

BILL

No. 127

An Act to amend *The Mental Health Services Act* and to make a consequential amendment to *The Health Information Protection Act*

(Assented to _____)

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

Short title

1 This Act may be cited as *The Mental Health Services Amendment Act, 2013*.

S.S. 1984-85-86, c.M-13.1 amended

2 *The Mental Health Services Act* is amended in the manner set forth in this Act.

New section 2

3 **Section 2 is repealed and the following substituted:**

“Interpretation

2 In this Act:

- (a) **‘attending physician’** means the physician who has the principal responsibility for the health care needs of a person admitted to a mental health centre;
- (b) **‘business day’** means a day other than a Saturday, Sunday or holiday;
- (c) **‘capacity’** means capacity as defined in *The Health Care Directives and Substitute Health Care Decision Makers Act*;
- (d) **‘chief psychiatrist’** means a psychiatrist designated pursuant to section 9;
- (e) **‘community treatment order’** means a community treatment order issued pursuant to section 24.3;
- (f) **‘director’** means the person appointed pursuant to section 6;
- (g) **‘experimental treatment’** means any treatment that poses a significant risk of harm to the patient, other than one that is:
 - (i) commonly accepted for treatment of the mental disorder involved or supported by widely accepted scientific studies; and
 - (ii) provided by a qualified health professional;
- (h) **‘involuntary patient’** means a patient who is admitted to and detained in a mental health centre pursuant to section 23, 24 or 24.1;
- (i) **‘judge’** means a judge of the Court of Queen’s Bench;

- (j) **‘mental disorder’** means a disorder of thought, perception, feelings or behaviour that seriously impairs a person’s judgment, ability to recognize reality, ability to associate with others or ability to meet the ordinary demands of life, with respect to which treatment is advisable;
- (k) **‘mental health approved home’** means any building, premises or place with respect to which:
- (i) there is a valid certificate issued pursuant to this Act or pursuant to *The Mental Health Act*; or
 - (ii) a licence is issued pursuant to section 37.2;
- (l) **‘mental health centre’** means a facility designated as a mental health centre pursuant to *The Facility Designation Regulations*;
- (m) **‘mental health services’** means the provision of care to an individual for the purposes of promoting, preserving and restoring the mental health of the individual to an optimal level, and may include assessment, treatment, health education and consultation;
- (n) **‘minister’** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (o) **‘ministry’** means the ministry over which the minister presides;
- (p) **‘nearest relative’** means nearest relative as described in section 25.1;
- (q) **‘nurse’** means a registered nurse as defined in *The Registered Nurses Act, 1988* or a registered psychiatric nurse as defined in *The Registered Psychiatric Nurses Act*;
- (r) **‘officer in charge’** means:
- (i) in relation to a mental health centre, the person designated pursuant to section 8; or
 - (ii) if no person is designated pursuant to section 8, the regional director for the region in which the mental health centre is located;
- (s) **‘official representative’** means an official representative appointed pursuant to section 10;
- (t) **‘patient’** means a person receiving, pursuant to this Act:
- (i) diagnostic services for the purpose of determining the existence or nature of a mental disorder; or
 - (ii) care or treatment for a mental disorder;
- (u) **‘peace officer’** includes:
- (i) a member of the Royal Canadian Mounted Police;
 - (ii) a person appointed pursuant to *The Police Act, 1990* as a special constable or peace officer;
- (v) **‘personal guardian’** means a personal guardian as defined in *The Health Care Directives and Substitute Health Care Decision Makers Act*;
- (w) **‘physician’** means a duly qualified medical practitioner within the meaning of *The Medical Profession Act, 1981*;

- (x) **‘prescribed’** means prescribed in the regulations;
- (y) **‘proxy’** means a proxy as defined in *The Health Care Directives and Substitute Health Care Decision Makers Act*;
- (z) **‘psychiatrist’** means a physician:
 - (i) who holds a specialist’s certificate in psychiatry issued by the Royal College of Physicians and Surgeons of Canada; or
 - (ii) whose combination of training and experience in psychiatry is satisfactory to the minister and who has been approved by the minister as a psychiatrist for the purposes of this Act;
- (aa) **‘psychosurgery’** means any procedure that by direct access to the brain removes, destroys or interrupts the normal connections of the brain for the primary purpose of treating a mental disorder or involves the implantation of electrodes, but does not include neurosurgical procedures designed to treat reliably diagnosed organic brain conditions or epilepsy;
- (bb) **‘region’** means a mental health region established pursuant to section 5;
- (cc) **‘regional director’** means a regional director designated pursuant to section 7;
- (dd) **‘review panel’** means a review panel appointed pursuant to section 32”.

New section 3

4 Section 3 is repealed and the following substituted:

“Responsibilities of the minister

- 3(1)** The minister is responsible for the strategic direction of the system of mental health services in Saskatchewan and may do any things that the minister considers advisable to meet that responsibility.
- (2)** Without limiting the generality of subsection (1), the minister may:
 - (a) establish goals and objectives for the provision of mental health services in Saskatchewan generally or in areas within Saskatchewan;
 - (b) establish performance measures and targets to promote the effective and efficient utilization of mental health services;
 - (c) develop, implement and evaluate provincial policies with respect to mental health services;
 - (d) conduct financial, human resources and information technology planning for the system of mental health services in Saskatchewan;
 - (e) do any thing pursuant to this or any other Act that the minister considers appropriate for preventing circumstances that lead to mental disorder and distress and for promoting and restoring the mental health and well-being of the people of Saskatchewan”.

Section 4 repealed

5 Section 4 is repealed.

New section 5

6 Section 5 is repealed and the following substituted:

“Regions

5 The minister may establish mental health regions”.

Section 6 amended

7(1) Subsection 6(1) is amended by striking out “department” and substituting “ministry”.

