

Legislation on Consent for Admission to a Care Facility in BC

This fact sheet is about **adults** (19 years or older). It provides an overview of the legislation that came into effect on November 4, 2019 (put forward by the BC Ministry of Health) and set out requirements about consent for admission to certain types of care facilities located and operating in **BC**.

These procedures only apply to care facility admission. These do not apply to managing finances, or consenting to health care, or to other personal care matters.

What law is involved?

The key legislation is **Part 3** of the **Health Care Consent and Care Facility Admission Act** (HCC&CFA Act).

The Health Care Consent Regulation expands on aspects of the HCC&CFA Act. Updates were also made to the Residential Care Regulation (for licensed community facilities under the Community Care and Assisted Living Act) and to the Patients' Bill of Rights Regulation (for licensed facilities under the Hospital Act, Part 2).

This fact sheet uses the term adult; the legislation uses the term 'person in care.'

To view legislation, go to www.bclaws.gov.bc.ca > Laws of BC > Public Statutes and Regulations > select first letter of Act (Regulations are listed with the Act)

What types of care facilities are affected?

The types of care facilities affected by the new legislation for admission are defined in Part 1 of the HCC&CFA Act. The care facility may be operated by a health authority (public) or by a private agency – for profit or non-profit.

Government and some others are discouraging use of the term 'residential care' to be sensitive to indigenous communities and the negative experiences of residential schools. However, it is difficult to come up with a different term that describes the residential or institutional nature of the current care system and the medical model approach.

Examples of care facilities that ARE affected:

- Long term residential care for chronic and progressive conditions (like dementia).
- Extended care (under Hospital Act).
- Facility for rehabilitation (convalescing) purposes.
- Respite (short term residential care as a break for carers).
- Hospice (residential care at end-of-life and short term palliative services for persons in care).
- Residential care services for mental illness and for substance abuse.

Examples of care facilities NOT affected:

- Service providers under the Community Living Authority Act (group homes, home share providers, community living agencies).
- Assisted Living Residences.
- Hospitals providing acute care services.
- Designated services under the Mental Health Act - such as a Psychiatric Unit or Observation Unit in a hospital or mental health facility like Riverview.

Although the legislation under Part 3 of the HCC&CFA Act does not apply to admission for some types of care facilities or other living arrangements, it does not mean that consent is not or should not be required. Rather, consent may be governed by different legislation or policies.

Consent for admission is NOT required:

- In an emergency for care facilities covered under Part 3 of the HCC&CFA Act if the adult's life is in danger. The law makes clear this is a temporary measure only.
- If someone is involuntarily committed under the BC Mental Health Act. In this case, the person is 'deemed' to give consent to treatment related to their mental disorder and placement (in a mental health facility).

When does consent for admission happen?

For facilities affected by Part 3 of the HCC&CFA Act, consent must be obtained BEFORE admission.

1. An application is made (see top of next page), and
2. Information is provided by the care facility about its services (see next page), and
3. The manager of the care facility must obtain consent according to requirements set out in the legislation.

A **manger** is defined as an individual who is responsible for the operation of the care facility and/or admissions to the care facility. [HCC&CFA Act, section 1] Some care facilities may not use the term manager. Ask who is responsible for admissions.

Following are links to the BC government website for more information on some of the care options it provides through health authorities:

[Choice in Supports for Independent Living \(CSIL\)](#)
[Home and Community Care — Policy Manual](#)
[Long-Term Care Services](#)
[Residential Care Facilities](#)

Who may apply for admission?

The adult may apply. Anyone else may apply for the adult's admission to a care facility, but only certain people are allowed to consent on behalf of the adult.

If someone other than the adult applies, section 20(2) of the HCC&CFA Act says they must have reason to believe:

1. The care facility would fit the needs of the adult; and
2. The adult is incapable of giving or refusing consent for admission.

Is there a specific application form to use?

The care facility or the health authority where the facility is located will provide an application form.

What information must be provided by the manager of the care facility before admission?

Section 21(1)(d) of the HCC&CFA Act outlines the information that must be given to applicants:

- The care that will be provided to the adult by the facility;
- The services that will be available to the adult if admitted to the care facility; and
- The circumstances when an adult may leave the care facility (more on this topic later).

Applicants can also ask questions. Get terms in writing, including fees. The care facility may have a brochure.

If the adult is not capable to arrange bill payment, someone will need legal authority to do this on behalf of the adult.

Legal authority to manage an adult's finances (including to arrange payment of the care facility fees) is separate from authority to consent on an adult's behalf for admission to the care facility. See fact sheet under Resources on page 4.

