HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION) ACT

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HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION) ACT

CHAPTER 181 [RSBC 1996]

[includes 2013 Bill 7, c. 13 (B.C. Reg. 145/2013) amendments (effective April 1, 2013)]

Contents

Part 1 — Introductory Provisions
1. Definitions
2. Application of this Act
3. Presumption of capability

Part 2 — Consent to Health Care
4. Consent rights
5. General rule — consent needed
6. Elements of consent
7. How incapability is determined
8. Duty to communicate in appropriate manner
9. How consent is given and scope of consent
10. Same rules apply to substitute consent
11. Exception — if a personal guardian or representative consents
12. Exception — urgent or emergency health care
12.1 No emergency health care contrary to wishes
12.2 Emergency health care despite refusal
13. Exception — informed consent not required for preliminary examination
14. Exception — major health care
15. Exception — minor health care
16. Temporary substitute decision makers
17. Authority of a temporary substitute decision maker
18. Restrictions on authority of a temporary substitute decision maker
19. Duties of a temporary substitute decision maker

Part 2.1 — Advance Directives
19.1 Adult may make advance directive unless incapable
19.2 Scope of advance directive
19.3 If both advance directive and representation agreement
19.4 Form of advance directive
19.5 Execution of advance directive
19.6 Changing or revoking an advance directive
19.7 Providing health care if adult has advance directive
19.8 When advance directive does not apply
19.9 Withdrawal of health care
19.91 Advance directive must not be mandatory
19.92 Not yet in force

Part 3 — Admission to a Care Facility

Part 4 — Repealed
27. 27. to 32. Repealed

Part 5 — General Provisions
33. Protection from liability
33.1 Collection of personal information
33.2 33.2 and 33.3 Repealed
33.4 Court directions and orders
34. Power to make regulations
35. Offence
35.1 Transitional – advance directives
Part 1 — Introductory Provisions

Definitions

1. In this Act:

"adult" means anyone who has reached 19 years of age;

"advance directive" means a written instruction made by a capable adult that

(a) gives or refuses consent to health care for the adult in the event that the adult is not capable of giving the instruction at the time the health care is required, and

(b) complies with the requirements of Part 2.1;

"care facility" means

(a) a facility licensed under the Community Care and Assisted Living Act and regulated under the Residential Care Regulation, B.C. Reg. 96/2009,

(b) a private hospital licensed under Part 2 of the Hospital Act,

(c) an institution designated as a hospital under the Hospital Act for the treatment of persons referred to in paragraph (b) or (c) of the definition of "hospital" in that Act, or

(d) any other facility, or class of facility, designated by regulation as a care facility;

"close friend", in respect of an adult who needs health care, means another adult who has a long-term, close personal relationship involving frequent personal contact with the adult, but does not include a person who receives compensation for providing personal care or health care to that adult;

"court" means the Supreme Court of British Columbia;

"facility care proposal" means a proposal described in section 20 (1);

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health, and includes

(a) a series or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem,

(b) a plan for minor health care that

(i) is developed by one or more health care providers,

(ii) deals with one or more of the health problems that an adult has and may, in addition, deal with one or more of the health problems that an adult is likely to have in the future given the adult’s current health condition, and

(iii) expires no later than 12 months from the date consent for the plan was given, and

(c) participation in a medical research program approved by an ethics committee designated by regulation;

"health care provider" means a person, or a person in a prescribed class of persons, who, under a prescribed Act, is licensed, certified or registered to provide health care;

"major health care" means

(a) major surgery,

(b) any treatment involving a general anesthetic,

(c) major diagnostic or investigative procedures, or

(d) any health care designated by regulation as major health care;
"minor health care" means any health care that is not major health care, and includes
(a) routine tests to determine if health care is necessary, and
(b) routine dental treatment that prevents or treats a condition or injury caused by disease or trauma, for example,
   (i) cavity fillings and extractions done with or without a local anesthetic, and
   (ii) oral hygiene inspections;
"near relative", in respect of an adult who needs health care, means an adult child, a parent, a grandparent, an adult brother or sister, any other adult relation by birth or adoption, or a spouse of any of these;
"personal guardian" means a committee of a person who is declared under the Patients Property Act to be
(a) incapable of managing himself or herself, or
(b) incapable of managing himself or herself and his or her affairs;
"representation agreement" means an agreement made under the Representation Agreement Act;
"representative" means a person authorized by a representation agreement to make or help in making decisions on behalf of another and includes an alternate representative;
"spouse" means a person who
(a) is married to another person, and is not living separate and apart, within the meaning of the Divorce Act (Canada), from the other person, or
(b) is living with another person in a marriage-like relationship.

