


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 284

, Approved and Ordered


June 3, 2019


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective November 4, 2019,

- (a) *section 13 of the Supplements Repeal Act, S.B.C. 2006, c. 33, is brought into force,*
- (b) *sections 2, 6 (a), 7, 9, 10, 37 and 38 of the Health Statutes Amendment Act, 2007, S.B.C. 2007, c. 19, are brought into force,*
- (c) *section 6 (b) of the Health Statutes Amendment Act, 2007, except as it enacts paragraph (b) of the definition of "care facility" in section 1 of the Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181, is brought into force,*
- (d) *section 8 of the Health Statutes Amendment Act, 2007, except as it enacts section 25 (2) and (4) (b) of the Health Care (Consent) and Care Facility (Admission) Act, is brought into force,*
- (e) *the Health Care Consent Regulation, B.C. Reg. 20/2000, is amended as set out in the attached Schedule 1,*
- (f) *the Residential Care Regulation, B.C. Reg. 96/2009, is amended as set out in the attached Schedule 2, and*
- (g) *the Patients' Bill of Rights Regulation, B.C. Reg. 37/2010, is amended as set out in the attached Schedule 3.*


Minister of Health
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Supplements Repeal Act, S.B.C. 2006, c. 33, s. 19; Health Statutes Amendment Act, 2007, S.B.C. 2007, c. 19, s. 40; Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181, s. 34; Community Care and Assisted Living Act, S.B.C. 2002, c. 75, s. 34 (2); Hospital Act, R.S.B.C. 1996, c. 200, s. 56*

Other: *OIC 89/2000; OIC 225/2009; OIC 80/2010*

R70184203

SCHEDULE 1

- 1 *Section 1 (1) of the Health Care Consent Regulation, B.C. Reg. 20/2000, is amended by adding the following definitions:*

“assessment” means an assessment under section 26 of the Act;

“assessor” means a medical practitioner and a person within a class prescribed under section 16 for the purpose of performing assessments; .

- 2 *The following Part is added:*

PART 5 – CARE FACILITIES

Division 1 – Assessments of Incapability

Prescribed health care providers

- 16 The classes of health care providers who are prescribed as assessors for the purposes of the Act are as follows:
- (a) registrants of the British Columbia College of Nursing Professionals who are subject to either
 - (i) the Nurses (Registered) and Nurse Practitioners Regulation, or
 - (ii) the Nurses (Registered Psychiatric) Regulation;
 - (b) registrants of the British Columbia College of Social Workers;
 - (c) registrants of the College of Occupational Therapists of British Columbia;
 - (d) registrants of the College of Psychologists of British Columbia.

Information to be given before assessment

- 17 Before conducting an assessment in respect of an adult, an assessor must ensure that the adult has been advised that
- (a) the adult is being assessed to determine whether the adult is incapable of giving or refusing consent to admission to, or continued residence in, a care facility, and
 - (b) if the adult is found to be incapable of making decisions about the adult’s admission to, or continued residence in, a care facility, a substitute decision maker may make those decisions on the adult’s behalf.

Others may be present

- 18 (1) An assessor may permit a person other than the adult being assessed to be present during all or part of an assessment if
- (a) requested by the adult, or
 - (b) necessary or advisable for the purposes of either communicating with the adult or conducting the assessment.
- (2) An assessor may prohibit a person from being present during all or part of an assessment if, in the opinion of the assessor, the presence of the person would disrupt or in any way adversely affect the assessment process.

- (3) Subsection (2) applies even if the adult requests the person to be present.

Review of medical information

- 19 An assessor must, before completing an assessment in respect of an adult, review all available relevant medical diagnoses and prognoses about the adult with respect to any underlying, or potentially reversible, health conditions that may affect the ability of that adult to make decisions about that adult's admission to, or continued residence in, a care facility.

Assessment may occur without adult

- 20 An assessment, or part of an assessment, may be conducted without the adult being present, and based on observational information and relevant information gathered from other sources, if
- (a) the adult
 - (i) refuses, in full or in part, to participate in the assessment, or
 - (ii) cannot reasonably be accessed or is not reasonably able to participate in the assessment, and
 - (b) the assessor has reason to believe that the assessment would be completed accurately using the information available.

Consultation with others

- 21 (1) Without limiting section 20, an assessor may consult with and collect information from other persons if the assessor has reason to believe that
- (a) it is necessary or advisable for the purposes of the assessment, and
 - (b) the person consulted with has information relevant to the assessment.
- (2) Without limiting subsection (1), an assessor may consult with and collect relevant information from the following:
- (a) a person who has provided social or health care services to the adult;
 - (b) the adult's spouse, near relatives and close friends.

On completing assessment

- 22 (1) On completing an assessment, an assessor must, subject to subsection (2), do all of the following:
- (a) complete an assessment report detailing the assessment, including
 - (i) the factors that were considered in making the determination of the adult's capability or incapability,
 - (ii) the conclusions that were reached on the basis of those factors, and
 - (iii) a summary of the information, if any, gathered under section 20 or 21;
 - (b) advise the adult who is the subject of the assessment regarding the assessor's determination of the adult's capability or incapability;
 - (c) provide a copy of the assessment report to
 - (i) the manager who requested the assessment, and
 - (ii) the manager of the care facility to which the adult is admitted, if different from the manager who requested the assessment;

- (d) offer to provide, and provide if requested, a copy of the assessment report to
 - (i) the adult, and
 - (ii) the person responsible for giving substitute consent on behalf of the adult under section 22 of the Act, if the adult is determined to be incapable.
- (2) An assessor need not comply with the requirements of subsection (1) (b) or (d) if the assessor has reason to believe that it may result in
 - (a) serious physical or mental harm to the adult, or
 - (b) significant damage or loss to the adult's property.