(2) Subsection 6(2) is amended by striking out “department” and substituting “ministry”.

New section 7

8 Section 7 is repealed and the following substituted:

“Regional directors

7(1) Each regional health authority shall designate a regional director for that region.

(2) The regional director is responsible for the provision of mental health services within the region.

(3) The regional director may delegate to any person any power given to the regional director by this Act and the regulations”.

Section 8 amended

9 Subsection 8(1) is amended by striking out “facility” wherever it appears and in each case substituting “mental health centre”.

New section 9

10 Section 9 is repealed and the following substituted:

“Chief psychiatrist

9 Each regional health authority shall designate a chief psychiatrist for that region”.

New section 10

11 Section 10 is repealed and the following substituted:

“Official representatives

10(1) In this section, ‘**person**’ includes a partnership.

(2) The minister shall appoint one or more persons to be official representatives for each region to assist patients in understanding their rights and obligations pursuant to this Act.

(3) The director may, if he or she considers it necessary or advisable for the purposes of this Act, assign an official representative to assist patients in a region that is in addition to the region for which the official representative was appointed.

(4) The minister shall provide to official representatives appointed pursuant to subsection (2) remuneration and reimbursement for expenses on any terms and conditions that the minister considers appropriate”.

New sections 11 and 12

12 Sections 11 and 12 are repealed and the following substituted:

“Eligibility

11(1) Subject to section 13, any person who is a beneficiary pursuant to *The Saskatchewan Medical Care Insurance Act* is eligible to receive services provided by the minister pursuant to this Act at the expense of the Government of Saskatchewan.

(2) If a regional health authority or a health care organization, within the meaning of *The Regional Health Services Act*, provides mental health services to beneficiaries, it shall provide those services to each beneficiary on the same terms and conditions.

(3) A regional health authority or a health care organization, within the meaning of *The Regional Health Services Act*, shall not include as a term or condition of providing mental health services any requirement with respect to the place of residency of the beneficiary.

“Services to persons who are not beneficiaries

12 The minister may provide services to persons who are not beneficiaries pursuant to section 11, and may enter into any agreements that the minister considers appropriate with any person with respect to providing services pursuant to this Act to persons who are not beneficiaries”.

New section 14

13 Section 14 is repealed and the following substituted:

“Preservation of rights

14 Except as provided in this Act, no person is to be deprived of any right or privilege enjoyed by other persons solely because he or she:

- (a) is receiving or has received mental health services; or
- (b) is or has been named in a certificate, warrant or order issued pursuant to section 18, 19, 21, 22, 23, 24, 24.1 or 24.3 of this Act or in any similar certificate, warrant or order issued pursuant to *The Mental Health Act* or any former Act respecting mental health”.

Section 16 amended

14 Subsection 16(1) is repealed and the following substituted:

“(1) Every person who is apprehended or detained pursuant to section 18, 19, 20, 21, 22, 23, 24, 24.1 or 24.3:

- (a) must be informed promptly of the reasons for his or her apprehension or detention, as the case may be; and
- (b) is entitled on his or her own request to receive a copy of the certificate, warrant or order pursuant to which he or she has been apprehended or is detained, as the case may be, as soon as is reasonably practicable”.

New sections 17, 18 and 18.1

15 Sections 17 and 18 are repealed and the following substituted:

“Voluntary request for services

17 Subject to the regulations and to the availability of services, a person may, on his or her own request:

- (a) receive assessment and treatment services;
- (b) with the advice and on the arrangements of a physician with admitting privileges to a mental health centre, be admitted to a mental health centre; or
- (c) receive other services available pursuant to this Act.

“Involuntary examination

18(1) Subject to subsection (2) and the regulations, any person may be conveyed to a place where he or she may be examined by a physician who has admitting privileges to a mental health centre if that person:

- (a) in the opinion of an examining physician or a prescribed health professional, is suffering from a mental disorder and requires a psychiatric examination to ascertain whether he or she should be admitted to a mental health centre pursuant to section 24; and
- (b) refuses to submit to the examination mentioned in clause (a).

(2) A person may be conveyed to a place for the purpose of the psychiatric examination mentioned in clause (1)(a) only if:

- (a) arrangements have been made with a physician who has admitting privileges to a mental health centre; and
- (b) the certificate of the examining physician or the prescribed health professional is issued in accordance with this section.

(3) The certificate of a physician or a prescribed health professional in the prescribed form is sufficient authority to any person to apprehend the person who is the subject of the certificate and convey him or her immediately to the place where the examination is to be conducted by the physician who has admitting privileges to a mental health centre mentioned in subsection (1).

(4) Every certificate issued pursuant to subsection (2) is required to:

- (a) state that the examining physician or the prescribed health professional has personally examined the person who is the subject of the certificate and, after due inquiry into the necessary facts relating to the case of the person, has formed the opinion that the person is suffering from a mental disorder and requires a psychiatric examination to ascertain whether he or she should be admitted to a mental health centre pursuant to section 24;
- (b) state the facts on which the examining physician or the prescribed health professional has formed his or her opinion of the mental disorder;
- (c) show the date on which the examination was made; and
- (d) be signed in the presence of one subscribing witness.

(5) No person shall be conveyed for a psychiatric examination more than seven days after the date on which the examination for the purposes of subsection (1) was made.

(6) A psychiatric examination pursuant to this section must be conducted as soon as is reasonably practicable, and in all cases within 24 hours, after the person arrives at the place where he or she is to be examined.

“Involuntary patients

18.1 Unless otherwise directed by the director, the assessment, treatment and care of an involuntary patient is to be provided at a mental health centre”.

