreted differently by various stakeholders.

#### Notification and information sharing

- 2. That s. 32(1) be amended to ensure that health care professionals notify not only the patient's family physician but should, when appropriate, also notify the other appropriate medical practitioner and health facility as well as family members providing primary care or support.
- 3. That s. 32(1) be amended to clarify when and how the sharing of patient information regarding a patient's discharge is allowed with health professionals other than the family physician.
- 4. That there is a need to increase measures to be taken to educate and raise awareness among health care and community workers about the legality of information sharing in order to facilitate communication and improve care.

#### **Discharge supports**

5. That the Act be supported by ensuring the availability upon discharge of services provided by all appropriate health professionals to help individuals remain in the community.

#### Designation of physician or health professional

6. That s. 5 of the *Community Treatment Order Regulation* be amended to include other health professionals, including psychologists and nurse practitioners, when appropriately trained.

## 2.0 COMMITTEE MANDATE

On June 25, 2015, the Legislative Assembly passed Government Motion 10, which referred the *Mental Health Amendment Act, 2007*, SA 2007, c35, to the Standing Committee on Families and Communities for the purpose of conducting a comprehensive review of the amendments to legislation made by that Act, pursuant to section 54 of the *Mental Health Act*.

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.

The Committee began its review on July 16, 2015.

## **3.0 INTRODUCTION**

The changes introduced by the *Mental Health Amendment Act, 2007*, focus primarily on two distinct areas:

- 1. The criteria for the involuntary admission of persons with mental disorders to health care facilities; and
- 2. The introduction of community treatment orders for persons requiring ongoing mental health services.

The *Mental Health Amendment Act, 2007* received Royal Assent on December 7, 2007, and section 8 came into force on January 1, 2010.

This report is the result of the Committee's year-long review, which began in July 2015. It contains the six recommendations that the Committee agreed to during its deliberations, including recommendations for amendments to the *Mental Health Act* and the *Community Treatment Order Regulation*. For a complete record of the Committee's deliberations please consult the transcripts of the Committee's meetings, which are posted online at <u>assembly.ab.ca</u>.

### 4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the useful contributions of the individuals and organizations who provided written submissions and/or appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

#### **Technical Support Staff**

#### Office of the Mental Health Patient Advocate

Ms Carol Robertson Baker, Mental Health Patient Advocate

#### **Ministry of Health**

Ms Fern Miller, Director, Addiction and Mental Health, Health Services Ms Kathy Ness, Assistant Deputy Minister, Health Services

#### **Ministry of Justice and Solicitor General**

Ms Tracey Bailey, General Counsel, Health Law Mr. Sunny Menon, Barrister and Solicitor, Health Law

#### Legislative Assembly Office Support Staff

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### **5.0 CONSULTATION AND REVIEW PROCESS**

The Committee's review of the *Mental Health Amendment Act, 2007,* involved a series of meetings that were open to the public and streamed live on the Legislative Assembly website. These meetings took place on July 16, October 5, and December 16, 2015, and April 13 and June 13, 20, and 30, 2016.

As part of the review process the Committee received background briefings on the *Mental Health Amendment Act, 2007*, from officials of the Office of the Mental Health Patient Advocate and the Departments of Health and Justice and Solicitor General on October 5, 2015.

The Committee invited written submissions from a number of identified stakeholders and advertised for written submissions from the public through radio and newspaper, on its website, and through social media and other web-based initiatives. Stakeholders included professional associations, interest groups, regulatory colleges, policy research institutes, legal and law enforcement organizations, patient advocate groups and tribunals, academic organizations, scholars, service providers, and Alberta Native friendship centres.

The Committee received 15 written submissions from identified stakeholders and 68 written submissions from members of the public. On June 13, 2016, the Committee heard oral presentations from Alberta Health Services, the Edmonton Police Service, the RCMP, Boyle Street Community Services, the Schizophrenia Society of Alberta, the Canadian Mental Health Association, Forward Action in Mental Health, the Alberta Alliance on Mental Illness and Mental Health, Dr. Esther Tailfeathers, and duty counsel for mental health review panels. Appendices A and B contain a complete list of all the individuals and organizations that provided written submissions and oral presentations to the Committee.

The Committee then met on June 20, 2016, to deliberate on the issues and proposals arising from the written submissions and oral presentations and from Committee members themselves. Representatives from the Office of the Mental Health Patient Advocate and the Departments of Health and Justice and Solicitor General attended the meeting and supported the Committee by providing technical expertise.

This report is the result of the Committee's deliberations and contains its six recommendations in relation to the Act and the *Community Treatment Order Regulation*.

