HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION) ACT
RSBC 1996 CHAPTER 181

As amended by:

*Adult Guardianship Statutes Amendment Act, S.B.C. 1999, c.25*
*Definition of Spouse Act, S.B.C. 2000, c.24*
*Adult Guardianship Statutes Amendment Act, S.B.C. 2001, c. 2*

This is an unofficial consolidation of the *Health Care (Consent) and Care Facility (Admission) Act* as amended and reflecting those sections which are in force.

**Note:**
- **aaaa**: Shaded text - not in force

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HEALTH CARE (CONSENT) AND CARE FACILITY
(ADMISSION) ACT
[RSBC 1996] CHAPTER 181

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Definitions

1 In this Act:

“adult” means anyone who has reached 19 years of age;

“board” means a Health Care and Care Facility Review Board established under section 27 (1);

“care facility” means

(a) a facility licensed under the Community Care Facility Act and regulated under the Adult Care Regulations, B.C. Reg. 536/80,

(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;

“court” means the Supreme Court of British Columbia;

“designated agency” means a public body, organization or person designated as an agency under section 61 (a) of the Adult Guardianship Act for the purposes of Part 2 of that Act;

“facility care proposal” means a proposal described in section 20 (1);
“guardian” means a person appointed as
(a) a guardian under the Adult Guardianship Act, or
(b) a committee of a person who is declared under the Patients Property Act to be
   (i) incapable of managing himself or herself, or
   (ii) incapable of managing himself or herself or his or her affairs;

“health care” means anything that is done for a therapeutic, preventive, palliative, cosmetic or other purpose related to health, and includes
(a) a course of health care, for example, a series of immunizations or dialysis treatments or a course of chemotherapy, and
(b) participation in a medical research program approved by an ethics committee designated by regulation;

“health care provider” means a person 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;

“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 and cohabiting with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

“substitute decision maker” means a person appointed under the Adult Guardianship Act as a substitute decision maker.

1993-48-1.
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 professional services, care or treatment to a person under the Mental Health Act, if the person is detained in a designated facility under section 22, 28, 29, 30 or 42 of that Act, and

(c) the provision of professional services, care or treatment to a person under the Mental Health Act, if the person is released on leave or transferred to an approved home under section 37 or 38 of that Act.


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).

1993-48-3.

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.

1993-48-5.

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.

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 relatives or 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.
   (2) Consent to health care applies only to the specific health care that an adult has consented to.
   (3) However, 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.

1993-48-10.

Exception - if a substitute decision maker, 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 substitute decision maker, guardian or representative
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(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 substitute decision maker, 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 substitute decision maker, 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 substitute decision maker, guardian or representative, and

(b) to communicate with the adult’s substitute decision maker, guardian or representative.

1993-48-12.

**Exception - informed consent not required for preliminary examination**

13 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, relative or friend indicates that he or she wants the adult to be provided with health care.


**Exception - major health care**

14 (1) A health care provider may provide major health care to an adult without the adult’s consent if
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(a) after consulting with the adult’s spouse, relative or friend 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 it,

(b) the adult does not have a substitute decision maker, 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 subsections (4) to (7).

(2) However, if

(a) the adult or someone who is consulted under subsection (1) objects to the major health care or the decision about the adult’s incapability, or

(b) the adult is not accompanied by a spouse, relative or friend, the health care provider must arrange for an assessment, in accordance with the regulations, of whether or not the adult needs the proposed major health care and is incapable of giving, refusing or revoking consent to it.

(3) If an assessment under subsection (2) indicates that the adult needs the major health care and is incapable of giving, refusing or revoking consent to it, the health care provider may, subject to subsections (4) and (7), provide the health care if someone chosen under section 16 has authority to consent to the major health care and gives substitute consent.

(4) On choosing a person under section 16, the health care provider must

(a) inform the adult and any spouse, relative or friend of the adult who accompanies the adult of

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

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

(iii) he right to request a review, under section 28, within 72 hours, and

(b) give the adult a written notice in the prescribed form containing the information listed in paragraph (a).