Section 19 amended

16(1) Subsection 19(1) is repealed and the following substituted:

“(1) A person may lay an information before a judge of the Provincial Court of Saskatchewan in the prescribed form and manner if that person believes on reasonable grounds that another person who refuses to submit to a medical examination:

- (a) is suffering from a mental disorder; and
- (b) is in need of examination to determine whether he or she should be admitted to a mental health centre pursuant to section 24”.

(2) Subsection 19(2) is repealed and the following substituted:

“(2) If on inquiry the judge of the Provincial Court of Saskatchewan is satisfied that the person named in the information is in need of examination to determine whether he or she should be admitted to a mental health centre pursuant to section 24, that judge may, after making arrangements with a physician who has admitting privileges to a mental health centre, issue a warrant in the prescribed form and manner to apprehend the person named in the warrant and cause him or her to be taken to a place where he or she may be examined by that physician”.

(3) Subsection 19(5) is amended by striking out “the physician who examines him” and substituting “the physician who examines that person”.

(4) Subsection 19(6) is amended by striking out “constable or”.

(5) Subsection 19(7) is repealed and the following substituted:

“(7) The person who is apprehended pursuant to this section must be examined by a physician as soon as is reasonably practicable and in all cases within 24 hours after that person’s apprehension”.

New section 20

17 Section 20 is repealed and the following substituted:

“Powers of peace officers in certain cases

20(1) A peace officer may apprehend a person without a warrant and convey that person as soon as is reasonably practicable to a place where he or she may be examined by a physician if the peace officer has reasonable grounds to believe that the person is:

- (a) suffering from a mental disorder; and
- (b) likely to cause harm to himself or herself or to others or to suffer substantial mental or physical deterioration if he or she is not detained in a mental health centre.

(2) A person apprehended pursuant to subsection (1) must be examined by a physician as soon as is reasonably practicable and in all cases within 24 hours after his or her apprehension”.

Section 21 amended

18(1) Subsection 21(1) is repealed and the following substituted:

“(1) Subject to the regulations, if the director has reason to believe that a person who is being detained in a hospital outside Saskatchewan by reason of having a mental disorder should be brought into Saskatchewan, the director may, by order in the prescribed form, authorize that the person be taken into custody, conveyed to a mental health centre and examined by a physician who has admitting privileges to the mental health centre”.

(2) Subsection 21(2) is amended by striking out “facility” and substituting “mental health centre”.

New section 22

19 Section 22 is repealed and the following substituted:

“Treatment of person charged with an offence

22(1) In this section, ‘**judge**’ includes a judge of the Provincial Court of Saskatchewan.

(2) If a person who has been charged with an offence and who is in custody requests an examination in order to determine whether he or she should be treated for a mental disorder, the judge may, after making the necessary arrangements with a psychiatrist or any other qualified health professional designated by the regional director, order that the person be conveyed to a place where he or she may be examined by that psychiatrist or other professional.

(3) If a judge considers that a person who has been charged with an offence is suffering from a mental disorder and is in need of an examination to determine whether he or she should be admitted to a mental health centre pursuant to section 24, the judge may, after making arrangements with a physician who has admitting privileges to a mental health centre, order that the person be conveyed to a place where he or she may be examined as an out-patient by that physician.

(4) If an order is made pursuant to subsection (2) or (3), the judge may order that the person to be examined is to be accompanied by a peace officer who shall be responsible for the custody of the person until the examination has been completed.

(5) The results of an examination ordered pursuant to subsection (2) or (3) are to be communicated in writing to the judge.

(6) A person mentioned in subsection (2) or (3) may receive treatment with the approval of the court if the judge, on the basis of the results of the examination conducted pursuant to this section, is satisfied that:

- (a) the person examined requires treatment for a mental disorder;
- (b) a psychiatrist or other qualified health professional designated by the regional director is prepared to provide treatment to the person; and
- (c) the person consents to receiving treatment”.

Section 23 amended

20 Section 23 is amended in the portion preceding clause (a) by striking out “an in-patient facility” and substituting “a mental health centre”.

Section 23.1 amended

21 Subsection 23.1(1) is amended by striking out “an in-patient facility” wherever it appears and in each case substituting “a mental health centre”.

New section 24

22 Section 24 is repealed and the following substituted:

“Admission on medical certificates

24(1) In this section, ‘physician’ means:

- (a) a physician who has admitting privileges to a mental health centre; or
- (b) a resident in psychiatry under the supervision of a psychiatrist who has admitting privileges to a mental health centre.

(2) Every certificate issued for the purposes of this section is to be in the prescribed form and is to:

(a) state that the physician has examined the person named in the certificate within the preceding 72 hours and that, on the basis of the examination and any other pertinent facts regarding the person or the person’s condition that have been communicated to the physician, he or she has reasonable grounds to believe that:

- (i) the person is suffering from a mental disorder as a result of which he or she is in need of treatment or care and supervision that can be provided only in a mental health centre;
- (ii) as a result of the mental disorder the person is unable to fully understand and to make an informed decision regarding his or her need for treatment or care and supervision; and
- (iii) as a result of the mental disorder, the person is likely to cause harm to himself or herself or to others or to suffer substantial mental or physical deterioration if he or she is not detained in a mental health centre;

(b) state the facts on which the physician has formed his or her opinion that the person meets the criteria set out in clause (a);

(c) show the date on which the examination was made; and

(d) be signed in the presence of one subscribing witness.

(3) On the issuance of the certificates of two physicians at least one of whom is a psychiatrist:

(a) a person who is not an in-patient in a mental health centre may be apprehended, conveyed and admitted to a mental health centre and detained there until the end of the 21st day following the day that he or she is admitted;

(b) a person who is an in-patient in a mental health centre may be detained there until the end of the 21st day following the date of issuance of the first of the certificates.