Application of this Act

2. This Act does not apply to
(a) the admission of a person to a designated facility under section 22, 28, 29, 30 or 42 of the Mental Health Act,
(b) the provision of psychiatric care or treatment to a person detained in or through a designated facility under section 22, 28, 29, 30 or 42 of the Mental Health Act,
(c) the provision of psychiatric care or treatment under the Mental Health Act to a person released on leave or transferred to an approved home under section 37 or 38 of the Mental Health Act, or
(d) the provision of professional services, care or treatment to a person for the purposes of sterilization for non-therapeutic reasons.

Presumption of capability

3. (1) Until the contrary is demonstrated, every adult is presumed to be capable of
(a) giving, refusing or revoking consent to health care, and
(b) deciding to apply for admission to a care facility, to accept a facility care proposal, or to move out of a care facility.
(2) An adult's way of communicating with others is not, by itself, grounds for
deciding that he or she is incapable of understanding anything referred to in subsection (1).

RS1996 (Supp) -181-3.
Part 2 — Consent to Health Care

Consent rights

4. Every adult who is capable of giving or refusing consent to health care has
   (a) the right to give consent or to refuse consent on any grounds, including
       moral or religious grounds, even if the refusal will result in death,
   (b) the right to select a particular form of available health care on any grounds,
       including moral or religious grounds,
   (c) the right to revoke consent,
   (d) the right to expect that a decision to give, refuse or revoke consent will be
       respected, and
   (e) the right to be involved to the greatest degree possible in all case planning
       and decision making.


General rule — consent needed

5. (1) A health care provider must not provide any health care to an adult without the
      adult's consent except under sections 11 to 15.

      (2) A health care provider must not seek a decision about whether to give or refuse
      substitute consent to health care under section 11, 14 or 15 unless he or she has
      made every reasonable effort to obtain a decision from the adult.

RS1996-181-5.

Elements of consent

6. An adult consents to health care if
   (a) the consent relates to the proposed health care,
   (b) the consent is given voluntarily,
   (c) the consent is not obtained by fraud or misrepresentation,
   (d) the adult is capable of making a decision about whether to give or refuse
       consent to the proposed health care,
   (e) the health care provider gives the adult the information a reasonable person
       would require to understand the proposed health care and to make a
       decision, including information about
       (i) the condition for which the health care is proposed,
       (ii) the nature of the proposed health care,
       (iii) the risks and benefits of the proposed health care that a reasonable
            person would expect to be told about, and
       (iv) alternative courses of health care, and
   (f) the adult has an opportunity to ask questions and receive answers about the
       proposed health care.

How incapability is determined

7. When deciding whether an adult is incapable of giving, refusing or revoking consent to health care, a health care provider must base the decision on whether or not the adult demonstrates that he or she understands
   (a) the information given by the health care provider under section 6 (e), and
   (b) that the information applies to the situation of the adult for whom the health care is proposed.
   RS1996 (Supp) -181-7.

Duty to communicate in appropriate manner

8. When seeking an adult's consent to health care or deciding whether an adult is incapable of giving, refusing or revoking consent, a health care provider
   (a) must communicate with the adult in a manner appropriate to the adult's skills and abilities, and
   (b) may allow the adult's spouse, or any near relatives or close friends, who accompany the adult and offer their assistance, to help the adult to understand or to demonstrate an understanding of the matters mentioned in section 7.