Who can consent to care facility admission?

1. If a judge of the Supreme Court of BC has appointed someone to be the adult's committee of person, then the manager must get consent from the committee (pronounce kaw-mi-tay). The manager needs to check the court order in case there are conditions or restrictions. In BC, adult guardianship is also called Committeeship. See link to Nidus' fact sheet on page 4.
2. If there is no committee of person and the manager believes the adult is capable to understand, the adult decides about admission.
 - If the manager is not sure whether the adult is capable to understand, the manager must refer the adult to a qualified assessor.
 - If the assessor determines the adult is capable to decide about admission, the adult decides.

3. If there is no committee of person and the assessor determines the adult is incapable to decide about admission, the manager must select someone from a list in the law to be a 'substitute decision maker' and to consent for admission on the adult's behalf. See page 3.

What else is important about consent?

The manager has a legal duty to ensure an adult who gives consent does it voluntarily. The adult must be given information a reasonable person would need in order to understand what it means to give consent for admission.

Who is a qualified assessor?

Only the manager can refer an adult for assessment about the adult's capability to consent to admission.

An assessment can only be done by a specific health professional listed below. Only one is required.

- A physician (also called a medical practitioner).
- Registrants of the BC College of Nurses and Midwives if a registered nurse, or a nurse practitioner or a registered psychiatric nurse according to the relevant Regulations under the Health Professions Act.
- Registrants of the BC College of Social Workers.
- Registrants of the College of Occupational Therapists of BC.
- Registrants of the College of Psychologists of BC.

What is involved in an assessment?

The HCC&CFA Act section 26 says that an assessment must be done in the following way:

1. According to the regulations (see next heading); and
2. Based on whether the adult demonstrates an **understanding** of the information provided by the manager about the care facility. (Assessments are based on cognitive ability, which is a traditional and narrow view of capability.)
3. The assessor **MUST** communicate with the adult in a way that is appropriate to the adult's skills and abilities. The manager **MAY** allow the adult's spouse, relatives, and friends, who accompany the adult and who offer, to assist the adult to understand or to demonstrate understanding so the adult is found capable to decide.

What do the regulations say about how an assessment is done?

The Health Care Consent Regulation outlines procedures for an assessment of incapability in sections 16 to 22.

- Section 16 identifies who is **qualified** to do an assessment (see list above 'Who is a qualified assessor?').
- Section 17 says an assessor must make sure the adult who is being assessed **has been told** the purpose of the assessment and what happens if they are assessed as incapable to decide about admission to the care facility (see next heading).

- Section 18 says an assessor may **allow another person** to be present at the assessment if requested by the adult or if necessary to assist with communication. However, the assessor can forbid the presence of another person at some or all of the assessment, even if requested by the adult, if, in the opinion of the assessor, the other person would create problems for the process of doing an assessment.
- Section 19 says that at some point during an assessment, the assessor must review all available and relevant **medical information**. (Sometimes a physical problem or medical condition might affect an adult's cognitive ability to understand.)
- Section 20 says that an assessment may be done **without the adult being present**. Information can be collected from other sources and from observation. The assessor can do an assessment without the adult present if the adult refuses to participate or is not reasonably able to take part AND the assessor believes the assessment can be done accurately.
- Section 21 says, whether or not an adult is present for the assessment, an assessor can **consult with and collect information** from other persons if it is helpful and relevant to the assessment. An assessor may collect relevant information from professionals who have provided social or health care services to the adult and from the adult's spouse, near relatives, and close friends.
- Section 22 says that when an assessment is completed, the assessor must produce a **report** that includes:
 1. Details of factors considered in determining the adult's capability or incapability; and
 2. The assessor's conclusions, and
 3. A summary of any information that was gathered from other sources, as allowed under sections 20 or 21.
 - » A copy of the report is given to:
 - The manager who requested the assessment; and
 - The manager of the care facility to which the adult may be admitted, if different from the manager who requested the assessment.
 - » A copy of the report is also given to:
 - The adult; and
 - The person who makes the decision on behalf of the adult (if the adult is determined incapable to decide);
 —UNLESS the assessor believes doing so would cause serious physical or mental harm to the adult or significant loss or damage to the adult's property. In law, property is broadly defined and includes things the adult owns such as money (bank account, investments), real estate, vehicles, and personal effects.

If the adult is determined incapable, who can consent for admission on the adult's behalf?

If there is no committee of person and the adult is assessed to be incapable, the HCC&CFA Act section 22(2) provides a list of individuals the manager can select to decide about admission on behalf of the adult.

