

## **New Legislation: The Involuntary Psychiatric Treatment Act**

This provincial legislation took effect in Nova Scotia on July 3, 2007. The broad general purpose of the Act is to ensure that those who are unable to make treatment decisions, due to severe mental health illness, receive appropriate treatment.

The Act makes significant changes to provisions that used to be included in the *Hospital Act*. The new Act has Guiding Principles setting out how the Act is to be applied. Among the nine guiding principles are the following:

- Patients are to be treated with dignity and respect
- Patients have the right to make treatment decisions (if the patient has the capacity to do so)
- The patient should be allowed to live in his/her community.
- Promotion of self-reliance by the patient.
- Confirmation that the primary mode of hospital admission is to be voluntary.
- Confirmation that mental health services should be provided as close to a patient's home as practical.
- Involuntary admission must be based on evidence.
- Lack of capacity to consent to treatment must be determined on the basis of evidence.

The Act deals with “mental disorders” which are defined as:

- any substantial disorder of behaviour, thought, mood, perception, orientation or memory
- that severely impairs judgment, behaviour, capacity to recognize reality or the ability to meet the ordinary demands of life
- in respect of which psychiatric treatment is advisable

Hospital admission to access mental health services can be voluntary in the same way as hospital admission for any physical illness i.e., through your family doctor or the Outpatient process. In addition hospital admission for an involuntary psychiatric assessment can be ordered by any two licensed doctors following an examination of the patient. If the patient refuses the initial examination or to attend for such an initial examination then, in an appropriate case, an order for an initial examination can be obtained from a Family Court Judge (on application by any person) or can be initiated by a police officer (if certain conditions are found to exist). The new Act contains special provisions setting out how the initial medical examination can be obtained through a Family Court Judge or through the police. At the time of the examination by two doctors (not necessarily psychiatrists) any further admission for an involuntary psychiatric assessment must be based on the determination by those doctors that

- the patient has an apparent mental disorder, and
- would benefit from inpatient psychiatric treatment, and
- will not submit voluntarily to a psychiatric assessment, and
- meets the old “dangerousness” criteria (harm or threat or attempt to self or others), or
- is likely to suffer “serious physical impairment” or “serious mental deterioration”.

If the medical examination results in a finding, on the above criteria, by the doctors of a need for an involuntary psychiatric assessment, the patient can be forcibly taken to a facility and held for a maximum of 72 hours to permit an assessment to be done by a psychiatrist.

In order for a patient to be placed in a psychiatric facility on an involuntary basis for a period beyond that psychiatric assessment, the psychiatrist must then conclude that the patient does have a mental disorder, is in need of psychiatric treatment, that the treatment needed can be provided at a psychiatric facility, that the “dangerousness” test is met or that the “serious physical impairment” or “serious mental deterioration” test is met. In addition, the psychiatrist must conclude that treatment in a psychiatric facility is required (as opposed to in the community) and that the patient will not or is not capable of consenting to such admission. Finally, the patient will not be admitted unless the psychiatrist concludes that the patient does not have the capacity to make admission and treatment decisions on his or her own. A patient who has the capacity to make his or her own admission and treatment decisions will no longer be “on hold” in a psychiatric facility while refusing treatment. Involuntary admission under the new Act will not occur if the patient has capacity to make his or her own admission/treatment decisions. Unless the psychiatrist can reach all of these conclusions within the 72-hour holding period, the patient must be advised of his/her right to leave the facility. Any declaration by a psychiatrist of involuntary admission beyond the initial 72 hour assessment period must, under the new Act, be reviewed on a stipulated regular basis.

In deliberations to determine whether or not a patient has the capacity to make a specific treatment decision the psychiatrist must consider whether the patient fully understands and appreciates

- The nature of the condition
- The nature and purpose of the treatment
- The risk and benefits involved in taking the treatment
- The risk and benefits involved in not taking the treatment

The new Act also provides for, and sets out a list of those who can act as, a Substitute Decision Maker for an involuntary patient. The Act covers the process for the appointment of such a person and how that person’s authority is exercised on behalf of the patient.

The new Act now specifically provides for “Certificates of Leave” (for a maximum of six months) to permit involuntary patients to live outside the psychiatric facility. The Act spells out how this process works and sets out a process for canceling such certificates.

In addition, the new Act provides for the treatment of an involuntary patient in the community by way of a Community Treatment Order (CTO). The Act spells out the process involved and conditions that must be met for any treatment order that releases the involuntary patient into the community. There is also a process for amending, canceling and renewing a CTO.

Finally, the new Act also provides for a Patient Advisor Service (independent of any hospital or any District Health Authority) and for recognition of patient rights. The Advisor can work with the involuntary patient or the patient’s Substitute Decision Maker. As yet there are no regulations in place under the Act to implement this service.

This has been a brief overview of some of the significant provisions of this new Act. Additional details and facts sheets for patients, police and hospital administrators along with a copy of the Act and the regulations and the various forms involved can be found on the Department of Health website at <http://www.gov.ns.ca/health/mhs>. When the page opens on your screen on the right side of the page is a list of patient services, just click on the item entitled “Involuntary Psychiatric Treatment Act”