How consent is given and scope of consent

9. (1) Consent to health care may be expressed orally or in writing or may be inferred from conduct.
   (1.1) For the purposes of sections 5 and 6, and despite section 6 (e) and (f), an adult may give or refuse consent to health care in an advance directive, except that an adult may not give consent in an advance directive to any health care for which a person chosen under section 16 could not give substitute consent under section 18 (1).
   (1.2) If a capable adult gives or refuses consent to health care, the consent or refusal is not affected by any subsequent incapability.
   (2) Consent to health care applies only to the specific health care that an adult has consented to.
   (3) As an exception to subsection (2), a health care provider may provide additional or alternative health care to an adult if
      (a) the health care that was consented to is in progress,
      (b) the adult is unconscious or semi-conscious, and
      (c) it is medically necessary to provide the additional or alternative health care to deal with conditions not foreseen when consent was given.
      (4) If an adult who consents to health care stipulates that the health care must be provided by a named health care provider, no one else may provide the health care without first obtaining the adult's consent unless
         (a) the health care is in progress, or
         (b) delay is likely to put the adult's life or health at risk.

Same rules apply to substitute consent

10. Sections 6, 7, 8 (a) and 9 apply when a decision about whether to give or refuse substitute consent is sought or made under section 11, 14 or 15.
Exception – if a personal guardian or representative consents

11. A health care provider may provide health care to an adult without the adult's consent if
   (a) the health care provider is of the opinion that the adult needs the health care and is incapable of giving or refusing consent, and
   (b) the adult's personal guardian or representative
      (i) has authority to consent to the health care,
      (ii) is capable of giving consent, and
      (iii) gives substitute consent.

Exception – urgent or emergency health care

12. (1) A health care provider may provide health care to an adult without the adult's consent if
   (a) it is necessary to provide the health care without delay in order to preserve the adult's life, to prevent serious physical or mental harm or to alleviate severe pain,
   (b) the adult is apparently impaired by drugs or alcohol or is unconscious or semi-conscious for any reason or is, in the health care provider's opinion, otherwise incapable of giving or refusing consent,
   (c) the adult does not have a personal guardian or representative who is authorized to consent to the health care, is capable of doing so and is available, and
   (d) where practicable, a second health care provider confirms the first health care provider's opinion about the need for the health care and the incapability.

   (2) For the purpose of this section, a personal guardian or representative is available if it is possible for the health care provider, within a time that is reasonable in the circumstances,
      (a) to determine whether the adult has a personal guardian or representative, and
      (b) to communicate with the adult's personal guardian or representative.

   (3) If a personal guardian or representative becomes available or a person is chosen under section 16 after a health care provider provides health care to an adult under this section, the personal guardian, representative or person chosen under section 16 may refuse consent for continued health care, and, if consent is refused, the health care must be withdrawn.

No emergency health care contrary to wishes

12.1 A health care provider must not provide health care under section 12 if the health care provider has reasonable grounds to believe that the person, while capable and after attaining 19 years of age, expressed an instruction or wish applicable to the circumstances to refuse consent to the health care.
Emergency health care despite refusal

If substitute consent to health care is refused on an incapable person's behalf by their personal guardian or representative, the health care may be provided despite the refusal if, in the opinion of the health care provider proposing the health care,

(a) section 12 (1) (a) applies, and

(b) the personal guardian or representative did not comply with their duties under this or any other Act.


Exception – informed consent not required for preliminary examination

A health care provider may undertake triage or another kind of preliminary examination, treatment or diagnosis of an adult without complying with section 6 if

(a) the adult indicates that he or she wants to be provided with health care, or

(b) in the absence of any indication by the adult, the adult's spouse, near relative or close friend indicates that he or she wants the adult to be provided with health care.


Exception – major health care

A health care provider may provide major health care to an adult without the adult’s consent if

(a) after consulting, or making a reasonable effort to consult, with any spouse, near relative or close friend of the adult who is reasonably available or with any other person who has relevant information, the health care provider decides that the adult

(i) needs the major health care, and

(ii) is incapable of giving or refusing consent to the major health care,

(b) the adult does not have a personal guardian or representative who is authorized to consent to the major health care, is capable of doing so and is available,

(c) someone chosen under section 16 has authority to consent to the major health care and gives substitute consent, and

(d) the health care provider complies with subsection (4).

