



Current Health Law Issues in Long-term Care

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Canadian Centre for Elder Law

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1. Legal research
2. Law reform
3. Legal education
4. Outreach



Focus for today

- Consent to use of chemical restraints
- Care facility admission



Consent to use of Anti-psychotics

2 key laws:

- *Health Care (Consent) and Care Facility (Admission) Act*
- *Residential Care Regulation*



Health Care Consent Act

all medication

chemical
restraints

Residential Care Reg

all restraints

What is a chemical restraint?

"**restraint**" means any chemical, electronic, mechanical, physical or other means of controlling or restricting a person in care's freedom of movement in a community care facility, including accommodating the person in care in a secure unit."



What is a chemical restraint?

“any medication used to control behaviour beyond the point of therapeutic benefit.”



Mental Health Act

- Community Legal Assistance Society
***Operating in Darkness: BC's Mental Health Act
Detention System***
<https://bit.ly/2JGC7eL>
- BC Ombudsperson,
***Committed to Change: Protecting the Rights of
Involuntary Patients under the Mental Health Act***
<https://bit.ly/2PouBJ5>

Health Care Consent Act

1. Get consent from the appropriate person
2. Consider capacity in a timely manner
3. Provide adequate information
4. Accommodate communication difficulties
5. Include welcome support people

Residential Care Regulation

1. Must be necessary to protect the person in care or others from imminent serious physical harm
2. Must be used as minimally as possible
3. Cannot be used for resident discipline or staff convenience
4. Require ongoing monitoring of the safety and physical and emotional dignity of the resident

Residential Care Regulation

NON-EMERGENCY USE must have:

- 1. Agreement in writing**
2. Agreement by the resident OR their substitute decision-maker for health care
3. Agreement by physician OR nurse practitioner

Residential Care Regulation

EMERGENCY USE must

1. Inform appropriate individuals
2. Document use in the care plan
3. Reassess use after 24 hours & get agreement
4. Report use to a medical health officer



<https://bit.ly/2W0snEi>



CONVERSATIONS ABOUT CARE:

The Law and Practice of Health
Care Consent for People Living with
Dementia in British Columbia

HEALTH CARE DECISION-MAKING: Legal Rights of People Living with Dementia



New Care Facility Admission

- Define care facility
- Set out inform consent rights
- Define capacity to consent to admission
- Say who can provide substitute consent to admission
- Set out when emergency admission without consent is possible
- Provide a legal framework for incapability assessment

Application

Provisions apply to:

1. Care facilities licensed under the *Community Care and Assisted Living Act*
2. Private hospitals (licensed under the *Hospital Act*)
3. Certain types of facilities of extended care facilities under the *Hospital Act*)

Care Facility Admission

3 ways an adult can be admitted:

1. The capable adult consents
2. Substitute decision-maker consents—if the adult is incapable of making an admission decision or
3. The adult is admitted on an emergency basis without prior consent

Emergency admissions

1. Adult is incapable of consenting AND

Immediate admission is necessary to:

- preserve the adult's life,
- prevent serious physical / mental harm to adult, OR
- prevent serious physical harm to any person OR

2. Emergency protection—*Adult Guardianship Act*, s 59)

Care Facility Admission

Some provisions parallel the consent provisions:

1. Accommodation of communicate needs
2. Right to information
3. Decision-making with support
4. Oral, in writing, or inferred from conduct

Incapacity assessment if...

1. ADMISSION—if the director of the care facility cannot get informed consent from the adult

2. CONTINUED RESIDENCE
 - the adult wants to leave the facility,
 - has no personal guardian, AND
 - capacity is in doubt



Who assesses incapability?

- Medical practitioner
- Registered nurse
- Nurse practitioner
- Social worker
- Occupational therapist
- Psychologist



What does capacity mean?

Understanding of information relevant to the care facility proposal, including information related to:

- Care
- Services
- When they can leave the facility



Substitute consent to admission

- Legal substitute decision-maker
- Spouse
- Adult child
- Other family members
- The Public Guardian and Trustee



Duties of a substitute decision-maker for admission

- to consult with the adult
- to consider their best interests
 - What are their current and pre-expressed wishes, values, beliefs?
 - Would they benefit from admission?
 - Are there less restrictive appropriate options?

Duty to report abuse

If the manager has reason to believe the substitute decision-maker for admission is acting in a manner that may be abusive or harmful to the adult...must:

- Report to health authorities
- Take steps reasonably necessary to protect the adult



Restraints

A person should not be restrained for:

- Punishment
- Staff convenience



More learning

- Ministry of Health, *Practice Guidelines*

<https://bit.ly/2qfB8es>

- Ministry of Health, *2-page Quick Guide*

<https://bit.ly/34pJKhf>

- Public Guardian and Trustee, *Personal Decisions*

<https://bit.ly/2PJJoy4>

Professional development

1. Health care consent law
2. Capacity & incapability assessment
3. *Mental Health Act*
4. Role of the Public Guardian & Trustee
5. Restraints Regulations

More Resources

- BC, Ministry of Health, *A Health Care Providers Guide to Consent to Health Care*
<https://bit.ly/2qK8pi3>
- BC Mental Health Rights
<https://www.bcmmentalhealthrights.ca/>
- MacArthur Competence Assessment Tool for Treatment <https://bit.ly/2MT2FuX>

Summary

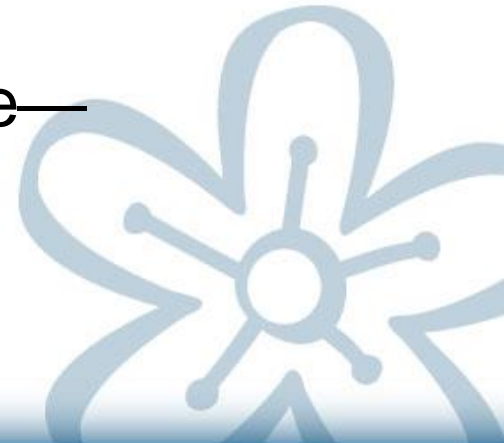
- *Health Care Consent Act & Residential Care Regs* apply to use of anti-psychotics in long-term care
- Emergency admission is very limited & temporary
- You need separate timely consent for medication & admission
- Automatically assessing all potential residents for capacity is against the law

Law reform survey

Tell us what laws you think need to be created or changed

<https://bit.ly/34tg6rv>

Join us for the Elder Law Conference—
Nov 14-15 <https://bit.ly/2pwWFzu>





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