Division 2 – Use of Restraints

Manner and means of restraint

- 23** For the purposes of section 26.1 (1) (b) of the Act, “**restrain**” includes to control or restrict the freedom of movement of a person in care by
- (a) chemical, electronic, mechanical or other means, and
 - (b) accommodating the person in care in a secure unit.

Adoption of Residential Care Regulation requirements

- 24** (1) For the purposes of section 26.1 of the Act, Division 5 of Part 5 and section 84 of the Residential Care Regulation, B.C. Reg. 96/2009, are adopted as amended from time to time.
- (2) For the purposes of applying the Residential Care Regulation, references to the text in that regulation referred to in column 1 of the following table are to be read as references to the text set out opposite in column 2:

Item	Column 1 Residential Care Regulation	Column 2 Health Care Consent Regulation
1	care plan	a health record kept in a care facility for the purposes of recording information respecting the person in care who is the subject of the record, including a plan of care for that person
2	community care facility	care facility
3	employee	person providing services under contract or other person ordinarily present at a care facility, other than a person in care
4	licensee	manager, but only if responsible for the operation of the care facility

SCHEDULE 2

- 1** *Section 1 of the Residential Care Regulation, B.C. Reg. 96/2009, is amended in paragraph (b) of the definition of “parent or representative” by striking out “to make health or personal care decisions on behalf of the adult, but nothing in this regulation*

confers on the person any greater authority to make health or personal care decisions” **and substituting** “to make health or personal care decisions, or decisions respecting admission to or continued accommodation in a care facility, on behalf of the adult, but nothing in this regulation confers on the person any greater authority to make those decisions”.

2 The following section is added to Division 1 of Part 5:

Continuing accommodation for incapable persons

50.1 (1) In this section:

“**assessed**” means assessed, for incapability, in accordance with section 26 of the *Health Care (Consent) and Care Facility (Admission) Act*;

“**incapable person in care**” means a person in care who has been assessed as incapable or for whom a personal guardian has been appointed;

“**personal guardian**” has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

“**substitute consent**” means substitute consent given in accordance with section 22 of the *Health Care (Consent) and Care Facility (Admission) Act*.

(2) If an incapable person in care expresses a desire to leave a community care facility, the licensee must, within a reasonable time of the expression, act as follows:

(a) have the person in care assessed if

(i) the licensee has reason to believe that the person in care may be capable of giving or refusing consent to continued accommodation in the community care facility, and

(ii) the person in care does not have a personal guardian;

(b) obtain substitute consent to the continued accommodation of the person in care in the community care facility if

(i) paragraph (a) does not apply, or

(ii) the person in care is assessed as incapable.

(3) Subsection (2) does not apply to a program described in section 2 (1) as Child and Youth Residential or a type of care described in section 2 (2) (d) as Community Living.

(4) Subsection (2) (b) does not apply

(a) if the incapable person in care was admitted to the community care facility within 30 days before expressing the desire to leave, or

(b) if substitute consent to the continued accommodation of the person in care in the community care facility has been obtained within the last 90 days.

3 The following section is added to Division 1 of Part 6:

Records respecting admission

77.1 (1) Subject to subsections (2) to (4), a licensee must keep, for each person in care, a record showing the following information:

- (a) the date of admission to the community care facility;
 - (b) in the case of an adult, the consent for that person in care to be admitted or to continue to be accommodated in the community care facility, given in accordance with section 21 or 22 of the *Health Care (Consent) and Care Facility (Admission) Act* or section 50.1 of this regulation, as applicable;
 - (c) each assessment report, if any, provided under section 22 (1) (c) of the Health Care Consent Regulation.
- (2) Subsection (1) (b) and (c) does not apply to a person in care who is in a program described in section 2 (1) as Child and Youth Residential or is receiving a type of care described in section 2 (2) (d) as Community Living.
 - (3) Subsection (1) (b) applies only in respect of a consent or continued consent given on or after November 4, 2019.
 - (4) Subsection (1) (c) applies only in respect of an assessment report provided on or after November 4, 2019.

4 Section 78 (1) (b) is repealed.

5 Section 85 is amended

(a) in subsection (2) by adding the following paragraph:

- (m) obtaining consent, in accordance with Part 3 of the *Health Care (Consent) and Care Facility (Admission) Act*, before admitting an adult to the community care facility. , **and**

(b) by adding the following subsection:

- (2.1) Despite subsection (2) (m), that paragraph does not apply to a person in care who is receiving a type of care described as Child and Youth Residential or Community Living.

SCHEDULE 3

1 Section 2 (2) of the Patients' Bill of Rights Regulation, B.C. Reg. 37/2010, is amended by striking out "52 (1), 53, 57 (2), 59, 60, 81 (2) and (4) and 85 (1) (c) (ii.1) and (iii)" and substituting "50.1 (1), (2) and (4), 52 (1), 53, 57 (2), 59, 60, 77.1 (1) (b) and (c), (3) and (4), 81 (2) and (4) and 85 (1) (c) (ii.1) and (iii) and (2) (m)".