(5) In addition, the health care provider must notify a prescribed advocacy organization of the decision or assessment that the adult for whom the major health care is proposed is incapable, and of the other information listed in subsection (4) (a), if

(a) the adult objects to the major health care or the decision about the adult’s incapability,

(b) the adult is not accompanied by a spouse, relative or friend,

(c) any spouse, relatives or friends accompanying the adult dispute among themselves about the major health care, or

(d) the adult’s rights under this Act may be at risk.
(6) After notifying the prescribed advocacy organization, the health care provider must allow someone from the advocacy organization to, in private,
   (a) inform the adult for whom the major health care is proposed about the right to a review, and
   (b) receive the adult’s directions.

(7) The health care provider must not provide the major health care to the adult for whom it is proposed until
   (a) the review period passes without a review being requested under section 28, or
   (b) a final decision is made on a review requested under section 28.

(8) Subsection (7) does not prevent the health care provider from providing health care under section 12.

(9) A health care provider may notify the Public Guardian and Trustee if the health care provider believes that an adult who is incapable of giving, refusing or revoking consent needs major health care that is of a type that
   (a) the adult’s substitute decision maker, guardian or representative is not authorized to consent to, or
   (b) someone chosen under section 16 is not authorized to consent to.

(10) On being notified under subsection (9), the Public Guardian and Trustee may apply to the court under the Adult Guardianship Act for
   (a) the appointment of a substitute decision maker or guardian for the adult, or
   (b) a change to an existing order appointing a substitute decision maker or guardian.


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 substitute decision maker, guardian or representative or the adult’s substitute decision maker, 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;
(e) anyone else related by birth or adoption to the adult.

(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.

1993-48-16.

Authority of a temporary substitute decision maker

17(1) A person chosen under section 16 has, for a period of 21 days from the date of being chosen, the authority to give or refuse substitute consent to health care for the adult.

(2) Subsection (1) applies even if the health care is for a continuous period that extends beyond the 21 day period so long as the health care begins before that period ends.

(3) Within the 21 day period, the person chosen under section 16 may apply to the court under the Adult Guardianship Act for an order appointing a substitute decision maker or guardian for the adult.

(4) If an application is made under the Adult Guardianship Act, the applicant’s authority to give or refuse substitute consent under this Act extends beyond the 21 day period until a final order is made.

(5) On being told that a person chosen under section 16 wants to be relieved of the responsibility of giving or refusing consent, the health care provider may choose another person in accordance with that section to assume that responsibility for the remainder of the 21 day period.

(6) A person chosen under section 16 has the right to all the information necessary to make an informed decision under subsection (1) of this section.

(7) Anyone who has custody or control of the information referred to in subsection (6) must disclose that information to the person chosen under section 16.
(8) Subsections (6) and (7) override
   (a) any claim of confidentiality or privilege other than a claim founded on solicitor-client privilege, and
   (b) any restriction, in an enactment or the common law, about the disclosure or confidentiality of information.

1993-48-17

Effective September 1, 2001, s.17 will provide as follows:

Authority of a temporary substitute decision maker

17(1) A person chosen under section 16 has, for a period of 21 days from the date of being chosen, the authority to give or refuse substitute consent to health care for the adult.

(2) Subsection (1) applies even if the health care is for a continuous period that extends beyond the 21 day period so long as the health care begins before that period ends.

(3) Within the 21 day period, the person chosen under section 16 may apply to the court under the Adult Guardianship Act for an order appointing a substitute decision maker or guardian for the adult.

(4) If an application is made under the Adult Guardianship Act, the applicant’s authority to give or refuse substitute consent under this Act extends beyond the 21 day period until a final order is made.

(5) On being told that a person chosen under section 16 wants to be relieved of the responsibility of giving or refusing consent, the health care provider may choose another person in accordance with that section to assume that responsibility for the remainder of the 21 day period.

(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 substitute decision maker 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 substitute decision maker’s request, disclose that information to the substitute decision maker or produce that document for inspection and copying by the substitute decision maker.

(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.

1993-48-17

Restrictions on authority of a temporary substitute decision maker

18(1) A person chosen under section 16 does not have authority to give 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) (a).

If any person referred to in subsection (2) does not agree on any matter referred to in subsection (2) (a) or (b), that person or the Public Guardian and Trustee may apply under the *Adult Guardianship Act* for the appointment of a substitute decision maker or guardian for the adult.


**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 friend or relative 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

(a) on the basis of the adult’s known beliefs and values, or

(b) in the adult’s best interests, if his or her beliefs and values are not known.