- (4) If one of the certificates mentioned in subsection (3) is issued by a resident in psychiatry under the supervision of a psychiatrist, the other certificate must not be issued by:
- (a) the psychiatrist who is supervising that resident; or
 - (b) another resident in psychiatry.
- (5) Notwithstanding subsection (3), if it is not reasonably practicable to obtain the certificates of two physicians at least one of whom is a psychiatrist, on the issuance of the certificate of one physician:
- (a) a person may be apprehended, conveyed and admitted to a mental health centre and detained there until the end of the third day following the day on which he or she is admitted;
 - (b) a person who is an in-patient in a mental health centre may be detained there until the end of the third day following the date of the issuance of the certificate.
- (6) If a person is detained in a mental health centre pursuant to subsection (5), a second opinion about his or her condition is to be obtained as soon as is practicable, if the physician who signed the certificate on the basis of which the person is detained in the mental health centre is:
- (a) a psychiatrist, from another physician; or
 - (b) not a psychiatrist, from a psychiatrist.
- (7) A person detained pursuant to subsection (5) may be further detained until the end of the 21st day following the date of the issuance of the certificate mentioned in that subsection if a certificate is issued by the physician who examined the patient pursuant to subsection (6).
- (8) A person detained in a mental health centre pursuant to this section may be detained for successive periods of 21 days on the certificates, signed before the end of each 21-day period, of two physicians at least one of whom is a psychiatrist.
- (9) No person shall be admitted to a mental health centre:
- (a) pursuant to clause (3)(a) more than seven days after the date of the first of the two examinations on which the certificates are based;
 - (b) pursuant to clause (5)(a) more than seven days after the date of the examination on which the certificate is based.
- (10) If a person who has been detained pursuant to this section indicates a desire to remain in a mental health centre pursuant to section 17, the attending physician may issue an order in the prescribed form revoking any certificate then in effect, and in that event the person may remain in the mental health centre pursuant to that section”.

Section 24.1 amended

23(1) Subsection 24.1(1) is amended:

(a) **in the portion preceding clause (a) by striking out “The officer in charge of a facility” and substituting “The officer in charge of a mental health centre”;**

(b) **in clause (a) by striking out “an in-patient facility” and substituting “a mental health centre”; and**

(c) **in clause (d) by striking out “60 or more consecutive days” and substituting “a total of 60 days or longer”.**

(2) Subsection 24.1(2) is repealed and the following substituted:

“(2) Copies of an application pursuant to subsection (1) are to be served on:

(a) the person who is the subject of the application;

(b) the person’s nearest relative;

(c) the person’s proxy, if any;

(d) the person’s personal guardian, if any; and

(e) an official representative for the region”.

(3) Subsection 24.1(5) is repealed and the following substituted:

“(5) An application for a review of a detention order may be made by:

(a) the person who is the subject of the application;

(b) the person’s nearest relative;

(c) the person’s proxy, if any;

(d) the person’s personal guardian, if any;

(e) the officer in charge of the mental health centre in which the person is detained;

(f) an official representative for the region;

(g) any other person with a sufficient interest”.

(4) Subsection 24.1(6) is amended by striking out “is to be made by notice of motion and”.

(5) Subsection 24.1(8) is amended by adding “, any proxy, any personal guardian” after “nearest relative”.

Section 24.2 amended

24 Subsection 24.2(1) is amended by striking out “an in-patient facility” and substituting “a mental health centre”.

Section 24.3 amended

25(1) Subsection 24.3(1) is amended:

(a) by repealing subclause (a)(ii) and substituting the following:

“(ii) during the preceding two-year period, the person:

(A) has been admitted to a mental health centre, voluntarily or involuntarily, on at least one occasion; or

(B) has previously been the subject of a community treatment order”; **and**

(b) by adding the following clause after clause (d):

“(d.1) if considered necessary, state that the person is required to stay at a residence specified by the psychiatrist”.

(2) Clause 24.3(3)(b) is repealed and the following substituted:

“(b) the patient’s nearest relative;

“(b.1) the patient’s proxy, if any;

“(b.2) the patient’s personal guardian, if any”.

Section 24.4 amended

26 The following subsection is added after subsection 24.4(3):

“(4) If there is no lapse in a valid community treatment order, a certificate in support of a community treatment order is not required for any subsequent renewal of the order”.

Section 24.5 amended

27(1) Subsection 24.5(1) is repealed and the following substituted:

“(1) Every community treatment order and any renewal of it that has been issued pursuant to section 24.4 by a psychiatrist is valid for the period specified in the community treatment order, to a maximum of six months from the date of the community treatment order”.

(2) Subsection 24.5(1.1) is repealed and the following substituted:

“(1.1) Subject to subsections (1.2) and (1.3), a community treatment order that has been validated by a certificate in support of the community treatment order issued pursuant to section 24.4 by a physician designated pursuant to section 24.31 is valid for the period specified in the community treatment order, to a maximum of 72 hours from the date of the community treatment order”.

(3) Subsection 24.5(1.2) is repealed and the following substituted:

“(1.2) During the period of validity of a community treatment order supported by a physician designated pursuant to section 24.31, that order may be renewed if a further certificate in support of the community treatment order is issued by a psychiatrist.

“(1.3) A community treatment order that is renewed pursuant to subsection (1.2) is valid for the period specified in the community treatment order to a maximum of six months from the date of the renewal”.

(4) Subsection 24.5(2) is amended by adding “, any proxy, any personal guardian” after “nearest relative”.

