PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

MENTAL HEALTH ACT

PLEASE NOTE

This document, prepared by the ***Legislative Counsel Office***, is an office consolidation of this Act, current to February 1, 2024. It is intended for information and reference purposes only.

This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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CHAPTER M-6.2

MENTAL HEALTH ACT

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 - INTERPRETATION AND ADMINISTRATION

1. Definitions

In this Act

(a) "**administrator**" means the person in charge of the administrative functions in a psychiatric facility;

(b) "**attending psychiatrist**" means the psychiatrist who is responsible for the care and treatment of a patient in a psychiatric facility;

(c) "**capable**" means capable of making a decision to consent to, refuse or withdraw consent to treatment in accordance with the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2;

(d) "**certificate of cancellation of leave**" means a certificate issued under subsection 15(2);

(e) "**certificate of incapacity**" means a certificate issued under subsection 17(2);

(f) "**certificate of involuntary admission**" means a certificate issued under section 10;

(g) "**certificate of leave**" means a certificate issued under subsection 15(1);

(h) "**certificate of renewal**" means a certificate issued under section 11;

(i) "**community treatment**" means treatment or care and supervision outside of a psychiatric facility;

(j) "**community treatment order**" means a community treatment order issued under section 18 or renewed under section 20;

(k) "**community treatment plan**" means a community treatment plan referred to in subsection 18(3);

(l) "**health facility**" means a health facility as defined in the *Health Services Act* R.S.P.E.I. 1988, Cap. H-1.6;

(m) "**involuntary patient**" means a person who is admitted to a psychiatric facility without the person's consent under a certificate of involuntary admission or a certificate of renewal;

(n) "**medical examination**" means an examination of a person's mental and physical condition by a medical practitioner or nurse practitioner;

(o) "**medical practitioner**" means a person who is authorized by law to practise medicine in the province;

(p) "**mental disorder**" means a disorder of thought, mood, perception, orientation or memory that impairs a person's judgment or behaviour, ability to recognize reality or ability to meet the ordinary demands of life and for which psychiatric treatment is advisable;

(q) "**Minister**" means the Minister of Health and Wellness;

(r) "**nurse practitioner**" means a person who is authorized by law to practise nursing as a nurse practitioner in the province;

(s) "**psychiatric assessment**" means an assessment of a person's mental condition by a psychiatrist;

(t) "**psychiatric facility**" means a facility or part of a facility designated in the regulations for the assessment, care and treatment of persons who have or may have a mental disorder;

(u) "**psychiatrist**" means a medical practitioner who is registered in the specific disciplines register under the *Regulated Health Professions Act* Medical Practitioners Regulations (EC843/21) and specializes in the discipline of psychiatry;

(v) "**representative**" means, in respect of a person who has or may have a mental disorder, a family member or other person selected by the person, or a person who has legal responsibility for, or decision-making authority in relation to, the person;

(w) "**responsible psychiatrist**" means the psychiatrist responsible for the supervision and management of a community treatment order, in accordance with subsections 18(5) and (6).

(x) "**Review Board**" means the Mental Health Act Review Board continued under section 25;

(y) "**substitute decision-maker**" means a person who is authorized to make a decision consenting to, refusing or withdrawing consent to treatment on behalf of another person in accordance with the *Consent to Treatment and Health Care Directives Act*;

(z) "**treatment**" means treatment as defined in the *Consent to Treatment and Health Care Directives Act*;

(aa) "**voluntary patient**" means a person who is admitted to a psychiatric facility with the person's consent. *2023,c.28,s.1.*

2. Purposes

(1) The purposes of this Act are

(a) to provide for the treatment, care and supervision of persons with a mental disorder who require care and treatment in a psychiatric facility or community treatment;

(b) to provide for the apprehension, detention, custody, restraint, observation, medical examination, psychiatric assessment and admission to a psychiatric facility of persons, where necessary, to determine a person's mental condition or provide treatment, care and supervision; and

(c) to protect the rights of persons apprehended, detained, restrained, examined, assessed, admitted, treated, cared for and supervised pursuant to this Act.

Limitation on effect

(2) Nothing in this Act shall be considered to affect the rights or privileges of a person except as specifically set out in this Act. *2023,c.28,s.2.*

3. Minister responsible for administration

(1) The Minister is responsible for the administration of this Act.

Duties of Minister

(2) The Minister shall ensure

(a) the establishment and operation of psychiatric facilities for the purposes of this Act;

(b) the staffing of psychiatric facilities by psychiatrists and other necessary personnel; and

(c) the provision of services for the treatment of mental disorders and care and supervision in the community. *2023,c.28,s.3.*

PART 2 - MEDICAL EXAMINATION AND REFERRAL

Involuntary Medical Examination

4. Application to court

(1) A person may apply to a judge, with or without notice, for an order for an involuntary medical examination of another person, where

(a) the applicant has reasonable grounds to believe that

(i) the person may have a mental disorder, and

(ii) as a result of a mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment; and

(b) the person refuses or is unable to consent to a medical examination.

Order for involuntary medical examination

(2) Where the judge is satisfied on hearing evidence under oath that the circumstances in subclauses (1)(a)(i) and (ii) and clause (1)(b) have been established, the judge may order a peace officer or other person to apprehend the person named or described in the order and take the person to a health facility for an involuntary medical examination.