## 6.0 COMMITTEE RECOMMENDATIONS

#### 6.1 Interpretation of the term "harm"

Section 2 of the *Mental Health Act* (the "Act") provides the criteria that are required to exist in order for a person with a mental illness to be detained in a health care facility for treatment without their consent. Following the amendments introduced as part of the *Mental Health Amendment Act, 2007*, one of the criteria for involuntary admission (a patient is "likely to present a danger to themselves or others") was revised as follows (s. 2(b)):

Likely to cause harm to themselves or others, or suffer serious mental or physical deterioration or serious physical impairment [a doctor must find that if not admitted, a person would be likely to become seriously mentally or physically ill or likely to hurt themselves or others in some way].

Under the revised criteria doctors must now focus on the concept of harm rather than danger by requiring that a person be found to be likely to cause harm to themselves or to others as a prerequisite for involuntary admission.

The Committee considered submissions from the Alberta Medical Association and the Edmonton Police Service regarding the interpretation of the term "harm." The submission from the Alberta Medical Association commented that psychiatrists have noticed little impact on involuntary admissions as a result of changing the criteria from "danger" to "harm" because neither is defined in the Act. The Edmonton Police Service (EPS) expressed concern about the fact that the term "harm" in the criteria for involuntary admission is not defined, arguing that the term is interpreted differently by law enforcement than it is by doctors. The EPS noted that the police "frequently perceive a higher likelihood of harm (including harm to the public in general) than do physicians," noting that approximately "70 per cent of [apprehensions under s. 12] are discharged by the attending physician …" In its oral presentation to the Committee regarding this issue the EPS argued that having a common definition of "harm" would be helpful to "everybody, particularly the health care professionals … if they're taking into account harm on the community."

The Committee considered the stakeholder feedback and ultimately decided that some clarity was needed with respect to the interpretation of the term "harm."

The Committee therefore recommends:

## 1. That s. 1 be amended to provide a definition of the term "harm," given that the term is currently interpreted differently by various stakeholders.

#### 6.2 Notification and information sharing

Section 32(1) of the Act provides for notifications that must be made with respect to a patient who is discharged from a health care facility following an involuntary admission. Clause (c) was added to this section in 2007, requiring a facility to give notice of the discharge of a patient from a facility to the patient's family doctor, if known. Notification to the family doctor must include a discharge summary and recommendations for treatment.

32(1) When a patient is discharged from a facility, the board shall, where reasonably possible, give notice of the discharge

- (a) to the patient's guardian, if any,
- (b) to the patient's nearest relative, unless the patient being discharged objects, and

(c) to the patient's family doctor, if known, along with the discharge summary, including any recommendations for treatment,

and, when applicable, shall state in the notice whether a certificate of incapacity is in effect under the *Public Trustee Act* with respect to the patient.

Some stakeholders raised the issue of expanding notification under s. 32(1) to other health professionals. Boyle Street Community Services (BSCS) indicated that it is currently not provided information from Alberta Health Services regarding whether a person accessing its support "has been admitted or discharged from involuntary admission" or is receiving services regarding "their mental health or substance misuse challenges" from another health care provider. Furthermore, the Committee heard from BSCS that clients often "[do not] remember if they were involuntarily admitted or if they're on any medication or if they have any upcoming appointments." BSCS argued that it "could play a key role in supporting people" but cannot effectively provide that support if it is "working in the dark" without knowledge of "what's happening with [its] clients." The EPS agreed, noting in its written submission that "clients are often discharged to shelters or to homelessness, and in lieu of notification to a family doctor or relative, it is important to ensure communication between the discharging hospital and any relevant shelter or social service provider" in order to ensure "a continuity of care."

Alberta Health Services (AHS) noted in its submission that some patients do not have a family doctor and use only walk-in clinics, in which case they may not see the same doctor at each visit. Consequently, notification to the family physician on discharge is not always possible. However, AHS, Tracey Bailey, General Counsel, Health Law, Department of Justice and Solicitor General, and the Information and Privacy Commissioner each informed the Committee that, in their opinion it may be unnecessary to expand s. 32(1) of the Act because the authority to notify other health care providers with respect to the discharge of patients from involuntary admission already exists under the *Health Information Act*. The Committee acknowledged that the *Health Information Act* already provides the ability to share health information with health professionals other than the patient's family doctor but noted that in practice "the information isn't getting shared" and that clarifying this ability would be a positive step.

The Committee also considered expanding notification under s. 32(1) to a patient's family without the patient's consent. The Mental Health Patient Advocate (MHPA) offered that some patients have raised concerns with her office "about the release of information about the discharge planning to family members as some of them believe it could be used for nefarious purposes." In view of this concern the MHPA urged the Committee to consider phrasing its recommendation so that a nearest relative or family member that is to be notified is one that is "providing primary support" to the patient.