(5) Subclause 24.5(3)(c)(ii) is repealed and the following substituted:

“(ii) the patient’s nearest relative;

“(ii.1) the patient’s proxy, if any;

“(ii.2) the patient’s personal guardian, if any”.

Section 24.6 amended

28 Subsection 24.6(1) is repealed and the following substituted:

“(1) If a person who is the subject of a community treatment order fails to comply with the community treatment order and refuses to submit to a psychiatric examination to ascertain whether or not he or she should be admitted to a mental health centre pursuant to section 24, the attending physician or prescribed health professional may order that the person be apprehended and immediately conveyed to a place where the attending physician may examine the person”.

Section 25 amended

29(1) Subsection 25(1) is repealed and the following substituted:

“(1) Except in the case of emergency, if a patient is in a mental health centre pursuant to section 17, no diagnostic or treatment services or procedures are to be carried out on the patient except with his or her consent or, if he or she does not have the capacity to consent, with the consent of his or her nearest relative, or proxy or personal guardian, if any”.

(2) Subsection 25(2) is repealed and the following substituted:

“(2) Subject to the regulations and to subsections (3) to (5), the attending physician may perform or prescribe any diagnostic procedures he or she considers necessary to determine the existence or nature of a mental disorder and administer or prescribe any medication or other treatment that is consistent with good medical practice and that he or she considers necessary to treat the mental disorder to a patient who is detained pursuant to section 24 or 24.1 without that patient’s consent”.

New section 25.1

30 The following section is added after section 25:

“Nearest relative

25.1(1) Subject to subsections (2) and (3), a nearest relative is, with respect to a person requiring a diagnosis, treatment or care in relation to a mental disorder, the person first described in the following clauses who has capacity and is available:

- (a) the legally married spouse of the person or a person with whom the person cohabits and has cohabited as a spouse in a relationship of some permanence;
- (b) an adult son or daughter;
- (c) a parent or legal custodian;
- (d) an adult brother or sister;

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- (e) a grandparent;
 - (f) an adult grandchild;
 - (g) an adult uncle or aunt;
 - (h) an adult nephew or niece.
- (2) For the purposes of subsection (1):
- (a) if a person requiring a diagnosis, treatment or care in relation to a mental disorder is not an adult, the decision of a legal custodian, within the meaning of *The Children's Law Act, 1997*, is preferred to the decision of a non-custodial parent;
 - (b) if a person requiring a diagnosis, treatment or care in relation to a mental disorder is an adult, the decision of a person, other than the member of the Executive Council to whom for the time being the administration of *The Child and Family Services Act* is assigned, who was the legal custodian of the person requiring those services immediately before that person became an adult is preferred to the decision of a parent;
 - (c) the decision of a relative of the whole blood is preferred to the decision of a relative of the same description of the half blood; and
 - (d) the decision of the elder or eldest of two or more relatives listed in each clause of subsection (1) is preferred to the decision of the other or others of those relatives”.

New section 26

31 Section 26 is repealed and the following substituted:

“Person other than nearest relative

26(1) If a patient mentioned in subsection 25(1) has appointed a proxy, the proxy shall act in the place of the nearest relative.

(2) If a personal guardian has been appointed with respect to a patient mentioned in subsection 25(1), the personal guardian shall act in the place of the nearest relative.

(3) If a person other than the nearest relative is authorized to act on behalf of the patient pursuant to subsection (1) or (2), the nearest relative is no longer authorized to consent on behalf of the patient”.

New section 27

32 Section 27 is repealed and the following substituted:

“Duty to provide care and treatment

27 Subject to section 25, if a person is detained in a mental health centre, the attending physician shall endeavour with all resources reasonably available in the mental health centre to provide the person with care and treatment with a view to the result that the detention of the person in the mental health centre will no longer be required”.

New section 28

33 Section 28 is repealed and the following substituted:

“Transfer to another facility

28(1) Subject to subsection (5), the regulations and to the terms of any warrant or order authorizing a patient’s detention in a mental health centre pursuant to section 23, the director may, by order in the prescribed form, transfer an involuntary patient from a mental health centre to any other mental health centre.

(2) An order issued pursuant to subsection (1) is to include written reasons for the transfer.

(3) A patient who is the subject of an order issued pursuant to subsection (1) must be informed promptly of the reasons for the transfer and is entitled on his or her own request to receive a copy of the order as soon as is reasonably practicable.

(4) If a patient is transferred pursuant to subsection (1), the director’s order is to be accompanied by the certificates, warrant or order authorizing the detention of the person in the mental health centre from which he or she is transferred, and the director’s order and the certificates, warrant or order continue to be sufficient authority for the patient’s detention.

(5) On the order of the attending physician, a patient detained in a mental health centre pursuant to section 24 may be transferred from one mental health centre to another if the two mental health centres are in the same municipality.

(6) An order pursuant to subsection (5) is to be in the prescribed form and a copy is to be given to the patient, his or her nearest relative, any proxy, any personal guardian and an official representative for the region”.

New section 29

34 Section 29 is repealed and the following substituted:

“Temporary removal and return

29(1) Subject to the regulations, the attending physician may authorize the temporary removal of an involuntary patient from a mental health centre to an appropriate place, having ascertained that the patient:

(a) requires health care or other services that cannot be provided in the mental health centre; or

(b) requires a temporary absence from the mental health centre for activities that will be of benefit to the patient.

(2) From the time of the involuntary patient’s removal pursuant to subsection (1) until his or her return to the mental health centre, the patient is deemed to continue to be a patient of the mental health centre in the same manner and to the same extent and is subject to the same control as if he or she were in the mental health centre”.