Duration of order

(3) An order made under subsection (2) is valid for seven days. *2023,c.28,s.4.*

5. Apprehension by peace officer without order

A peace officer may apprehend a person and take the person to a health facility for an involuntary medical examination where

(a) the peace officer has reasonable grounds to believe that

(i) the person may have a mental disorder, and

(ii) as a result of a mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment;

(b) the person refuses or is unable to consent to a medical examination; and

(c) it is not feasible in the circumstances to make an application under section 4. *2023,c.28,s.5.*

6. Duty of peace officer or other person on apprehension

Where a person is apprehended by a peace officer or other person under this Act, the peace officer or other person shall promptly inform the person apprehended of

(a) the reasons for the apprehension;

(b) where the person is being taken and for what purpose; and

(c) the person's right to retain and instruct legal counsel without delay. *2023,c.28,s.6.*

7. Involuntary medical examination

(1) Where a person is apprehended and taken to a health facility for an involuntary medical examination under section 4 or 5, a medical practitioner or nurse practitioner may

(a) detain, restrain and observe the person for not more than 24 hours; and

(b) conduct an involuntary medical examination of the person.

Duty to inform

(2) Where a medical practitioner or nurse practitioner detains a person under subsection (1), the medical practitioner or nurse practitioner shall, as soon as is reasonably practicable,

(a) inform the person and, where requested by the person or required by law, a representative of

(i) where the person has been taken and for what purpose,

(ii) the reasons for the person's detention, and

(iii) the person's right to retain and instruct legal counsel without delay; and

(b) provide a copy of the order, if any, under which the person is detained to the person and, where requested by the person or required by law, a representative.

Actions by medical practitioner or nurse practitioner

(3) On the completion of an involuntary medical examination of the person or the expiry of 24 hours after apprehension, whichever occurs first, the medical practitioner or nurse practitioner shall

(a) refer the person to a psychiatrist for an involuntary psychiatric assessment under section 8, where the criteria for a referral are met; or

(b) immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act. *2023,c.28,s.7.*

Referral for Involuntary Psychiatric Assessment

8. Referral for involuntary psychiatric assessment

(1) A medical practitioner or nurse practitioner may, by order, refer a person to a psychiatrist for an involuntary psychiatric assessment where

(a) the medical practitioner or nurse practitioner examines the person and is of the opinion that

(i) the person has a mental disorder, and

(ii) as a result of the mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment; and

(b) the person refuses or is unable to consent to a psychiatric assessment.

Contents of order

(2) An order under subsection (1) shall be in the prescribed form and signed by the referring medical practitioner or nurse practitioner, set out the date and nature of the medical examination and the basis for the opinion, and confirm the person's refusal or inability to consent to a psychiatric assessment.

Authority under order

(3) An order made under this section is sufficient authority

(a) for a peace officer to apprehend the person who is named or described in the order and take the person to a psychiatric facility; and

(b) for a psychiatrist to

(i) detain, restrain and observe the person in a psychiatric facility for not more than 72 hours, and

(ii) conduct an involuntary psychiatric assessment of the person.

Duty to inform

(4) Where a psychiatrist detains a person under subsection (3), the psychiatrist shall, as soon as is reasonably practicable

(a) inform the person and, where requested by the person or required by law, a representative of

(i) where the person is being detained,

(ii) the reasons for the person's detention, and

(iii) the person's right to retain and instruct legal counsel without delay; and

(b) provide a copy of the order under which the person is detained to the person, the administrator and, where requested by the person or required by law, a representative.

Actions by psychiatrist

(5) On the completion of an involuntary psychiatric assessment of the person or the expiry of 72 hours after apprehension, whichever occurs first, the psychiatrist shall

(a) admit the person to a psychiatric facility as a voluntary patient or an involuntary patient, where the criteria for voluntary or involuntary admission, as the case may be, under Part 3 are met;

(b) make a community treatment order in respect of the person, where the criteria in subsection 18(1) are met; or

(c) immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act.

Release by administrator

(6) Where a psychiatrist has not taken action under subsection (5) within 72 hours of the person being detained in a psychiatric facility, the administrator shall immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act. *2023,c.28,s.8.*

PART 3 – ADMISSION TO PSYCHIATRIC FACILITY

Voluntary Admission

9. Voluntary admission

(1) A psychiatrist may admit a person to a psychiatric facility with the person's consent, where the psychiatrist has conducted a psychiatric assessment of the person within the previous 72 hours and is of the opinion that

(a) the person has a mental disorder; and

(b) the person requires care and treatment in a psychiatric facility.

Detention of voluntary patient

(2) Where a voluntary patient has requested to be discharged from a psychiatric facility, the attending psychiatrist may issue an order for an involuntary psychiatric assessment of the patient, where

(a) the attending psychiatrist has reasonable grounds to believe that

(i) the patient has a mental disorder, and

(ii) as a result of the mental disorder, the patient

(A) has caused or is likely to cause harm to the patient or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment; and

(b) the patient refuses or is unable to consent to a psychiatric assessment.

Contents of order

(3) An order under subsection (2) shall be in the prescribed form and signed by the attending psychiatrist, set out the reasonable grounds and confirm the patient's refusal or inability to consent to a psychiatric assessment.

Authority under order

(4) An order made under this section is sufficient authority for the attending psychiatrist to

(a) detain, restrain and observe the patient in a psychiatric facility for not more than 72 hours; and

(b) conduct an involuntary psychiatric assessment of the patient.

Duty to inform

(5) Where an attending psychiatrist detains a voluntary patient under subsection (4), the psychiatrist shall, as soon as is reasonably practicable,

(a) inform the patient and, where requested by the patient or required by law, a representative of

(i) where the patient is being detained,

(ii) the reasons for the patient's detention, and

(iii) the patient's right to retain and instruct legal counsel without delay; and

(b) provide a copy of the order under which the patient is detained to the patient, the administrator and, where requested by the patient or required by law, a representative.

Actions by psychiatrist

(6) On the completion of an involuntary psychiatric assessment of the voluntary patient or the expiry of 72 hours after detention, whichever occurs first, the attending psychiatrist shall

(a) admit the patient to a psychiatric facility as an involuntary patient, where the criteria for involuntary admission are met under subsection 10(1);

(b) make a community treatment order in respect of the patient, where the criteria in subsection 18(1) are met; or

(c) immediately release the patient from detention, subject to any detention that is lawfully authorized otherwise than under this Act.