(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,

(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 3 - Admission to a Care Facility

Facility care proposal required

20 (1) The operator of a care facility must not admit an adult to live in the facility unless the adult or a person authorized under section 22 has accepted a facility care proposal that includes information about
   (a) the types and levels of care and the activities provided in the facility,
   (b) the policies followed in the facility, and
   (c) any other prescribed subject.

(2) The operator of the care facility must explain the facility care proposal to the adult.

(3) When explaining the facility care proposal, the operator of the care facility
   (a) must communicate with the adult in a manner appropriate to the adult’s skills and abilities, and
   (b) may allow any spouse, relative or friend who accompanies the adult, or who offers assistance, to help
       the adult to understand or demonstrate an understanding of the proposal.

If a facility care proposal is rejected

21 (1) A person authorized under subsection (2) may arrange for an assessment by a designated agency of whether an adult who has rejected a care facility proposal is incapable of making that decision, if the authorized person has reason to believe that
   (a) the adult needs and would benefit from admission to the care facility mentioned in the facility care proposal, and
   (b) the adult is incapable of deciding to reject the proposal.

(2) An assessment under subsection (1) may be arranged by one of the following persons:
   (a) a substitute decision maker, guardian or representative who is authorized to make decisions about the
       adult’s personal care;
   (b) the adult’s spouse;
   (c) a relative referred to in section 22 (2) (b) to (e);
   (d) the adult’s medical practitioner;
   (e) the Public Guardian and Trustee, if no one else is available.

(3) In assessing whether the adult is incapable of deciding to reject the facility care proposal, the designated agency must
   (a) comply with the regulations governing assessments, and
   (b) consider whether the adult demonstrates that he or she understands the facility care proposal, and the
       reason for admission to the care facility.

Who can accept the proposal if the adult is incapable

22 (1) If the designated agency decides that the adult is incapable of rejecting the facility care proposal, a substitute decision maker, guardian or representative who has authority to do so may accept or reject the proposal.
(2) If the adult has no substitute decision maker, guardian or representative with authority to accept a facility care proposal, the first, in listed order, of the following who is available and who qualifies under subsection (3) may accept or reject the proposal:
   
   (a) the adult’s spouse;
   (b) the adult’s child;
   (c) the adult’s parent;
   (d) the adult’s brother or sister;
   (e) anyone else related by birth or adoption to the adult.

(3) To qualify to accept or reject a facility care proposal, 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, and
   (d) be capable of accepting or rejecting the proposal.

(4) Before accepting or rejecting the facility care proposal, a person authorized under this section must
   
   (a) consult, to the greatest extent possible, with the adult and with any spouse, friend or relative of the adult who asks to assist, and
   (b) decide to accept or reject the proposal, in the adult’s best interests.

(5) In deciding whether the facility care proposal is in the adult’s best interests, the person authorized under this section must consider
   
   (a) the adult’s current wishes, values and beliefs,
   (b) whether the adult would benefit from admission to a care facility, and
   (c) whether a less restrictive type of care facility would be as beneficial to the adult as the proposed care facility.

(6) If no one listed in subsection (2) is available or qualifies under subsection (3) or if there is a dispute about who is entitled to accept or reject the facility care proposal, the Public Guardian and Trustee may
   
   (a) accept the proposal, or
   (b) apply to the court under Part 2 of the Adult Guardianship Act.

(7) A person who is authorized to accept or reject a facility care proposal has the right to all the information necessary to make an informed decision and section 17 (7) and (8) applies.


**Duty to notify others of admission**

23 (1) If an adult is admitted to a care facility after a facility care proposal is accepted for the adult under section 22, the operator of the care facility must notify the following of the admission:
   
   (a) the adult’s spouse, or a relative or friend of the adult, if known to the operator;
   (b) the adult’s medical practitioner;
   (c) the adult’s substitute decision maker, guardian or representative.

(2) The notice of admission must be in the prescribed form and must be delivered within 72 hours after the adult’s admission to the care facility.
(3) The operator of the care facility must notify a prescribed advocacy organization of the adult’s admission if
   (a) the adult objects to the admission,
   (b) any spouse, relatives or friends accompanying the adult dispute among themselves about the admission,
   (c) the adult has no spouse, relatives or friends and has been admitted by the Public Guardian and
        Trustee under section 22 (6), or
   (d) the operator has reason to believe that the adult’s rights under this Act may be at risk.