New sections 30 and 30.1

35 Section 30 is repealed and the following substituted:

“Departure and return, powers of attending physician

30(1) If a patient who is detained pursuant to section 24 leaves a mental health centre without having been discharged, the attending physician may, within 21 days after the patient’s departure, if he or she considers it advisable to do so, order that the patient be returned to the mental health centre.

(2) If the attending physician orders that a patient be returned to a mental health centre pursuant to subsection (1), the patient may be apprehended and returned to the mental health centre, without a warrant, by:

- (a) any peace officer; or
- (b) any person designated by the attending physician.

(3) If a patient who is detained pursuant to section 24 leaves a mental health centre without having been discharged and remains absent from the mental health centre for a period of more than 21 days, he or she is deemed to be discharged from the mental health centre.

“Temporary hold for voluntary patients

30.1(1) A nurse in a mental health centre may detain or cause to be detained and, if necessary, restrain or cause to be restrained a voluntary patient requesting to be discharged if the nurse believes on reasonable grounds that the patient:

- (a) has a mental disorder;
- (b) because of the mental disorder, is likely to cause serious harm to himself or herself or to another person or to suffer serious mental or physical deterioration if the patient leaves the mental health centre; and
- (c) needs to be examined by a physician or a resident in psychiatry.

(2) A patient who is detained pursuant to subsection (1) must be examined by a physician or a resident in psychiatry within three hours after the detention commenced”.

New section 31

36 Section 31 is repealed and the following substituted:

“Discharge from mental health centre

31(1) If the attending physician is of the opinion that a person detained pursuant to section 24 no longer meets the criteria for a certificate set forth in clause 24(2)(a), the attending physician shall:

- (a) issue an order in the prescribed form revoking any certificate then in effect;
- (b) advise the patient that an order has been issued pursuant to clause (a) and that the patient is no longer subject to detention pursuant to section 24;
- (c) provide an official representative for the region with a copy of the order issued pursuant to clause (a); and
- (d) if the patient requests a copy of the order issued pursuant to clause (a), provide him or her with a copy.

(2) If an order is issued pursuant to clause (1)(a) and the person remains in the mental health centre on his or her own request, section 17 applies, with any necessary modification.

(3) If there is no lawful authority for detaining a person in a mental health centre, the person must be discharged:

- (a) on his or her own request; or
- (b) if his or her attending physician considers it advisable that he or she be discharged, on the direction of the attending physician”.

Section 32 amended

37 Subsection 32(3) is repealed and the following substituted:

“(3) Each member of a review panel holds office for a term of not more than three years and until the member is reappointed or a successor is appointed”.

Section 33 amended

38(1) Subsection 33(1) is repealed and the following substituted:

“(1) Subject to subsections (3) to (5), the attending physician shall immediately cause written notice to be given to the patient, his or her nearest relative, any proxy, any personal guardian and an official representative for the region in which the mental health centre is located if that patient:

- (a) is subject to detention in a mental health centre pursuant to section 24;
- (b) is the subject of a community treatment order pursuant to section 24.3; or
- (c) is the subject of an order for a transfer pursuant to subsection 28(1)”.

(2) Subsection 33(2) is repealed and the following substituted:

“(2) On receipt of a notice pursuant to subsection (1), the official representative shall:

- (a) visit the patient;
- (b) as soon as is reasonably practicable, advise the patient about his or her right of appeal; and
- (c) provide any assistance that the official representative considers necessary to enable the patient, or a nearest relative, proxy or personal guardian on the patient’s behalf, to initiate an appeal”.

(3) Clause 33(3)(a) is amended by striking out “an in-patient facility” and substituting “a mental health centre”.

Section 34 amended

39(1) Subsection 34(3) is amended by adding “, proxy or personal guardian” after “nearest relative”.

(2) Subsection 34(4) is amended by striking out “with respect to him since he last exercised his right of appeal” and substituting “with respect to that person since he or she last exercised his or her right of appeal”.

(3) Subsection 34(5) is amended:

(a) in the portion preceding clause (a) by striking out “an in-patient facility” and substituting “a mental health centre”; and

(b) in the portion following clause (c) by striking out “facility” and substituting “mental health centre”.

(4) Subsection 34(5.2) is repealed and the following substituted:

“(5.2) If a community treatment order is issued pursuant to section 24.3 that would extend the period of the community treatment order beyond six months or any subsequent six-month period following the date on which the person first became the subject of a community treatment order, the attending physician shall notify the chairperson of the review panel for the region of the extension, and, for the purposes of section 34, that notice is deemed to be an appeal by the person who is subject to the community treatment order”.

(5) Subsection 34(9) is repealed and the following substituted:

“(9) The chairperson of the review panel shall make a written report of the decision of the review panel and shall, before the end of the third business day following the day that the appeal was received, transmit the report to:

- (a) the appellant;
- (b) the nearest relative, if he or she submitted the appeal;
- (c) the proxy, if any;
- (d) the personal guardian, if any;
- (e) an official representative for the region, if he or she submitted the appeal; and
- (f) the officer in charge of the mental health centre in which the appellant is a patient”.

(6) Subsection 34(11) is amended by striking out “facility” and substituting “mental health centre”.

Section 36 amended

40(1) Subsection 36(1) is repealed and the following substituted:

“(1) A patient, or a person described in subsection 34(3) on the patient’s behalf, may appeal the decision of a review panel respecting an appeal pursuant to section 34 to the Court of Queen’s Bench within 30 days after the date of service of the decision”.

(2) Subsection 36(1.1) is amended by striking out “Her Majesty’s Court of Queen’s Bench for Saskatchewan” and substituting “the Court of Queen’s Bench”.

(3) Subsection 36(2) is repealed and the following substituted:

“(2) An appeal pursuant to this section is to be served on:

- (a) the director;
- (b) the officer in charge of the mental health centre in which the appellant is a patient; and
- (c) any other persons that the court may direct”.