Ms Bailey raised a number of factors with respect to grouping health professionals and family members in the same recommendation regarding notification upon discharge and in regard to notifying family members against a patient's wishes. She posed a number of questions for the consideration of the Committee, including: 1) would it be mandatory that notification be provided to additional health care providers and family members "regardless of the circumstances," or would health professionals retain the ability to exercise their professional judgment in making those decisions?; 2) should "health care professionals and family members [be] in the same category," or should different considerations apply to each of them?; and 3) given the stigma around mental illness should patients with mental illness who are discharged from involuntary admission be treated differently from other patients when they are discharged from the hospital, and if so, how differently? Ms Bailey concluded that "[i]t is a balancing of rights in wanting to assist the individual to ensure treatment and support are in place for them in the community but not to violate their rights."

The Committee debated the importance of preserving a patient's right to privacy and the confidentiality of their health information while at the same time providing health information to the appropriate service providers and family members so that the patients can receive the care that they need. The Committee ultimately created two recommendations that attempt to balance these competing interests.

The Committee recommends:

- 2. That s. 32(1) be amended to ensure that health care professionals notify not only the patient's family physician but should, when appropriate, also notify the other appropriate medical practitioner and health facility as well as family members providing primary care or support.
- 3. That s. 32(1) be amended to clarify when and how the sharing of patient information regarding a patient's discharge is allowed with health professionals other than the family physician.

The EPS and the RCMP expressed concerns to the Committee regarding reluctance expressed by health professionals to share health information with the police related to the issuance of Community Treatment Orders (CTO).

The EPS indicated that the health care system and police are "not sharing information properly," acknowledging that existing legislation allows for better information sharing but that this is not occurring because of the way the law is being interpreted. According to the EPS, "people are so afraid of liability … that they will not release information," and this lack of information sharing is "actually putting people's lives in danger." The RCMP added that "the pendulum needs to move a little closer to … providing information to the police so that when we arrive at a scene with … someone that has been [the] subject of one of these orders, we're … sensitive … because it does significantly affect our approach to some of these incidents." According to the RCMP, if the police had more awareness while still respecting a person's privacy, this information would be very helpful to the client and to the police. The EPS indicated that many health care workers are reluctant to share information with police because of perceived liability issues (i.e., many workers are concerned that they will be sued or lose their job if they release medical information).

The Committee acknowledged that the ability to share certain health information with the police already exists under the *Health Information Act* but wanted to reflect stakeholders' concerns regarding this issue and recommend steps to address what appears to be a misinterpretation of the related *Health Information Act* provisions.

Therefore, the Committee recommends:

4. That there is a need to increase measures to be taken to educate and raise awareness among health care and community workers about the legality of information sharing in order to facilitate communication and improve care.

#### 6.3 Discharge supports

The Committee agreed that apart from ensuring that the appropriate health professionals are notified of a patient's discharge from involuntary admission and provided with appropriate patient health information, it is important that appropriate health supports are available to these patients. Hence, the Committee discussed the importance of ensuring that mental health service providers are available in the community to patients following discharge in order to properly treat and care for these patients.

The Committee recommends:

5. That the Act be supported by ensuring the availability upon discharge of services provided by all appropriate health professionals to help individuals remain in the community.

#### 6.4 Designation of physician or health professional

Section 9.7 of the Act provides for the designation of physicians or health professionals authorized to issue CTOs or apprehension orders.

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 or issue an apprehension 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 or issuing an apprehension 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, or issue an apprehension order, only after consultation with a psychiatrist.

Section 5 of the *Community Treatment Order Regulation* restricts section 9.7(1) of the Act by providing that "[o]nly a physician may be designated under section 9.7(1) of the Act."

The College of Alberta Psychologists and the Nurse Practitioner Association of Alberta proposed that registered psychologists and nurse practitioners should be added to the list of health professionals who are authorized to issue involuntary admission certificates and CTOs.

Fern Miller, Director, Addiction and Mental Health, Health Services, Department of Health, offered background information to the Committee with respect to the colleges of the health professions which sought to be authorized to issue CTOs around the time that CTOs were established in Alberta. According to Ms Miller, the health professions which sought this authorization were asked for a mechanism "to ensure that they could determine the qualifications of their providers to ensure that they had the knowledge and skills to be issuing the CTOs." Ms Miller indicated that discussions with the various health professions with respect to this issue have not yet taken place but that the Department could investigate it further should the Committee recommend expanding the categories of health professions that are authorized to issue CTOs.

The Committee debated the possibility of recommending that the *Community Treatment Order Regulation* be amended to include psychologists and nurse practitioners as health professionals that are authorized to issue CTOs. The Committee noted the importance of expanding the types of professionals who could issue CTOs, particularly in areas of Alberta where there is limited access to primary care physicians and psychiatrists. However, the Committee felt it was important to ensure that the professionals given such authority should be appropriately trained in the area of mental health.