(4) After notifying the prescribed advocacy organization, the operator of the care facility must allow someone
   from the prescribed advocacy organization to, in private,
   (a) inform the adult who has been admitted about the right to a review, and
   (b) receive the adult’s directions.

1993-48-23.

**Authority to consent to health care not included**

24 A person who is authorized under section 22 to accept or reject a facility care proposal for an adult is not
   authorized to give or refuse consent to health care for the adult unless that person is authorized under Part 2
   of this Act.


**Use of restraints**

25 (1) The operator of a care facility must not restrain, by physical, chemical or other means, the freedom of
   movement of an adult who is living in the facility unless
   (a) all alternatives have been exhausted,
   (b) the restraint is as minimal as possible,
   (c) the restraint has been approved by a person authorized under section 22 (1), (2) or (6) and by a
        medical practitioner whose approval is based on the opinion of another health care provider, and
   (d) the necessity for the restraint is periodically reassessed in accordance with the regulations.

(2) A person authorized under section 22 (1), (2) or (6) may approve a decision to restrain the adult’s freedom
   of movement if
   (a) the person consults, to the greatest extent possible, with the adult and with any spouse, relative or
        friend of the adult who asks to assist, and
   (b) the decision is in the adult’s best interests or for the protection of others.

(3) The operator of a care facility may restrain the adult’s freedom of movement, even though the restraint is
   not approved under subsection (1) (c), if
   (a) the restraint is necessary to preserve the adult’s life or to prevent serious physical harm to the adult
        or others,
   (b) the adult is restrained for no longer than necessary and, at the most, for no longer than 72 hours,
   (c) a health care provider reassesses the necessity for the restraint at least every 8 hours, and
   (d) the operator ensures that the adult’s comfort and safety is monitored in accordance with the regula-
        tions.
(4) If the adult is restrained under this section, the operator of the care facility must
   (a) notify, in the prescribed form, any person who accepted a facility care proposal for the adult, and
   (b) record the restraint in accordance with the regulations.


**Right to leave care facility**

26 (1) An adult who has been admitted to live in a care facility has the right to move out of the facility unless he or she is incapable of making that decision.

(2) The adult’s substitute decision maker, guardian or representative or the person who accepted the facility care proposal for the adult may remove the adult from the care facility if
   (a) the adult is incapable of making the decision to move out of the facility, and
   (b) removing the adult from the facility is in the adult’s best interests.


**Part 4 - Reviews and Appeals**

**Health Care and Care Facility Review Boards**

27(1) The minister must establish a Health Care and Care Facility Review Board, appoint its members and designate a member of the board as its chair.

(2) The chair of the board may establish one or more panels of the board and designate the chair of each panel established and a panel, if established, must include at least
   (a) one health care provider;
   (b) one member of the Law Society of British Columbia, and
   (c) one person who is not a health care provider nor a member of the Law Society of British Columbia.

(3) If a panel is established
   (a) the chair of the board may refer matters that are before the board to a panel or a matter that is before a panel to the board or another panel,
   (b) the panel has all the jurisdiction and may exercise and perform the powers and duties of the board with respect to matters that come before the panel,
   (c) the board or 2 or more panels may proceed with separate matters at the same time, and
   (d) a decision or order of the panel is a decision or order of the board.

(4) The members of the board are entitled to be reimbursed by the minister for reasonable travelling and other out of pocket expenses necessarily incurred in discharging their duties, and may be paid remuneration set by the Lieutenant Governor in Council.

Requests for review

28 (1) A request may be made for a review of

(a) a decision that the adult to whom health care is provided or for whom health care is proposed is incapable of giving, refusing or revoking consent to health care,

(b) a decision to choose a particular person under section 16 to give, refuse or revoke substitute consent to health care,

(c) a decision to give, refuse or revoke substitute consent to health care,

(d) a decision that an adult is incapable of rejecting a facility care proposal,

(e) a decision to accept or reject a facility care proposal,

(f) a decision to restrain an adult’s freedom of movement within a care facility, or

(g) a decision that an adult is incapable of deciding to move out of a care facility.

(2) Any of the following may request a review:

(a) an adult to whom health care is being provided or for whom health care is proposed;

(b) an adult who is living in a care facility or for whom a care facility is proposed;

(c) a spouse, relative or friend of anyone referred to in paragraph (a) or (b);

(d) the substitute decision maker, guardian or representative of anyone referred to in paragraph (a) or (b);

(d.1) a health care provider caring for the adult referred to in paragraph (a);

(e) a prescribed advocacy organization in prescribed circumstances;

(f) the Public Guardian and Trustee.