Release by administrator

(7) Where the attending psychiatrist has not taken action under subsection (6) within 72 hours of detaining the voluntary patient, the administrator shall immediately release the patient from detention, subject to any detention that is lawfully authorized otherwise than under this Act. *2023,c.28,s.9.*

Involuntary Admission

10. Involuntary admission

(1) A psychiatrist may admit a person to a psychiatric facility without the person's consent by issuing a certificate of involuntary admission, where

(a) the psychiatrist has conducted a psychiatric assessment of the person within the previous 72 hours and is of the opinion that

(i) the person has a mental disorder,

(ii) as a result of the mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment, and

(iii) the person requires care and treatment in a psychiatric facility; and

(b) the person refuses or is unable to consent to admission to a psychiatric facility.

Certificate of involuntary admission

(2) A certificate of involuntary admission shall be in the prescribed form and contain the following information:

(a) a statement by the psychiatrist confirming the psychiatrist has personally conducted a psychiatric assessment of the person who is named or described in the certificate within the previous 72 hours, making careful inquiry into all of the facts necessary to form an opinion as to the nature of the person's mental condition;

(b) a statement by the psychiatrist confirming the psychiatrist's opinion that

(i) the person has a mental disorder,

(ii) as a result of the mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment, and

(iii) the person requires care and treatment in a psychiatric facility;

(c) a description of the facts upon which the psychiatrist formed the opinion described in subclauses (b)(i), (ii) and (iii), distinguishing between the facts observed by the psychiatrist and those that have been communicated by another person;

(d) the time and date on which the psychiatric assessment was conducted;

(e) a statement confirming that the person refuses or is unable to consent to admission to a psychiatric facility;

(f) the dated signature of the psychiatrist; and

(g) any other information required by the regulations.

Duty to inform

(3) The attending psychiatrist shall, as soon as is reasonably practicable,

(a) inform the person and, where requested by the person or required by law, a representative of

(i) where the person has been admitted,

(ii) the reasons for the detention,

(iii) the person's right to retain and instruct legal counsel without delay, and

(iv) the person's right to apply to the Review Board for a review of the certificate of involuntary admission; and

(b) provide a copy of the certificate of involuntary admission to the person, the administrator and, where requested by the person or required by law, a representative.

Duration of admission

(4) An involuntary patient may be detained in a psychiatric facility under a certificate of involuntary admission for not more than 30 days from the date the certificate is issued.

Application to voluntary patient or detainee

(5) This section applies in respect of the admission of a voluntary patient, or a patient whose detention in a psychiatric facility under another enactment or Act of the Parliament of Canada is ending, as an involuntary patient, with the necessary changes. *2023,c.28,s.10.*

11. Psychiatric assessment of involuntary patient

(1) The attending psychiatrist shall conduct a psychiatric assessment of an involuntary patient

(a) at any time the attending psychiatrist has reasonable grounds to believe that the patient no longer meets the criteria for involuntary admission in subclauses 10(1)(a)(i) to (iii) and clause 10(1)(b); and

(b) within the 72 hours immediately before the expiration of the certificate of involuntary admission.

End of involuntary admission

(2) Where, as a result of a psychiatric assessment referred to in subsection (1), the attending psychiatrist is of the opinion that the involuntary patient no longer meets the criteria for involuntary admission in subclauses 10(1)(a)(i) to (iii) and clause 10(1)(b), the attending psychiatrist shall

(a) cancel the certificate of involuntary admission in respect of the patient; and

(b) either

(i) admit the person to a psychiatric facility as a voluntary patient under section 9, where the criteria for voluntary admission are met,

(ii) make a community treatment order in respect of the person, where the criteria in subsection 18(1) are met, or

(iii) immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act.

Continuation of involuntary admission

(3) On the expiration of a certificate of involuntary admission, a psychiatrist may continue the involuntary admission of the patient in a psychiatric facility by issuing a certificate of renewal, where the criteria in clauses 10(1)(a) and (b) are met.

Duty to inform

(4) The attending psychiatrist shall, as soon as is reasonably practicable,

(a) inform the involuntary patient and, where requested by the involuntary patient or required by law, a representative of

(i) the reasons for the continued detention,

(ii) the patient's right to retain and instruct legal counsel without delay,

(iii) the patient's right to apply to the Review Board for a review of the certificate of renewal; and

(b) provide a copy of the certificate of renewal to the involuntary patient, the administrator and, where requested by the involuntary patient or required by law, a representative.

Certificate of renewal

(5) A certificate of renewal shall be in the prescribed form and contain the information set out in clauses 10(2)(a) to (g).

Detention under certificate of renewal

(6) An involuntary patient may be detained in a psychiatric facility under a certificate of renewal for the following periods from the date the certificate is issued:

(a) not more than 30 days under the first certificate of renewal;

(b) not more than 90 days under a second or third certificate of renewal;

(c) not more than 12 months under each subsequent certificate of renewal.

Application of subsections (1) to (3)

(7) Subsections (1) to (3) apply, with the necessary changes, in respect of an involuntary patient detained in a psychiatric facility under a certificate of renewal.

Deemed application for review

(8) On the issuance of a third certificate of renewal and at least once per year after that, the involuntary patient shall be deemed to have applied to the Review Board under Part 5 for a review of the certificate of renewal. *2023,c.28,s.11.*

12. Transfer between facilities

(1) A certificate of involuntary admission or a certificate of renewal is sufficient authority for a psychiatrist to transfer an involuntary patient

(a) from a psychiatric facility to another psychiatric facility; and

(b) from a psychiatric facility to a hospital or other health care facility to receive treatment that can't be provided in the psychiatric facility, and back to a psychiatric facility on completion of that treatment.