The Committee therefore recommends:

6. That s. 5 of the *Community Treatment Order Regulation* be amended to include other health professionals, including psychologists and nurse practitioners, when appropriately trained.

## APPENDICES

## Appendix A: Written Submissions to the Committee

Name	Organization
Sandy Bergwall	Boyle Street Community Services
Rod Knecht	Edmonton Police Service
Brent Secondiak	Medicine Hat Police Service
Jill Clayton	Information and Privacy Commissioner
Tammy Pozzobon	Calgary Police Service
Lyle B. Mittelsteadt	Alberta Medical Association
Angela Ilasi	Citizens Commission on Human Rights Canada
Scott Baerg	Covenant Health
M.A. (Marlin) Degrand	RCMP Alberta (on behalf of municipal detachments and the Provincial Police Service)
Roy Frenzel	College of Alberta Psychologists
W. Mark Stanley	Salvation Army – Alberta and Northern Territories
Paul Byrne	John Dossetor Health Ethics Centre – University of Alberta
David O'Brien and Barry Andres	Alberta Health Services
Linda McKay-Panos	Alberta Civil Liberties Research Centre
R. Allan Harris, QC	Chair, Edmonton and North Mental Health Review Panel
Jason Law	Private Citizen
Lisa Burback	Private Citizen
Janice Pedersen	Private Citizen
Carmen Gunderson	Private Citizen
Leata Murdock	Private Citizen
Alanna Wingenbach	Private Citizen
Claudia Griebel	Private Citizen
Renate Van Dorsser	Private Citizen
Mark Saulnier	Private Citizen
Jennifer Gohring	Private Citizen
Kevin Lloyd	Private Citizen
Ellen McIntyre	Private Citizen
Brad Jones	Private Citizen
Alison Beil	Private Citizen
Renee Perrault	Private Citizen
Angele C. Beaudoin	Private Citizen
Wendy Jakubec	Private Citizen
Laurie Buist	Private Citizen
Mike Astle	Private Citizen

Eric Lavoie	Nurse Practitioner Association of Alberta
Scott Chadsey	Private Citizen
Marc Dubuc	Private Citizen
Rene Millward	Private Citizen
Darlene Dauncey	Private Citizen
Kevin Grenier	Private Citizen
Myles Pang	Private Citizen
Antonio Balce	Private Citizen
Dasha Morrison	Private Citizen
Finn van Zijll de Jong	Private Citizen
Farid Alloul	Private Citizen
Adam Anthony Russell	Private Citizen
Sherry Perley	Private Citizen
Alvin Flnkel	Private Citizen
Shelley Hayduk	Private Citizen
Mary Ellen Davidson	Private Citizen
Leslie Peddie	Private Citizen
Zach Murray	Private Citizen
Michelle Rysiew	Private Citizen
Wendy Enberg	Private Citizen
Grant Dorosh	Private Citizen
Pamela Head	Private Citizen
Karl Willrich	Private Citizen
Brenda Moody	Private Citizen
Joyce and John Trynchuk	Private Citizen
Joanne Sorensen	Private Citizen
Tom Shand	Alberta Alliance on Mental Illness and Mental Health
Melody Evans	Private Citizen
Nathan V. Fawaz	Private Citizen
Averie McNary	Private Citizen
Carol Robertson Baker	Alberta Mental Health Patient Advocate
Connie Rogers	Private Citizen
Don Whitmore	Private Citizen
Sandy Strauss	Private Citizen
Jim Barclay	Private Citizen
Rhona Allen	Private Citizen
Erika York	Schizophrenia Society of Alberta – Calgary Branch
Noreen Wren	Forward Action in Mental Health
Jason Morris	Lawyer
Kathy Hughes	Private Citizen
Heather Chan	RMcD Law Offices
Leanne Wyatt	Private Citizen

Wendy David (Thomson)	Private Citizen
Paint Fremmerlid	Private Citizen
Tom Colin Fox	Private Citizen
Steve Horne	Private Citizen

## Appendix B: Oral Presentations to the Committee

Name	Organization
Rod Knecht and Brian Roberts	Edmonton Police Service
Marianne Ryan	RCMP Alberta (on behalf of municipal detachments and the Provincial Police Service)
Sandy Bergwall and Jordan Reiniger	Boyle Street Community Services
Dr. Arsh Kaur Dhaliwal and Kathy Hughes	Forward Action in Mental Health
David Grauwiler and Noreen Wren	Canadian Mental Health Association – Alberta Division
Louise Daviduck and Erika York	Schizophrenia Society of Alberta
Dr. Esther Tailfeathers	Physician
Susan Armstrong and Dr. Doug Watson	Alberta Health Services
Jason Morris and Sean Smith	Duty Counsel, Mental Health Review Panels
Tom Shand and Dr. Roger Bland	Alberta Alliance on Mental Illness and Mental Health