(3) A request for a review made under subsection (1) (a) must be accompanied by the report of an assessment arranged under section 14 (2).

(4) (Repealed.)

(5) The request must be delivered to the board within 72 hours after the decision is made.

(6) The board must give the parties written notice of the request for a review and of the time, date and place of the hearing.

(7) The parties to a review are

(a) the person who requested the review,

(b) the adult

   (i) to whom health care is provided or for whom health care is proposed, or

   (ii) who is living in the care facility or for whom a care facility is proposed, and

(c) the person whose decision is being reviewed.

Hearings

29 (1) The board must hold a hearing to review the decision referred to in the request, unless the request is withdrawn before the day set for the hearing.

(2) The hearing must be held within 7 days after the board receives the request.

(3) A party is entitled to be represented by counsel or agent at the hearing.

(4) The board may inform a prescribed advocacy organization if the board is of the opinion that any of the following need assistance at the hearing:

   (a) an adult to whom health care is provided or for whom health care is proposed;

   (b) an adult who is living in a care facility or for whom a care facility is proposed.

(5) Before the hearing, a party must be given an opportunity to examine and copy those parts of any document or electronic recording that another party intends to introduce as evidence at the hearing.

(6) A party is entitled to present any evidence that the board considers relevant and to question witnesses.

(7) The standard of proof at the hearing is proof on a balance of probabilities.

(8) The board must fully inform itself of the facts at the hearing.

(9) For the purpose of subsection (8), the board may summon witnesses to the hearing, in addition to the witnesses called by the parties, and has the powers of a commissioner under sections 15 and 16 of the Inquiry Act.

1993-48-29.

Decisions or orders of the board

30 (1) After holding a hearing, the board may confirm the decision under review or substitute its own decision.

(2) When substituting its own decision, the board must comply with any provision of section 19 or 22 that is relevant to the decision.

(3) A decision of the board must be in writing and include reasons and the board must give copies of the decision to all parties.


Board’s power to give directions on request

31 (1) In addition to its powers and duties with respect to reviews, the board may, if requested, give advice or directions on the following:

   (a) the scope of a person’s authority under this Act;

   (b) whether health care is major health care or minor health care;

   (c) whether health care is of a type that someone chosen under section 16 is authorized to consent to;
(d) whether health care is of a type that a representative is authorized to give or refuse consent to;
(e) whether it is appropriate to refuse substitute consent under section 18 (2) to health care necessary to preserve life;
(f) any other matter relating to the provision of health care to an adult who is incapable of giving, refusing or revoking consent.

(2) Any of the following may request advice or directions from the board:
   (a) a health care provider;
   (b) a substitute decision maker;
   (c) a guardian;
   (d) a representative;
   (e) a person chosen under section 16;
   (f) the Public Guardian and Trustee.

(3) The request for advice or directions must be in writing and must be delivered to the board.


**Appeal from board decisions**

32 (1) Within 30 days after a decision is made by the board, a party may appeal the decision to the court on a question of law or fact or both.

(2) The Rules of Court apply to an appeal under this section to the extent that they are consistent with this section.

(3) The appeal is to consist of a new hearing unless the appeal is restricted to a question of law.

(4) The appeal suspends the effect of the decision being appealed.

(5) On application, the court may make an interim order authorizing health care to be given to a person if the health care is necessary to prevent physical or mental harm to the person.

(6) After hearing the appeal, the court may do one or more of the following:
   (a) confirm or rescind the decision of the board;
   (b) exercise all the powers of the board and substitute the court’s decision for the board’s decision;
   (c) refer all or part of the matter back to the board for rehearing with any directions the court considers appropriate.

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) someone’s authority to accept or reject a facility care proposal,

unless it is not reasonable to rely on that information.

1993-48-33.

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 (b) of the definition of “health care”;
(c) prescribing Acts 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 (6), 23 (3) and (4), 28 (2) (e) and 29 (4); 
(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) (Repealed.)
(k) prescribing forms for the purpose of requesting a review under section 28 or requesting advice or directions under section 31 or for any other purpose;

(k.1) prescribing the circumstances in which a prescribed advocacy organization may request a review;

(l) governing hearings before the board.

1993-48-34.

Offence

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

1993-48-35.

Commencement

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