Certificate deemed to apply

(2) Where an involuntary patient is transferred to a hospital or other health care facility in accordance with clause (1)(b), the certificate of involuntary admission or certificate of renewal, as the case may be, applies as if the hospital or other health care facility were a psychiatric facility. *2023,c.28,s.12.*

13. Transfer of involuntary patient to another jurisdiction

(1) The attending psychiatrist may authorize, in writing, the transfer of an involuntary patient to another jurisdiction where

(a) it appears to the attending psychiatrist that

(i) the involuntary patient's care and treatment is the responsibility of the other jurisdiction, or

(ii) it would be in the involuntary patient's best interests to receive care and treatment in the other jurisdiction; and

(b) the attending psychiatrist has arranged for the hospitalization of the involuntary patient in the other jurisdiction.

Transfer of involuntary patient to the province

(2) A psychiatrist may authorize, in writing, the transfer of an involuntary patient in another jurisdiction to a psychiatric facility in the province where

(a) it appears to the psychiatrist that

(i) the involuntary patient's care and treatment is the responsibility of the province, or

(ii) it would be in the involuntary patient's best interests to receive care and treatment in the province; and

(b) the psychiatrist is satisfied that suitable arrangements have been made for the transport, care and custody of the involuntary patient.

Written authorization deemed to be certificate

(3) The written authorization under subsection (2) is deemed to be a certificate of involuntary admission in respect of the involuntary patient. *2023,c.28,s.13.*

14. Admission under other legislation

(1) A person admitted to a psychiatric facility under another enactment or an Act of the Parliament of Canada shall be admitted to, detained in and discharged from the psychiatric facility in accordance with that enactment or Act of Parliament.

Treatment

(2) A person referred to in subsection (1) is considered to be an involuntary patient under this Act only for the purposes of treatment. *2023,c.28,s.14.*

15. Authorized leave

(1) Subject to any detention that is legally authorized otherwise than under this Act, the attending psychiatrist of an involuntary patient may issue a certificate of leave in the prescribed form authorizing the patient to be absent from the psychiatric facility for a specified period of time, subject to any conditions specified on the certificate.

Cancellation of authorized leave

(2) The attending psychiatrist may cancel an involuntary patient's leave from a psychiatric facility by issuing a certificate of cancellation of leave in the prescribed form, where the attending psychiatrist is of the opinion that

(a) as a result of the mental disorder, the patient has caused or is likely to cause harm to the patient or others while on leave; or

(b) the patient has failed to comply with the terms and conditions of the certificate of leave.

Authority under certificate of cancellation of leave

(3) A certificate of cancellation of leave is sufficient authority for a peace officer to apprehend the involuntary patient named or described in the certificate and take the involuntary patient back to the psychiatric facility.

Duty to inform

(4) The attending psychiatrist shall, as soon as is reasonably practicable,

(a) inform the involuntary patient and, where requested by the involuntary patient or required by law, a representative of

(i) the cancellation of the leave,

(ii) the reasons for the cancellation of the leave,

(iii) the involuntary patient's right to retain and instruct legal counsel without delay,

(iv) the involuntary patient's right to apply to the Review Board for a review of the certificate of cancellation of leave; and

(b) provide a copy of the certificate of cancellation of leave to the involuntary patient, the administrator and, where requested by the involuntary patient or required by law, a representative.

Unauthorized leave

(5) Where an involuntary patient is absent from a psychiatric facility without a certificate of leave, the certificate of involuntary admission or certificate of renewal issued in respect of the involuntary patient is sufficient authority for a peace officer to apprehend the patient and take the patient back to the psychiatric facility. *2023,c.28,s.15.*

Patient Rights

16. Communication rights

(1) A voluntary patient or an involuntary patient of a psychiatric facility has a right to and shall not be denied

(a) access at any time to the patient's legal counsel, including through a private meeting in person or by other means;

(b) access at any time to clergy, an elder or other spiritual representative;

(c) reasonable access to a telephone to make or receive calls;

(d) reasonable access to materials or tools necessary to exchange written correspondence;

(e) reasonable access to written correspondence sent to the patient;

(f) reasonable access to a representative, including through a private meeting in person or by other means; and

(g) where applicable, reasonable access to visitors during scheduled visiting hours.

Duty to inform

(2) The administrator shall ensure that, in respect of a patient's right to retain and instruct legal counsel and rights under subsection (1),

(a) a patient is informed of these rights as soon as is reasonably practicable, in a language and form the patient understands; and

(b) notice of these rights is prominently displayed in all wards and public reception areas in the psychiatric facility.

Information about Review Board

(3) The administrator shall ensure that each patient in a psychiatric facility is provided with written information about the functions of the Review Board and the process for making an application for review. *2023,c.28,s.16.*

Treatment

17. Determination of capacity

(1) The attending psychiatrist shall, as soon as is practicable following the admission of a voluntary patient or an involuntary patient to a psychiatric facility, determine whether the patient is capable in accordance with the *Consent to Treatment and Health Care Directives Act*.

Certificate of incapacity

(2) Where the attending psychiatrist is of the opinion that the patient is not capable in respect of particular treatment or treatment in general, the psychiatrist shall issue a certificate of incapacity in the prescribed form, which shall be signed by the attending psychiatrist and include the date and nature of the assessment of the patient's capacity, the scope of the patient's incapacity and the reasons for the attending psychiatrist's opinion.

Duty to inform

(3) On issuing a certificate of incapacity, the attending psychiatrist shall, as soon as is reasonably practicable,

(a) determine the appropriate substitute decision-maker in accordance with the *Consent to Treatment and Health Care Directives Act*;

(b) inform the patient and the substitute decision-maker of

(i) the finding of incapacity,

(ii) the reasons for the finding of incapacity,

(iii) the patient's right to retain and instruct legal counsel without delay, and

(iv) the patient's right to apply to the Review Board for a review of the certificate of incapacity; and

(c) provide a copy of the certificate of incapacity to the patient, the substitute decision-maker and the administrator.