(2) [Not yet in force]

(3) [Not yet in force]

(4) If a person chosen under section 16 gives or refuses substitute consent, the health care provider must inform the adult and any spouse, near relative or close friend of the adult who accompanies the adult of

(a) the decision or assessment that the adult is incapable,

(b) the name of the person chosen under section 16, and

(c) the decision to give or refuse substitute consent.

(5) [Not yet in force]

(6) [Not yet in force]

(7) Repealed. [2003-96-29]

(8) Repealed. [2003-96-29]
(9) [Not yet in force]  
(10) [Not yet in force]


**Exception – minor health care**

15. A health care provider may provide minor health care to an adult without the adult's consent if
   (a) the health care provider is of the opinion that the adult is incapable of giving or refusing consent to the minor health care,
   (b) the adult does not have a personal guardian or representative or the adult's personal guardian or representative is incapable of giving or refusing consent, and
   (c) someone chosen under section 16 gives substitute consent to the minor health care.


**Temporary substitute decision makers**

16. (1) To obtain substitute consent to provide major or minor health care to an adult, a health care provider must choose the first, in listed order, of the following who is available and qualifies under subsection (2):
   (a) the adult's spouse;
   (b) the adult's child;
   (c) the adult's parent;
   (d) the adult's brother or sister;
   (d.1) the adult's grandparent;
   (d.2) the adult's grandchild;
   (e) anyone else related by birth or adoption to the adult;
   (f) a close friend of the adult;
   (g) a person immediately related to the adult by marriage.

(2) To qualify to give, refuse or revoke substitute consent to health care for an adult, a person must
   (a) be at least 19 years of age,
   (b) have been in contact with the adult during the preceding 12 months,
   (c) have no dispute with the adult,
   (d) be capable of giving, refusing or revoking substitute consent, and
   (e) be willing to comply with the duties in section 19.

(3) If no one listed in subsection (1) is available or qualifies under subsection (2) or if there is a dispute about who is to be chosen, the health care provider must choose a person, including a person employed in the office of the Public Guardian and Trustee, authorized by the Public Guardian and Trustee.

(4) A health care provider is not required to do more than make the effort that is reasonable in the circumstances to comply with this section.


**Authority of a temporary substitute decision maker**

17. (1) Subject to section 9 (2), a person chosen under section 16 has the authority to
HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION) ACT

decide whether to give or refuse substitute consent.

(2) The health care provider must, no more than 21 days before that health care begins, confirm in writing that
(a) the adult is still incapable, and
(b) the person who earlier consented to the health care being provided confirms that the health care should begin.

(2.1) Despite subsection (2) and whether or not the health care that is the subject of the decision made under subsection (1) has begun, if at any time a health care provider has reasonable grounds to believe that the adult may be capable of giving or refusing consent to health care, the health care provider must again determine whether the adult remains incapable.

(2.2) If, at any time after a decision is made under subsection (1), the adult is capable of giving or refusing consent to health care,
(a) the authority to give or refuse substitute consent to health care for the adult is terminated,
(b) the decision made under subsection (1) is rescinded, and
(c) before the health care that is the subject of the decision made under subsection (1) is begun or continued, the adult must give consent to that health care.

(2.3) Subsection (2.2) does not invalidate anything that is otherwise validly done before the decision made under subsection (1) is rescinded.

(3) While the authority to give or refuse substitute consent to health care for the adult is valid, a person chosen under section 16 may apply to the court under the Adult Guardianship Act for an order appointing a personal guardian for the adult.

(4) If a person chosen under section 16 makes an application under the Adult Guardianship Act, the person’s authority to give or refuse substitute consent under this Act continues until a final order is made under that Act, unless that authority is otherwise terminated under this Act.

(5) On being told that a person chosen under section 16 wants to be relieved of the authority to give or refuse substitute consent, the health care provider may choose in accordance with that section another person to assume that authority.

(6) A person chosen under section 16 has the right to all information and documents to which the adult is entitled and that are necessary for the person to make an informed decision under subsection (1) of this section.