(4) Subsection 36(3) is repealed and the following substituted:

“(3) The practice and procedure of the Court of Queen’s Bench on an application in chambers apply to any application pursuant to this section, with any necessary modification”.

New sections 37 to 37.94

41 Section 37 is repealed and the following substituted:

“Licence required

37(1) No person shall operate a mental health approved home unless that person holds a licence authorizing him or her to do so.

(2) A licence respecting a building or premises that will be operated as a mental health approved home must not be issued unless the regional director is satisfied that:

- (a) the building or premises:
 - (i) is the principal residence of the operator;
 - (ii) meets the fire, health and safety standards established by applicable Acts and regulations and municipal bylaws;
 - (iii) has been inspected by a fire inspector within the meaning of *The Fire Prevention Act, 1992* in the year in which the application for a licence is made or in the preceding year and will be inspected after that time in accordance with *The Fire Prevention Act, 1992*;
 - (iv) has been inspected by the regional director in the year in which an application is made and annually while the licence is valid;
 - (v) provides sleeping accommodation with a reasonable amount of space and privacy for each resident;
 - (vi) provides a reasonable amount of recreational space for residents;
 - (vii) provides adequate furnishings and accessories for each resident;
 - (viii) has a lockable storage cabinet in which medications may be stored;
- (b) the operator is a suitable, reliable and responsible person who is able to provide supervised accommodation for persons who require such accommodation because of a mental disorder; and
- (c) in the operation of the mental health approved home, the operator will:
 - (i) operate in a manner that does not contravene any Act or regulation or municipal bylaw;
 - (ii) admit persons to it only after the regional director has:
 - (A) determined that the operator is capable of providing the necessary supervised accommodation; and
 - (B) given his or her approval with respect to each person for whom accommodation is sought;
 - (iii) provide supervised accommodation in the home for not more than five residents at any one time;

(iv) provide for the individual needs of each resident, including needs for food, supervised accommodation, safety, social relationship and privacy;

(v) keep the home open at all reasonable times to visitation and inspection by a fire inspector within the meaning of *The Fire Prevention Act, 1992*, the public health inspector and the regional director; and

(vi) inform the regional director of any circumstances that may cause the operator to be unable to provide adequately for the supervised accommodation of residents.

“Applications

37.1 An applicant for a licence shall:

(a) apply to the regional health authority in a form approved by the regional health authority; and

(b) include in the application any relevant information and material that the regional health authority may request.

“Issuance of licence

37.2(1) If an application is received by the regional health authority, the regional health authority may:

(a) if satisfied that the applicant has complied with this Act and the regulations, issue the licence; or

(b) refuse to issue the licence.

(2) The minister may make payments in support of accommodation and supervision provided to residents by operators of mental health approved homes.

(3) The regional health authority may include as a provision of the licence any term or condition that the regional health authority considers appropriate.

“Compliance with licence required

37.3 No person to whom a licence is issued shall fail to comply with any term or condition contained in the licence.

“Duration of licence

37.4 A licence is valid for the period set out in the licence or, if no period is set out in the licence, for one year from the date on which it is issued, unless the licence is suspended or cancelled.

“Licence not transferable

37.5 A licence is not transferable.

“Licence to be displayed

37.6 Every licensee shall cause the licence to be displayed in a prominent place in the mental health approved home for which it is issued.

“Amendment, suspension, cancellation of licences

37.7(1) If the regional health authority considers it to be in the public interest, it may renew, amend, suspend or cancel a licence.

(2) For the purposes of section 37, a licence that is suspended pursuant to this section is, for the period of the suspension, deemed not to have been issued.

“Title reserved

37.8 No person who operates any facility shall hold the facility out as being a mental health approved home unless that person holds a licence for the facility.

“Inspection

37.9(1) The regional director may enter any premises or vehicle associated with a mental health approved home and conduct an inspection for the purposes of:

- (a) ensuring the well-being of residents of the mental health approved home; or
 - (b) determining whether there is compliance with this Act or the regulations.
- (2) An inspection may be conducted:
- (a) at any reasonable time; or
 - (b) at any other time if the regional director has reasonable grounds to believe that an unsafe situation exists.
- (3) When conducting an inspection in accordance with subsection (1), the regional director may do all or any of the following:
- (a) make any inquiry the regional director considers appropriate;
 - (b) require the use of any machinery, equipment, appliance or thing located at the premises to be demonstrated;
 - (c) conduct any tests, take any samples and make any examinations that the regional director considers necessary or advisable;
 - (d) take one or more persons to any place to assist the regional director and make arrangements with the licensee for those persons to re-enter the place to perform specified duties;
 - (e) require the production of, inspect and make copies of any books, records, papers or documents or of any entry in those books, records, papers or documents required to be kept by this Act or the regulations;
 - (f) subject to subsection (4), remove any books, records, papers or documents examined pursuant to this section for the purpose of making copies if a copy is not readily available, if a receipt is given;
 - (g) require the licensee to provide the regional director with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;
 - (h) in order to produce information and records mentioned in this subsection, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used by the licensee required to deliver the information and records.
- (4) If the regional director removes any books, records, papers or documents pursuant to this section for the purpose of making copies, the regional director shall:
- (a) make those copies as soon as is reasonably possible; and

(b) promptly return the books, records, papers or documents from which the copies were made to:

- (i) the place from which they were removed; or
- (ii) any other place that may be agreed to by the regional director and the person who produced them.

“Information requested by regional director

37.91(1) The regional director may:

- (a) request from a licensee any information or material that the regional director may require for the purposes of this Act and the regulations; and
- (b) set out the manner in which and time within which that information must be provided.