Interim treatment without consent

(4) Pending a determination of a patient's capacity, consent to treatment on behalf of a patient or an order of the Review Board in respect of treatment, the attending psychiatrist may order or administer psychiatric treatment and related medical treatment to detain and restrain the patient or prevent harm to the patient or another person. *2023,c.28,s.17.*

PART 4 – COMMUNITY TREATMENT ORDER

18. Issuance of community treatment order

(1) A psychiatrist may issue a community treatment order in respect of a person, in the prescribed form, for up to six months, where the following conditions are met:

(a) within the previous two years, the person has been

(i) admitted as an involuntary patient in a psychiatric facility on two or more separate occasions, for a total of at least 30 days, or

(ii) the subject of a prior community treatment order;

(b) the psychiatrist has conducted a psychiatric assessment of the person within the previous 72 hours and is of the opinion that

(i) the person has a mental disorder,

(ii) as a result of the mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment,

(iii) the person requires community treatment, and

(iv) the person is not capable of giving or refusing consent to community treatment, but is able to comply with a community treatment order;

(c) the community treatment the person requires exists in the community and is available and will be provided to the person;

(d) the person's substitute decision-maker has consented on behalf of the person to the community treatment plan.

Contents of order

(2) A community treatment order shall

(a) confirm that the conditions in subsection (1) are met and state the facts supporting that confirmation;

(b) set out the community treatment plan for the person;

(c) require the person who is subject to the order to comply with the order;

(d) identify the psychiatrist who is responsible for the supervision and management of the order, subject to the substitution of another psychiatrist, where necessary;

(e) provide for the substitution of another psychiatrist to be responsible for the supervision and management of the order, where necessary;

(f) state the expiry date of the order;

(g) bear the signature of the psychiatrist issuing the order; and

(h) meet any other requirement prescribed by the regulations.

Community treatment plan

(3) A community treatment plan shall contain

(a) a plan of psychiatric treatment and any necessary supports and services for the person;

(b) any conditions relating to the community treatment of the person;

(c) the requirements of the person under the plan;

(d) any requirements of the substitute decision-maker under the plan;

(e) the name of the health professional who has agreed to accept responsibility for the general supervision and management of the plan;

(f) the names of the health professionals who or organizations that have agreed to provide community treatment to the person and their obligations under the plan; and

(g) any other component prescribed by the regulations.

Notice of order

(4) The psychiatrist issuing a community treatment order shall promptly

(a) provide a copy of the order to

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

(ii) the person's substitute decision-maker,

(iii) the administrator of the psychiatric facility in which the person had a psychiatric assessment, and

(iv) any health professional or organization referred to in clause (3)(e) or (f); and

(b) inform the person and the person's substitute decision-maker of the person's right to

(i) apply to the Review Board for a review of the community treatment order, and

(ii) retain and instruct legal counsel without delay.

Responsible psychiatrist

(5) Subject to subsection (6), the psychiatrist who issues a community treatment order is responsible for the general supervision and management of the order.

Appointment of substitute

(6) Where the psychiatrist who issues a community treatment order is absent or, for any other reason, is unable to carry out the psychiatrist's functions in respect of the order, the psychiatrist may appoint another psychiatrist to act in the psychiatrist's place, with the consent of that other psychiatrist. *2023,c.28,s.18.*

19. Amendment of community treatment plan

(1) The responsible psychiatrist may amend the community treatment plan under a community treatment order with the consent of the person's substitute decision-maker.

Notice of amendment

(2) The responsible psychiatrist shall give notice of the amendment to the persons who received notice of the order under clause 18(4)(a) *2023,c.28,s.19.*.

20. Renewal of community treatment order

(1) On or before the expiry of a community treatment order, a responsible psychiatrist may renew the order for a period of up to six months, where the conditions in clauses 18(1)(b) to (d) are met.

Original requirements and terms apply

(2) Subsections 18(2) to (6) apply in respect of the renewed order with the necessary changes.

Application for review

(3) Where a community treatment order is renewed and on every second renewal after that, the person is deemed to have applied to the Review Board for a review of the order. *2023,c.28,s.20.*

21. Non-compliance

Where the responsible psychiatrist has reasonable grounds to believe that the person subject to a community treatment order is not complying with the order, the responsible psychiatrist shall ensure that reasonable efforts are made to

(a) inform the person and the person's substitute decision-maker of the person's noncompliance;

(b) inform the person and the person's substitute decision-maker of the steps that may be taken under section 22; and

(c) provide reasonable assistance to the person to comply with the terms of the order. *2023,c.28,s.21.*

22. Order for psychiatric assessment

(1) The responsible psychiatrist may order the involuntary psychiatric assessment of a person subject to a community treatment order, where

(a) either

(i) despite reasonable efforts to assist the person, the person does not comply with the community treatment order, or

(ii) the revocation of the community treatment order is required under section 23;

(b) the psychiatrist has reasonable grounds to believe that

(i) the person has a mental disorder, and

(ii) as a result of the mental disorder, the person

(A) has caused or is likely to cause harm to the person or others, or

(B) is likely to suffer substantial physical or mental deterioration or impairment; and

(c) the person refuses or is unable to consent to a psychiatric assessment.

Authority of order

(2) An order made under subsection (1) is valid for 30 days and is sufficient authority

(a) for a peace officer to apprehend the person who is named in the order and take the person to a psychiatric facility; and

(b) for a psychiatrist to

(i) detain, restrain and observe the person in a psychiatric facility for not more than 72 hours, and

(ii) conduct an involuntary psychiatric assessment of the person.

Duty to inform

(3) Where a psychiatrist detains a person under subsection (2), the psychiatrist shall, as soon as is reasonably practicable,

(a) inform the person and the person's substitute decision-maker of

(i) where the person is being detained,

(ii) the reasons for the person's detention, and

(iii) the person's right to retain and instruct legal counsel without delay; and

(b) provide a copy of the order under which the person is detained to the person, the substitute decision-maker and the administrator.