(7) A person who has custody or control of any information or document referred to in subsection (6) must, at the request of a person chosen under section 16, disclose that information to the person chosen under section 16 or produce that document for inspection and copying by that person.

(8) Subsections (6) and (7) override
(a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and
(b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, other than a restriction in section 51 of the Evidence Act.

Restrictions on authority of a temporary substitute decision maker

(1)
A person chosen under section 16 does not have authority to give or refuse substitute consent to any type of health care prescribed in the regulations.

(2) A person chosen under section 16 has authority to refuse substitute consent to health care necessary to preserve life, but only if there is substantial agreement among the health care providers caring for the adult that
(a) the decision to refuse substitute consent is medically appropriate, and
(b) the person has made the decision in accordance with section 19 (1) and (2).

(3) [Not yet in force]

Duties of a temporary substitute decision maker

19. (1) A person chosen under section 16 to give or refuse substitute consent to health care for an adult must
(a) before giving or refusing substitute consent, consult, to the greatest extent possible,
   (i) with the adult, and
   (ii) if the person chosen under section 16 is a person authorized by the Public Guardian and Trustee, with any near relative or close friend of the adult who asks to assist, and
(b) comply with any instructions or wishes the adult expressed while he or she was capable.

(2) If the adult's instructions or wishes are not known, the person chosen under section 16 must decide to give or refuse consent in the adult's best interests.

(3) When deciding whether it is in the adult's best interests to give, refuse or revoke substitute consent, the person chosen under section 16 must consider
(a) the adult's current wishes, and known beliefs and values,
(b) whether the adult's condition or well-being is likely to be improved by the proposed health care,
(c) whether the adult's condition or well-being is likely to improve without the proposed health care,
(d) whether the benefit the adult is expected to obtain from the proposed health care is greater than the risk of harm, and
(e) whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care.
Part 2.1 — Advance Directives

19.1 (1) An adult may make an advance directive unless the adult is incapable of understanding the nature and consequences of the proposed advance directive.

(2) An adult is incapable of understanding the nature and consequences of the proposed advance directive if the adult cannot understand

(a) the scope and effect of the health care instructions set out in the advance directive, and

(b) that a person will not be chosen under section 16 to make decisions on behalf of the adult about the health care described in the advance directive except in the circumstances set out in section 19.8.


19.2 (1) Subject to subsection (2), an adult may in an advance directive give or refuse consent to any health care described in the advance directive.

(2) An instruction in an advance directive to do either or both of the following is not valid and must be severed from the advance directive:

(a) to do anything that is prohibited by law;

(b) to omit to do anything that is required by law.


19.3 (1) Subject to subsection (2), if an adult makes both an advance directive and a representation agreement, regardless of when, in relation to each other, the advance directive and representation agreement are made,

(a) section 19.7 of this Act does not apply in respect of any instruction in the advance directive that relates to a matter over which the adult’s representative has decision-making authority, and

(b) for the purposes of section 16 of the Representation Agreement Act, the instruction referred to in paragraph (a) of this subsection is to be treated as the wishes of the adult, expressed while capable.

(2) An adult may, in the adult’s representation agreement, state that a health care provider may act in accordance with a health care instruction set out in the adult’s advance directive without consent of the adult’s representative, in which case section 19.7 applies in respect of that instruction.


19.4 An adult who makes an advance directive must
(a) include or address in the advance directive any prescribed matter, and
(b) indicate in the advance directive that the adult knows that
   (i) a health care provider may not provide to the adult any health care
       for which the adult refuses consent in the advance directive, and
   (ii) a person may not be chosen to make decisions on behalf of the adult
       in respect of any health care for which the adult has given or refused
       consent in the advance directive.


Execution of advance directive

19.5 (1) Subject to subsections (2) to (5), an advance directive must be in writing and
       signed and dated by
       (a) the adult in the presence of 2 witnesses, and
       (b) both witnesses in the presence of the adult.