(2) On receipt of a request of the regional director pursuant to subsection (1), a licensee must provide the regional director with the requested information or material respecting the licensee or mental health approved home:

- (a) in the manner specified by the regional director; and
- (b) within the time limits specified by the regional director.

“Request for review

37.92(1) A person who is the subject of a decision or action made with respect to the issuing, refusal to issue, renewal, amendment, suspension or cancellation of a licence for a mental health approved home by a regional health authority may request a review of the decision or action.

(2) A request for review is to be submitted in writing to the director within 30 days after the date on which the decision or action in relation to which the review is requested was made or taken.

(3) A request for review to the director does not stay the effect of the decision or action in relation to which the review is requested.

(4) On receiving a request for review, the director shall:

- (a) investigate the particulars of the decision or action in relation to which the review is requested; and
- (b) allow the person requesting the review an opportunity to make representations in a form and manner determined by the director.

(5) On completing the review, the director shall:

- (a) confirm, reverse or vary the decision or action in relation to which the review was requested; and
- (b) provide written reasons for the decision to the person who requested the review.

“Minister may waive or exempt

37.93 If the minister considers it appropriate to do so, he or she may:

- (a) waive the requirements of section 37; or
- (b) exempt any mental health approved home or any person from any requirement contained in the regulations.

“Annual inspection of facilities

37.94 The regional director shall cause each mental health approved home to be inspected annually and provide any directions to the licensee of that facility to make or cause to be made the maintenance, repairs or alterations that the regional director considers necessary within the time that the regional director may specify”.

Section 38 repealed

42 Section 38 is repealed.

Section 40 amended

43 Section 40 is amended by striking out “more than one year after the date” and substituting “more than two years after the date”.

Section 41 amended

44 Section 41 is amended by striking out “an in-patient facility except where the patient has been authorized to depart from the facility” and substituting “a mental health centre except if the patient has been authorized to depart from the mental health centre”.

Section 42 amended

45 Section 42 is amended by striking out “\$500” and substituting “\$5,000, and to a further fine of not more than \$500 for each day or part of a day during which the offence continues”.

Section 43 amended

46 Section 43 is amended:

- (a) by repealing clause (a);**
- (b) by repealing clause (b);**
- (c) by repealing clause (c);**
- (d) in clause (d) by striking out “facilities” and substituting “mental health centres”;**
- (e) by adding the following clause after clause (e):**
 “(e.1) for the purposes of section 18, prescribing health professionals who may provide an opinion and a certificate with respect to whether a person is suffering from a mental disorder and requires a psychiatric examination”;
- (f) in clause (f) by striking out “in-patient facilities” and substituting “mental health centres”;**
- (g) by repealing clause (h);**
- (h) by repealing clause (i);**
- (i) by repealing clause (k) and substituting the following:**
 “(k) governing the granting of licences with respect to mental health approved homes and the renewal, amendment, suspension and cancellation of those licences”;

(j) by repealing clause (l) and substituting the following:

“(l) establishing standards for the construction, operation and maintenance of mental health approved homes;

“(1.1) respecting the eligibility of, and criteria to be met by, applicants for licences for mental health approved homes;

“(1.2) respecting the terms and conditions to be contained in licences for mental health approved homes;

“(1.3) respecting eligibility for residence in mental health approved homes;

“(1.4) respecting the accommodation, services and programs to be made available to residents of mental health approved homes;

“(1.5) respecting the personnel requirements for mental health approved homes and the qualifications of persons who operate or provide services in mental health approved homes;

“(1.6) establishing and protecting the rights and privileges of persons who reside in mental health approved homes;

“(1.7) respecting the records to be kept by persons who operate mental health approved homes;

“(1.8) respecting the confidentiality of information concerning mental health approved homes and operators of mental health approved homes;

“(1.9) respecting agreements between persons who operate mental health approved homes and regional health authorities”;

(k) by repealing clause (m) and substituting the following:

“(m) governing payment by the ministry for the accommodation and supervision of persons receiving services provided pursuant to this Act in mental health approved homes”;

(l) in clause (n) by striking out “department” and substituting “ministry”;

(m) in clause (o) by striking out “in-patient facilities that may be held in trust by those facilities” and substituting “mental health centres that may be held in trust by those mental health centres”;

(n) in clause (p) by striking out “an in-patient facility of moneys realized from donations or bequests or moneys otherwise connected with the operation of the facility” and substituting “a mental health centre of moneys realized from donations or bequests or moneys otherwise connected with the operation of the mental health centre”;

(o) by repealing clause (q); and

(p) by adding the following clauses after clause (s):

“(s.1) with respect to any matter governed by this Act:

(i) adopting, as amended from time to time or otherwise, all or any part of any code, standard or guideline;

(ii) amending for the purposes of this Act or the regulations any code, standard or guideline adopted pursuant to subclause (i);

(iii) requiring compliance with a code, standard or guideline adopted pursuant to subclause (i);

“(s.2) respecting the monitoring and enforcement of standards and other requirements established pursuant to this Act or the regulations;

“(s.3) respecting the appointment of persons, including persons who are not employees of the ministry, to monitor and enforce standards and other requirements established pursuant to this Act or the regulations;

“(s.4) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act”.

S.S. 1999, c.H-0.021, section 4 amended

47 Clause 4(4)(e) of *The Health Information Protection Act* is repealed.

Coming into force

48 This Act comes into force on proclamation.

THIRD SESSION

Twenty-seventh Legislature

SASKATCHEWAN

B I L L

No. 127

An Act to amend *The Mental Health Services Act* and
to make a consequential amendment to
The Health Information Protection Act

Received and read the

First time

Second time

Third time

And passed

Honourable Dustin Duncan
