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Third Session, Forty-second Parliament  
71 Elizabeth II, 2022  
Legislative Assembly of British Columbia

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**BILL 23**

**MENTAL HEALTH AMENDMENT ACT, 2022**

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Honourable David Eby  
Attorney General and Minister Responsible for Housing

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## Explanatory Notes

CLAUSE 1: *[Mental Health Act, section 1]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 2: *[Mental Health Act, section 6]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 3: *[Mental Health Act, section 16]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 4: *[Mental Health Act, section 34.3]* adds requirements for a director to give information respecting rights advisors to patients, near relatives and the Public Guardian and Trustee, and to organize contact with rights advisors if requested by patients.

**BILL 23 – 2022**

**MENTAL HEALTH AMENDMENT ACT, 2022**

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

- 1** *Section 1 of the Mental Health Act, R.S.B.C. 1996, c. 288, is amended*
  - (a) in the definition of “approved home” by striking out “regulations made under this Act” and substituting “regulations made under section 43”,*
  - (b) in the definition of “director” by striking out “regulations” and substituting “regulations made under section 43”, and*
  - (c) by adding the following definition:*

**“rights advisor”** means a person designated as a rights advisor under section 46; .
- 2** *Section 6 is amended by striking out “this Act and its regulations” and substituting “this Act and the regulations made under section 43”.*
- 3** *Section 16 (h) and (i) is amended by adding “made under section 43” after “the regulations”.*
- 4** *The following section is added:*

**Rights advice**

- 34.3**
- (1) A director who gives a notice under section 34, 34.1 or 34.2 must include the information that the patient is entitled to meet with an independent rights advisor.
  - (2) On giving a notice to a patient under section 34 or 34.1, a director
    - (a) must ask the patient whether the patient desires to be contacted by a rights advisor, and
    - (b) must, if the patient requests to be contacted by a rights advisor, comply with the director’s duties under Part 5.
  - (3) A request under subsection (2) (b) may be made orally or in writing.

CLAUSE 5: *[Mental Health Act, sections 37, 38 and 39]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 6: *[Mental Health Act, heading to Part 4]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 7: *[Mental Health Act, section 43]* is consequential to the addition by this Bill of Part 5 to the Act.

CLAUSE 8: *[Mental Health Act, Part 5]* authorizes agreements to be made with rights advice services and provides for the duties of directors of facilities and rights advisors with respect to giving advice about the rights of admitted patients.

5 *Sections 37, 38 and 39 (2) and (3) are amended by adding “made under section 43” after “the regulations”.*

6 *The heading to Part 4 is repealed and the following substituted:*

**PART 4 – GENERAL REGULATIONS .**

7 *Section 43 (2) is amended by striking out “may make regulations as follows:” and substituting “may make regulations for the purposes of Parts 1 to 3 as follows:”.*

8 *The following Part is added:*

**PART 5 – RIGHTS ADVICE**

**Interpretation**

44 In this Part:

“**agreement**” means an agreement made under section 45 (1);

“**care**”, in relation to a patient, means the care, supervision, treatment, maintenance or rehabilitation of the patient;

“**event**” means a request or a prescribed event as described in section 47 (1);

“**notice of event**” means a notice of event given under section 47 (1);

“**rights advice service**” means a person with whom the Attorney General makes an agreement.

**Rights advice service**

45 (1) The Attorney General may make one or more agreements with respect to providing rights information and related services to patients.

(2) A person with whom the Attorney General makes an agreement under subsection (1)

(a) is a rights advice service for the purposes of this Part, and

(b) must comply with the duties of rights advice services imposed under this Part and the agreement.

**Rights advisors**

46 (1) A rights advice service must designate one or more rights advisors.

(2) Designations under subsection (1) must

(a) be in writing, and

CLAUSE 8: *[Mental Health Act, Part 5 – continued]*

- (b) designate only persons who
  - (i) are employees, volunteers or contractors of the rights advice service, and
  - (ii) meet the prescribed criteria, if any, to be eligible for designation as a rights advisor.

**Notice of event**

- 47** (1) A director must give a notice of event to a rights advice service as soon as reasonably practicable after
- (a) a request is made as described in section 34.3 (2) (b), or
  - (b) the occurrence of a prescribed event.
- (2) A notice of event must be given in the prescribed form and manner.

**Duties of director**

- 48** (1) A director must make reasonable efforts to provide, in the director's designated facility, a private space and appropriate furnishings and equipment, including communications equipment, for rights advisors to communicate with patients.
- (2) A director must make reasonable efforts to facilitate communication between rights advisors and patients, including
- (a) assisting patients to initiate communication with or to receive communication from rights advisors,
  - (b) accommodating any special needs of patients, and
  - (c) providing to rights advisors any information, including personal information, required for a purpose referred to in section 52.
- (3) A director must comply with the regulations made under section 55 for the purposes of this section.