The list must be followed in a specific order (see numbers). Those listed must also meet qualifications (see below).

1. Representative named in the adult's Representation Agreement section 9 (RA9).
2. Adult's spouse (legally married or living in a marriage-like-relationship/common law).*
3. One of the adult's children.
4. A parent of the adult.
5. One of the adult's siblings.
6. A grandparent of the adult.
7. A grandchild of the adult.
8. Any other relative of the adult by birth or adoption.
9. A close friend of the adult.
10. An in-law who is most immediately related to the adult by marriage.
11. A staff of the Public Guardian and Trustee of BC.

* *For care facility admission, there is no time period that common-law spouses have to be together. The definition of spouse also does not include the term co-habiting.*

Qualifications that must be met in order to be selected to decide on adult's behalf: [HCC&CFA sections 22&23]

- Not be the manager of the facility to which the adult is being admitted; and
- Be 19 years of age or older; and
- Have been in contact with adult in the preceding 12 months; and
- Have no dispute with the adult; and
- Be capable of giving or refusing consent to admission to a care facility; and
- Be willing to comply with their duties, which are:
 - » Make a reasonable effort to consult with the adult and with any spouse, friend or relative of the adult who asks to assist, and
 - » Make a decision in the adult's best interests by considering:
 - The adult's current wishes, pre-expressed wishes, known values and beliefs; and
 - Whether the adult could benefit from admission to the care facility; and
 - Whether an alternative is available and appropriate in the circumstance. Is there an alternative type of facility or other arrangement that is less intrusive or restrictive that could meet the adult's needs?

Although there is a legal requirement to consider the adult's current or pre-expressed wishes and values about admission to a care facility, there is no requirement to comply with the adult's wishes.

Right to information - the person selected to decide on behalf of the adult has the right to access information and documents about the adult (that the adult is entitled to). Access must be related to making the decision about the adult's admission to the care facility.

What if there is a disagreement about who is selected to consent on behalf of an adult?

If there is a dispute about who should be selected to decide about admission on behalf of an adult, the manager can contact the Public Guardian and Trustee (government official) who can authorize someone on the list or refer the decision to PGT staff.

What about leaving the facility?

In section 25 of the HCC&CFA Act, leaving or being discharged from a facility is called consent for continued residence. In section 50.1 of the Residential Care Regulation under the Community Care and Assisted Living Act it is called continued accommodation.

If the adult has a committee of person appointed by a judge and the committee requests that the adult leave the care facility, the manager must not prevent this.

If there is no committee of person, and the adult expresses a desire to leave the facility, and:

- If the manager believes the adult is capable to decide, the manager must not prevent the adult from leaving; or,
- If the manager has doubts about the adult's capability to consent to continued residence/accommodation, the manager must refer the adult to a qualified assessor.

If there is no committee of person and the person who gave consent to admission on behalf of the adult (because the adult was found incapable) expresses a desire for the adult to leave the facility, the manager must refer the adult to a qualified assessor.

If the qualified assessor determines:

- The adult is capable to decide, the manager must not prevent the adult from leaving if the adult wants to; or
- The adult is incapable, the same procedures are followed by the manager for identifying and qualifying someone to decide about continued residence/accommodation on the adult's behalf.

- If the person who is then selected to consent on the adult's behalf expresses a desire for the adult to leave the facility, the manager must not prevent this. [HCC&CFA Act section 25(1)(b)]

There are limits on the number of times re-assessments are required of licensed facilities. The first time, it can be done 30 days or more after the adult was admitted; additional reassessments are done 90 days or more after consent was given for continued accommodation.

TIP: *The health authority where the facility is located may become involved in any discussions about an adult leaving a care facility. Their concern is to protect the adult. Be prepared to show that appropriate and sufficient care will be provided if an adult is being transferred to another facility or discharged to live at home.*

The initial stage of consenting to admission is critical. Unless the adult regains abilities, it will be difficult for the adult and others to argue in favour of leaving the care facility for a living situation that provides 'lower' levels of care. Take the time to research or develop alternatives and less intrusive approaches early on – plan ahead! Check out community-based options like [Abbeyfield](#) and [L'Arche](#).

Make a Representation Agreement. A representative can assist with researching care options and has authority to consent on behalf of an adult for accessing in-home services and supports such as through the CSIL program ([link on p. 1](#)).

Resources from Nidus

For other fact sheets and information, click on title:

- [How Decisions are Made in BC if You are Incapable of Informed Consent to Health Care](#)
- [More About Representation Agreements](#)
- [Authority for Financial Affairs](#)
- [Adult Guardianship/Committeeship in BC](#)

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