Actions by psychiatrist

(4) On the completion of an involuntary psychiatric assessment of the person or the expiry of 72 hours after apprehension, whichever occurs first, the psychiatrist shall

(a) leave the community treatment order in place, make any necessary amendment to the community treatment plan in accordance with section 19, and immediately release the person from detention;

(b) revoke the community treatment order in accordance with section 23 and immediately release the person from detention; or

(c) revoke the community treatment order in accordance with section 23 and admit the person to a psychiatric facility as a voluntary or involuntary patient, where the criteria for voluntary or involuntary admission, as the case may be, under Part 3 are met.

Release by administrator

(5) Where a psychiatrist has not taken action under subsection (4) within 72 hours of the person being detained in a psychiatric facility,

(a) the administrator shall immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act; and

(b) the community treatment order is considered to be revoked. *2023,c.28,s.22.*

23. Revocation of community treatment order

(1) The responsible psychiatrist shall revoke a community treatment order, where, at any time during the term of the order,

(a) the responsible psychiatrist is of the opinion that any of the criteria in subclauses 18(1)(b)(i) to (iv) are no longer met;

(b) the community treatment the person requires no longer exists in the community or is no longer available or provided to the person; or

(c) the person's substitute decision-maker no longer consents to the community treatment plan.

Notice of revocation

(2) The responsible psychiatrist shall give notice of the revocation to the persons who received notice of the order under clause 18(4)(a). *2023,c.28,s.23.*

24. Limits on liability of responsible psychiatrist

(1) Where the responsible psychiatrist believes, on reasonable grounds and in good faith, that the persons who have agreed to be responsible for the general supervision and management of the community treatment plan or provide community treatment under a community treatment plan are doing so in accordance with the plan, the psychiatrist is not liable for any default or neglect by those persons in the provision of community treatment.

Limits on liability of other community treatment providers

(2) Where a person who agreed to be responsible for the general supervision and management of a community treatment plan or provide community treatment under a community treatment plan believes, on reasonable grounds and in good faith, that the responsible psychiatrist is supervising and managing the community treatment order and providing community treatment in accordance with the plan, the person is not liable for any default or neglect by the responsible psychiatrist in the provision of community treatment. *2023,c.28,s.24.*

PART 5 - REVIEW BOARD

25. Review Board

(1) The Review Board established under the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1, is continued as the Mental Health Act Review Board to hear and decide applications under this Part, and shall be composed of seven members appointed by the Lieutenant Governor in Council as follows:

(a) three lawyers who are members in good standing of the Law Society of Prince Edward Island, one of whom shall be the chairperson and preside at meetings of the Review Board;

(b) two psychiatrists;

(c) two other persons who are not lawyers or psychiatrists.

Qualifications

(2) A person appointed to the Review Board shall have knowledge, experience or a diverse perspective that will assist the Review Board to achieve its mandate.

Term of appointment

(3) A member of the Review Board shall be appointed for a term of three years. *2023,c.28,s.25.*

26. Application for review, involuntary patient

(1) A voluntary patient or an involuntary patient, or a representative, may apply to the Review Board, in the form required by the Review Board, for a review of the following, as applicable:

(a) a certificate of involuntary admission or certificate of renewal issued in respect of the patient;

(b) the proposed transfer of the patient to a psychiatric facility in another jurisdiction;

(c) the denial of the patient's communication rights under section 16;

(d) the cancellation of a certificate of leave issued in respect of the patient;

(e) a certificate of incapacity issued in respect of the patient;

(f) the selection or authority of the patient's substitute decision-maker.

Application for review, community treatment

(2) A person who is subject to a community treatment order, or a representative, may apply to the Review Board, in the form required by the Review Board, for a review of any of the following:

(a) the issuance or renewal of the community treatment order in respect of the person;

(b) the selection or authority of the person's substitute decision-maker. *2023,c.28,s.26.*

27. Application for treatment order, attending psychiatrist

(1) The attending psychiatrist of a voluntary patient or an involuntary patient may apply to the Review Board, in the form required by the Review Board, for an order authorizing the attending psychiatrist to give the patient specified psychiatric treatment and related medical treatment without consent.

Supporting material

(2) The Review Board shall not consider an application under subsection (1) unless it is accompanied by statements signed by the attending psychiatrist and another psychiatrist, each

stating that the psychiatrist has conducted a psychiatric assessment of the patient within the previous 72 hours and is of the opinion that

(a) the patient's mental disorder will be or is likely to be substantially improved by the specified psychiatric treatment;

(b) the patient's mental disorder will not improve or is not likely to improve without the specified psychiatric treatment;

(c) the anticipated benefit from the specified psychiatric treatment and related medical treatment outweighs the risk of harm to the patient; and

(d) the specified psychiatric treatment and related medical treatment are the least restrictive and least intrusive treatments that meet the requirements of clauses (a), (b), and (c).

Reasons

(3) A statement referred to in subsection (2) shall contain the facts and reasons upon which the opinions are based. *2023,c.28,s.27.*

28. Panel

(1) Subject to section 29, within two clear days of the receipt of an application, the chairperson shall

(a) establish a panel of three members of the Review Board, comprised of one member appointed under each of clauses 25(1)(a), (b) and (c), to hear and decide the application;

(b) designate a chairperson of the panel; and

(c) refer the application to the chairperson of the panel.

Disqualification

(2) A member of the Review Board shall not sit as a member of a panel where

(a) the member's participation in the panel would give rise to a reasonable apprehension of bias; or

(b) the member sat on a Criminal Code review board hearing in respect of a patient who is a party to the application.

Quorum

(3) A quorum for a panel is the three members of the panel.