**Contact and communication**

- 49** (1) A rights advice service that receives a notice of event must assign a rights advisor to review the notice.
- (2) The assigned rights advisor must contact the patient as soon as reasonably practicable on being assigned, unless, in the case of a prescribed event, the notice of event states that the patient does not wish to be contacted.
- (3) A rights advisor who contacts a patient may
- (a) communicate with the patient in person, in writing or by any other means, and
  - (b) permit other persons to be present during oral communication, if any and if the patient agrees to the presence of those persons.

CLAUSE 8: *[Mental Health Act, Part 5 – continued]*



**General duties of rights advisor**

- 50** (1) A rights advisor must give to patients prescribed information or materials.
- (2) A rights advisor must perform duties imposed on rights advisors under this Part in accordance with this Part and the regulations made under section 55.

**Matters that rights advisors must discuss**

- 51** (1) A rights advisor who contacts a patient in response to a notice of event must make reasonable efforts to explain to and discuss with the patient all the matters described in this section with respect to the event that is the subject of the notice.
- (2) A rights advisor must explain and discuss the legal processes that are relevant to the event, including
- (a) the actions that may be taken or the decisions that may be made by or with respect to the patient, and
  - (b) applicable timelines.
- (3) A rights advisor must explain and discuss the effects that the event may have on the patient’s exercise of autonomy, including with respect to decisions
- (a) to move about or leave the designated facility, and
  - (b) to give, refuse or revoke consent to one or more types of care.
- (4) A rights advisor must explain and discuss the information given by the director under section 34 or 34.1, as applicable, including, in particular, the patient’s rights.

**Authority to collect and disclose personal information**

- 52** (1) In this section:
- “**director**” includes a person assigned by a director to prepare a notice of event or to communicate with rights advice services and rights advisors with respect to patients;
- “**personal information**” means personal information about the following:
- (a) the patient who is the subject of a notice of event, as required by a rights advisor to perform duties imposed on the rights advisor under this Part;
  - (b) a near relative of the patient, or another person, as required by a rights advisor to contact or to facilitate the attendance or participation of the near relative or other person for the purposes of section 49 (3) (b).
- (2) Subject to the regulations, a director may collect personal information from, and disclose personal information to, a rights advice service for one or more of the following purposes:
- (a) to give or respond to a notice of event;
  - (b) to facilitate communication between a rights advisor and a patient;

CLAUSE 8: *[Mental Health Act, Part 5 – continued]*

- (c) to facilitate contact with or the attendance or participation of a near relative or other person for the purposes of section 49 (3) (b);
  - (d) to advise or receive advice that, due to the condition of a patient or for another reason,
    - (i) contact with the patient must be postponed, or
    - (ii) communication with the patient must be conducted in a particular manner to protect the safety of any person;
  - (e) to assist a patient to exercise the patient's rights;
  - (f) to exercise a power or perform a duty under this Part.
- (3) A rights advisor may disclose personal information to a director if the rights advisor is of the opinion that the information is relevant to a patient's exercise of the patient's rights under this Act.

**Record-keeping requirements**

- 53** (1) A director must keep records in accordance with the regulations made under section 55.
- (2) A rights advice service must keep records in accordance with the regulations made under section 55.

**Offence Act does not apply**

- 54** Section 5 of the *Offence Act* does not apply in respect of this Part or the regulations made under section 55.

**Regulations respecting rights advice**

- 55** (1) For the purposes of this Part, the Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations for the purposes of this Part as follows:
- (a) respecting eligibility for designation or continued designation of rights advisors, including respecting
    - (i) mandatory training or qualifications, and
    - (ii) actual or perceived conflicts of interest;
  - (b) prescribing the form and manner for giving a notice of event;
  - (c) prescribing additional events for which a director must give a notice of event, including, without limitation,
    - (i) a request made by a patient, or
    - (ii) events associated with a type of process or a set of circumstances;
  - (d) respecting circumstances in which a director is authorized not to give a notice of event when a notice is otherwise required;

CLAUSE 8: *[Mental Health Act, Part 5 – continued]*

- (e) respecting standards and requirements for the purposes of section 48;
- (f) respecting the performance of duties by rights advisors and imposing additional duties on rights advisors;
- (g) respecting the types of personal information that may or must be collected or disclosed under this Part;
- (h) respecting the content of records that a director and a rights advice service must keep and the periods for which records must be kept.

**Commencement**

- 9** This Act comes into force by regulation of the Lieutenant Governor in Council.