(2) Subject to subsection (3), an advance directive may be signed on behalf of an
    adult if
    (a) the adult is physically incapable of signing the advance directive,
    (b) the adult is present and directs that the advance directive be signed, and
    (c) the signature of the person signing the advance directive on behalf of the
        adult is witnessed in accordance with this section, as if that signature were
        the adult's signature

(3) The following persons must not sign an advance directive on behalf of an adult:
    (a) a witness to the signing of the advance directive;
    (b) a person prohibited from acting as a witness under subsection (5).

(4) Only one witness is required if the witness is a lawyer or a member in good
    standing of the Society of Notaries Public of British Columbia.

(5) The following persons must not act as a witness to the signing of an advance
    directive:
    (a) a person who provides personal care, health care or financial services to the
        adult for compensation, other than a lawyer or a member in good standing
        of the Society of Notaries Public of British Columbia;
    (b) a spouse, child, parent, employee or agent of a person described in
        paragraph (a);
    (c) a person who is not an adult;
    (d) a person who does not understand the type of communication used by the
        adult, unless the person receives interpretive assistance to understand that
        type of communication.


Changing or revoking an advance directive

19.6 (1) An adult who has made an advance directive may change or revoke the advance
        directive unless the adult is incapable of understanding the nature and
        consequences of the change or revocation.

(2) A change must be in writing and must be signed and witnessed in the same
    manner as an advance directive under section 19.5.

(3) An adult may revoke an advance directive by
Providing health care if adult has advance directive

Sep 01/11

19.7 (1) Subject to section 19.8, this section applies when
(a) in the opinion of a health care provider, an adult needs health care,
(b) the adult is incapable of giving or refusing consent to the health care, and
(c) the health care provider
(i) does not know of any personal guardian or representative who has authority to make decisions for the adult in respect of the proposed health care, and
(ii) is aware that the adult has an advance directive that is relevant to the proposed health care.

(2) A health care provider
(a) may provide health care to an adult if the adult has given consent to that health care in the adult's advance directive, and
(b) must not provide health care to an adult if the adult has refused consent to that health care in the adult's advance directive.

(3) A health care provider is not required to make more than a reasonable effort in the circumstances to determine whether the adult has an advance directive or a personal guardian or representative.

When advance directive does not apply

Sep 01/11

19.8 (1) This section applies if a health care provider reasonably believes that
(a) the instructions in an adult's advance directive do not address the health care decision to be made,
(b) in relation to a health care decision, the instructions in an adult's advance directive are so unclear that it cannot be determined whether the adult has given or refused consent to the health care,
(c) since the advance directive was made and while the adult was capable, the adult's wishes, values or beliefs in relation to a health care decision significantly changed, and the change is not reflected in the advance directive, or
(d) since the advance directive was made, there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult in relation to health care for which the adult has given or refused consent in an advance directive.

(2) Subject to subsection (3), in a circumstance described in subsection (1),
(a) section 19.7 does not apply,
(b) the health care provider must, despite any instruction or wish expressed in the advance directive respecting who may give substitute consent if the circumstances set out in subsection (1) apply, obtain substitute consent in accordance with section 11 or 16, and

(3)
the person giving substitute consent must act in accordance with section 19 (3).

(3) Subsection (2) does not apply in the circumstance described in subsection (1) (d) if the adult, in the adult's advance directive, expressly states that the instructions given in the advance directive apply regardless of any change in medical knowledge, practice or technology.

(4) Nothing in this section affects the operation of sections 12 and 12.1.


(ADD) Withdrawal of health care
Sep 01/11

19.9 If a health care provider
(a) is not aware that an adult has an advance directive that refuses consent to specific health care,
(b) provides the health care to the adult, and
(c) subsequently is made aware of an advance directive in which that adult refuses consent to that health care,
the health care provider must withdraw the health care, unless section 19.8 applies.


(ADD) Advance directive must not be mandatory
Sep 01/11

19.91 An adult must not be required to have an advance directive as a condition of receiving any good or service.


Not yet in force

19.92 [Not yet in force]
Part 3 — Admission to a Care Facility

Sections 20. to 26.