Majority decision

(4) A decision of a panel shall be made by majority vote and each member of a panel is entitled to one vote.

Replacement

(5) Where a member of a panel is unable to continue participating on the panel, the chairperson of the Review Board may replace that member of the panel with a person who was appointed to the Review Board under the same provision of the Act as the member being replaced. *2023,c.28,s.28.*

29. Power to dismiss an application

(1) The chairperson of the Review Board may summarily dismiss an application without referring it to a panel where

(a) the application has not been made in accordance with section 26 or 27; or

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

Application shall not be heard

(2) The Review Board shall not accept an application where a panel has conducted an initial review of the matter in the previous 30 days or a subsequent review of the matter within the previous six months. *2023,c.28,s.29.*

30. Hearing

(1) A panel shall hear and determine an application as soon as is reasonably possible and, in any event, not more than 10 clear days after receipt of the referral under section 28.

Notice

(2) Within two clear days of receipt of the referral of the application under section 28, the chairperson of the panel shall give notice of the hearing to the parties to the application, which shall

(a) state the date, time, place and purpose of the hearing;

(b) include a copy of the application; and

(c) advise that each party may

(i) make representations to the panel either in person or in writing, and

(ii) submit evidence relevant to the application by a date to be set out in the notice.

Parties

(3) The following persons are parties to an application:

(a) the patient or person who is subject to a community treatment order, as the case may be;

(b) the administrator, where applicable;

(c) the substitute decision-maker, where applicable;

(d) the responsible psychiatrist, where applicable;

(e) a person who, in the opinion of the panel, has a significant interest in the application. *2023,c.28,s.30.*

31. Duties and powers of panel

(1) A panel shall hear and consider applications in accordance with this Act and the regulations and for that purpose a member of the panel has all the powers, duties and immunities of a commissioner appointed under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31.

Additional duties and powers

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

(a) require the attendance of witnesses and the production of documents and records, in addition to the witnesses called and the documents and records produced by a party;

(b) arrange for the patient to be examined by a psychiatrist;

(c) engage independent medical, psychiatric or other professional persons to present evidence and make submissions with regard to a matter before the panel; and

(d) invite submissions from any other person who, in the opinion of the panel, has a material interest in or knowledge of matters relevant to the application. *2023,c.28,s.31.*

32. Conduct of proceedings

(1) Every proceeding before a panel shall be conducted in private and in accordance with the principles of natural justice.

Attendance by non-parties

(2) Notwithstanding subsection (1), the panel may permit a person who is not a party to be present during all or part of a hearing where

(a) the patient requests or consents to the attendance of that person; and

(b) the panel is of the opinion that there is no risk of harm or injustice to the patient.

Evidence

(3) In a proceeding before the panel

(a) all evidence shall be given under oath or affirmation, and for this purpose, an oath or affirmation may be administered by electronic or other means;

(b) a record shall be made of all evidence received or adduced in support of the application, and for this purpose, the record may be created in writing or by electronic recording; and

(c) the standard of proof is on the balance of probabilities and the onus of proof shall be on the administrator or the attending psychiatrist, as the case may be. *2023,c.28,s.32.*

33. Rights of parties

(1) A party to the proceedings has the right to

(a) be personally present during the presentation of evidence to the panel;

(b) be represented by legal counsel or another person;

(c) examine documentary evidence placed before the panel;

(d) present evidence; and

(e) cross-examine witnesses.

Capacity to retain and instruct legal counsel

(2) For the purpose of paragraph (1)(b), the patient or person who is the subject of a community treatment order, as the case may be, is considered to have the capacity to retain and instruct legal counsel for the purpose of a hearing before a panel and a judicial review of the decision of a panel.

Exception, disclosure of information

(3) Notwithstanding paragraphs (1)(a) and (c), where a panel is of the opinion that disclosure of certain information to the patient or person who is the subject of a community treatment order, as the case may be, would seriously endanger the health or safety of that party or another person, the panel shall disclose the information to the legal counsel or a representative of that party but may refuse to disclose the information to that party. *2023,c.28,s.33.*

34. Decision

(1) Within three clear days following the conclusion of its review, the chairperson of the panel shall provide

(a) to each party, the decision of the panel, in writing, together with reasons in support of the decision; and

(b) to the chairperson of the Review Board, a copy of the decision of the panel, in writing, together with reasons in support of the decision, and a record of all evidence presented to the panel.

Retention of record

(2) The record of evidence referred to in clause (1)(b) shall be retained by the Review Board for a period of seven years and shall be available for examination upon the request of a party.

Judicial review

(3) The chairperson of the panel shall advise each party that the decision and any order of the panel may be subject to judicial review under the *Judicial Review Act* R.S.P.E.I. 1988, Cap. J-3. *2023,c.28,s.34.*

35. Order of the panel

(1) In its decision, a panel may

(a) with respect to an application under clause 26(1)(a),

(i) where it determines that the criteria for issuing a certificate of involuntary admission or certificate of renewal set out in subsection 10(1) were met, confirm the person's status as an involuntary patient, or

(ii) where it determines that the criteria for issuing a certificate of involuntary admission or certificate of renewal set out in subsection 10(1) were not met,

(A) cancel the certificate, and

(B) order the release of the involuntary patient from detention in the psychiatric facility, subject to any detention that is lawfully authorized otherwise than under this Act;

(b) with respect to an application under clause 26(1)(b),

(i) where it determines that the transfer is in the best interests of the involuntary patient or the jurisdiction in question is responsible for the care and treatment of the involuntary patient, as the case may be, confirm the transfer of the involuntary patient, or

(ii) where it determines that the transfer is not in the best interests of the involuntary patient or the jurisdiction in question is not responsible for the care and treatment of the involuntary patient, as the case may be, order that the involuntary patient remain in a psychiatric facility in the province;

(c) with respect to an application under clause 26(1)(c), determine whether the patient's rights were violated and make an order for corrective action, where appropriate;

(d) with respect to an application under clause 26(1)(d),

(i) where it determines that one of the criteria for issuing a certificate of cancellation of leave under subsection 15(2) was met, confirm the certificate, or

(ii) where it determines that no criteria for issuing a certificate of cancellation of leave under subsection 15(2) were met, cancel the certificate and reinstate the certificate of leave;

(e) with respect to an application under clause 26(1)(e),

(i) where it determines that the involuntary patient does not have capacity, confirm the determination made by the attending psychiatrist; or

(ii) where it determines that the involuntary patient does have capacity, cancel the certificate of incapacity;

(f) with respect to an application under clause 26(1)(f),

(i) confirm the selection and authority of the substitute decision-maker under the *Consent to Treatment and Health Care Directives Act*, or

(ii) make an order designating a substitute decision-maker in accordance with the *Consent to Treatment and Health Care Directives Act*;

(g) with respect to an application under clause 26(2)(a),

(i) where it determines that the criteria for the issuance or renewal of a community treatment order set out in subsection 18(1) were met, confirm the issuance or renewal, as the case may be, of the community treatment order, or

(ii) where it determines that the criteria for the issuance or renewal of a community treatment order set out in subsection 18(1) were not met, cancel the community treatment order;

(h) with respect to an application under clause 26(2)(b),

(i) confirm the selection and authority of the substitute decision-maker under the *Consent to Treatment and Health Care Directives Act*, or

(ii) make an order designating a substitute decision-maker in accordance with the *Consent to Treatment and Health Care Directives Act*; and

(i) with respect to an application under section 27, where it is satisfied that the criteria set out in clauses 27(2)(a) to (d) have been established, issue an order authorizing the attending psychiatrist to give the patient the specified psychiatric treatment and related medical treatment without consent.

Terms and conditions

(2) An order made under clause (1)(i) may specify the period of time during which the order is effective and include terms and conditions. *2023,c.28,s.35.*

PART 6 – GENERAL

36. Liability protection

No action lies against the Minister, an administrator, a psychiatrist, a medical practitioner, a nurse practitioner, a peace officer, a member of the Review Board or any other person acting under the authority of this Act for actions taken or not taken or decisions made or not made, in good faith, in accordance with this Act. *2023,c.28,s.36.*

37. Regulations

The Lieutenant Governor in Council may make regulations

(a) designating psychiatric facilities;

(b) prescribing additional information to be included in a certificate of involuntary admission;

(c) respecting patient rights;

(d) prescribing other requirements for a community treatment order;

(e) prescribing other required components of a community treatment plan;

(f) governing a hearing of an application to the Review Board;

(g) prescribing the form of orders and certificates issued under this Act;

(h) defining any word or expression used but not defined in this Act;

(i) regarding any matter considered necessary or advisable to effectively carry out the intent and purposes of this Act. *2023,c.28,s.37.*

38. Transitional, former Act

(1) In this section, "**former Act**" means the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1.

Previous orders, certificates etc. not affected

(2) Except as otherwise provided in this section, the coming into force of this Act does not affect or invalidate an application, an order or a decision made, or a warrant or certificate issued, under the former Act.

Application to Review Board

(3) An application made to the Review Board under the former Act but not yet determined on the coming into force of this Act, shall be determined under the former Act as if this Act were not in force.

Transitional, Review Board members

(4) A person who is a member or an alternate member of the Review Board under the former Act, immediately before the coming into force of this Act, shall continue as a member of the Review Board under this Act until the member's term expires or the member sooner ceases to hold office.

Detention periods and mandatory review, certificate of renewal

(5) A certificate of renewal issued under the former Act shall be considered in the calculation of detention periods under subsection 11(6) of this Act and in respect of a mandatory review by the Review Board under subsection 11(8) of this Act.

Review under former Act

(6) A review conducted by the Review Board under the former Act shall be considered in respect of the limitations on the frequency of reviews in subsection 29(2) of this Act. *2023,c.28,s.38.*

39. Adult Protection Act

(1) The *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5, is amended as provided by this section.

(2) Clause 15(1)(a) of the Act is repealed.

(3) Clause 30(d) of the Act is amended by the deletion of the words ", the *Mental Health Act***".**

40. Consent to Treatment and Health Care Directives Act

(1) The *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2, is amended as provided by this section.

(2) Subclause 1(p)(i) of the Act is amended by the addition of the words "R.S.P.E.I. 1988, Cap. M-6.2**" after the words "**the *Mental Health Act***".**

(3) **Section 15 of the Act is amended by the deletion of the words "**or to a psychiatric or other treatment facility**" and the substitution of the words "**or treatment facility, other than a psychiatric facility,**".**

41. Correctional Services Act

(1) **The *Correctional Services Act* R.S.P.E.I. 1988, Cap. C-26.1, is amended as provided by this section.**

(2) **Subclause 1(h)(i) of the Act is amended**

(a) **by the deletion of the words "**arrested or committed**" and the substitution of the words "**apprehended or detained**"; and**

(b) **by the deletion of the words "**M-6**" and the substitution of the words "**M-6.2**".**

42. Child and Youth Advocate Act

(1) **The *Child and Youth Advocate Act* R.S.P.E.I. 1988, Cap. C-4.3, is amended as provided by this section.**

(2) **Subclause 1(l)(vii) of the Act is amended by the deletion of the words "**, section 40 of the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1**".**

43. Health Information Act

(1) **The *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, is amended as provided by this section.**

(2) **Subsection 24(2) of the Act is amended by the deletion of the words "**M-6.1**" and the substitution of the words "**M-6.2**".**

44. Repeal

The *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1 is repealed.

45. Commencement

This Act comes into force six months following Royal Assent or on a date to be proclaimed by the Lieutenant Governor in Council, whichever is earlier.