Part 4 — Repealed

27. to 32. Repealed

Sections 27. to 32. Repealed. [2003-96-30]
Part 5 — General Provisions

Protection from liability

33. (1) No action may be brought or continued against a person for any act or omission in the performance of a duty or the exercise of a power or function under this Act if the person has acted in good faith and used reasonable care.

(2) A person who is a health care provider or the operator of a care facility is entitled to rely on the accuracy of the information given to that person to establish (a) someone's eligibility to be chosen under section 16 or 22,

(b) someone's authority to give, refuse or revoke consent to health care, or

(c) [Not yet in force]

unless it is not reasonable to rely on that information.

RS1996 (Supp) -181-33.

Collection of personal information

ADD Oct 01/03

33.1 A health care provider is authorized to collect personal information about an adult from any person if this is necessary for the purposes of exercising a power or carrying out a duty or function under this Act.


33.2 and 33.3 Repealed

REP Mar 12/04

33.2 and 33.3 Repealed. [2003-96-31]

(ADD) Court directions and orders

ADD Sep 01/11

33.4 (1) The following people may apply to the court for an order under subsection (2):

(a) a health care provider responsible for the care of an adult who is incapable of giving or refusing consent to health care;

(b) an adult's representative or personal guardian;

(c) a person chosen under this Act to give or refuse substitute consent to health care or admission to a care facility on behalf of an adult who is incapable;

(d) an adult who is assessed as incapable of giving or refusing consent to health care or admission to a care facility.

(2) On application by a person described in subsection (1), the court may do one or more of the following:

(a) order the adult to attend at the time and place the court directs and submit to one or more assessments of incapability;

(b) give directions respecting

(i) the interpretation of a provision of an advance directive, or any other health care instruction or wish, made or expressed by an adult when capable, or

(ii) who should be chosen to provide substitute consent under this Act for an incapable adult;

(c) confirm, reverse or vary a decision by

(i) an adult's representative or personal guardian, or
(ii) a person chosen to provide substitute consent under this Act, to give or refuse consent to health care or admission to a care facility;

(d) make any decision that a person chosen to provide substitute consent under this Act could make.

(3) Any person may apply to the court for an order voiding an advance directive on the basis that fraud, undue pressure or some other form of abuse or neglect was used to induce an adult to make the advance directive, or to change or revoke a previous advance directive.

(4) Nothing in this Act
(a) limits the inherent jurisdiction of the Supreme Court to act in a parens patriae capacity, or
(b) deprives a person of the right to ask the Supreme Court to exercise that jurisdiction.

Power to make regulations

34. (1) 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 as follows:
(a) designating any facility or class of facility as a care facility for the purpose of paragraph (d) of the definition of "care facility";
(b) designating ethics committees for the purpose of paragraph (c) of the definition of "health care";
(c) prescribing Acts or classes of persons for the purpose of the definition of "health care provider";
(d) designating any type of health care as major health care for the purpose of paragraph (d) of the definition of "major health care";
(e) prescribing advocacy organizations for the purposes of sections 14 (5) and 23 (3);
(f) prescribing types of health care for which substitute consent may not be given under section 18;
(g) governing assessments under sections 14 (2) and 21;
(h) prescribing information that must be included in a facility care proposal under section 20;
(i) prescribing the duties of an operator of a care facility who restrains an adult's freedom of movement in the facility;
(j) [Not in force. Repealed 1999-25-18.]
(k) prescribing forms for the purpose of this Act;

(k.1) Repealed. [2003-96-32]

(l) Repealed. [2003-96-32]

(m) respecting matters that must be included or addressed in an advance directive.

35. Section 5 of the *Offence Act* does not apply to this Act or the regulations.

RS1996 (Supp) -181-35.

(ADD) **Transitional – advance directives**

Sep 01/11

35.1 (1) The Lieutenant Governor in Council may make regulations setting out criteria by which written instructions made by a capable adult that

(a) give or refuse consent to health care in the event that the adult is not capable of giving the instruction at the time the health care is required, and

(b) were made before Part 2.1 comes into force, that date being September 1, 2011,

may be deemed to be advance directives.

(2) If regulations are made under subsection (1), written instructions that meet the prescribed criteria are deemed to be advance directives.