

1993

## CHAPTER 59

### An Act to amend *The Mental Health Services Act*

(Assented to June 22, 1993)

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, 1993*.

#### 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.

#### Section 2 amended

##### 3 **Section 2 is amended:**

**(a) by repealing clause (b) and substituting the following:**

“(b) ‘**attending physician**’ means:

- (i) in relation to an in-patient, the physician who has responsibility for the care and treatment of the patient;
- (ii) in relation to a person who is the subject of a community treatment order, the psychiatrist who issued the order”;

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

“(d.1) ‘**community treatment order**’ means a community treatment order issued pursuant to section 24.3”;

**(c) by striking out “Executive Director of the Mental Health Services Branch of the department” and substituting “person appointed pursuant to section 6” in clause (f);**

**(d) by striking out “23 or 24” and substituting “23, 24 or 24.1” in clause (k);**

**(e) by repealing clause (r) and substituting the following:**

“(r) ‘**officer in charge**’ means:

- (i) in relation to a facility, the person designated pursuant to section 8; or
- (ii) where no person is designated pursuant to section 8, the regional director for the region in which the facility is located”; **and**

(f) by striking out "appointed" and substituting "designated" in clause (bb).

Section 4 amended

**4 Subsection 4(2) is repealed and the following substituted:**

"(2) A facility may not change its name or be given a name without the prior written approval of the minister".

New section 6

**5 Section 6 is repealed and the following substituted:**

Director of mental health services

"6(1) The minister shall appoint an employee of the department as director of mental health services and prescribe his or her duties and responsibilities.

(2) The minister may authorize the director to delegate to other officers of the department any power given to the director by this Act and the regulations".

New section 7

**6 Section 7 is repealed and the following substituted:**

Regional directors

"7(1) The minister shall designate a regional director for each region.

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

New section 8

**7 Section 8 is repealed and the following substituted:**

Officer in charge

"8(1) The regional director may designate a person for each facility that is located in the region to be the person responsible for the administration of this Act in the facility.

(2) Where the regional director does not designate a person pursuant to subsection (1), the regional director is responsible for the administration of this Act in the region".

Section 14 amended

**8 Clause 14(b) is amended by striking out "or 24" and substituting ", 24, 24.1 or 24.3".**

Section 16 amended

**9 Section 16 is amended by striking out "or 24" wherever it appears and in each case substituting ", 24, 24.1 or 24.3".**

Section 23 amended

10(1) **Clause 23(a) is repealed and the following substituted:**

“(a) under an order pursuant to Part XX.1 of the *Criminal Code* (Canada)”.

**(2) Clause 23(c) is repealed.**

New Section 23.1

11 **The following section is added after section 23:**

Psychiatric review

“23.1(1) Where a person has been detained under the provisions of the *Criminal Code* (Canada) as unfit to stand trial, not criminally responsible by reason of mental disorder or acquitted on account of insanity and the person's detention is about to expire, the director may order that the person submit to an examination by a physician with admitting privileges to an in-patient facility to ascertain whether that person should be detained in an in-patient facility pursuant to section 24.

(2) A person to whom an order is directed pursuant to subsection (1) shall allow himself or herself to be examined in accordance with the order”.

Section 24 amended

12 **Clause 24(2)(a) is amended by adding** “and any other pertinent facts regarding the person or the person's condition that have been communicated to the physician” **after** “on the basis of the examination”.

New sections 24.1 to 24.6

13 **The following sections are added after section 24:**

Long term detention order

“24.1(1) The officer in charge of a facility in which a person is being detained pursuant to section 23, 24 or this section may apply to Her Majesty's Court of Queen's Bench for Saskatchewan for an order for detention of that person for a period not to exceed one year where:

- (a) 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 which can be provided only in an in-patient facility;
- (b) 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;
- (c) as a result of the person's mental disorder, he or she is likely to cause bodily harm to himself or herself, or to others;

- (d) the person has been detained pursuant to section 23, 24 or this section for 60 or more consecutive days immediately prior to the date of the application; and
  - (e) the person is suffering from a severely disabling continuing mental disorder that is likely to persist for a period of longer than 21 days, notwithstanding that treatment is being provided.
- (2) An application pursuant to subsection (1) is to be by notice of motion, and copies of the notice of motion are to be served on:
- (a) the person who is the subject of the application;
  - (b) the person's nearest relative; and
  - (c) an official representative for the region.
- (3) Where a judge of the court finds, following a hearing, that the person meets all of the criteria listed in subsection (1), the judge may make an order for the detention of the person for a period of up to one year for the purposes of treatment or care and supervision.
- (4) Detention orders made pursuant to subsection (3) are subject to review by the court.
- (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 officer in charge of the facility in which the person is detained;
  - (d) an official representative for the region;
  - (e) any other person with a sufficient interest.
- (6) An application for a review of an order issued pursuant to subsection (3) is to be made by notice of motion and is to be served on the persons who were parties to the application for the detention order.
- (7) On an application to review a detention order issued pursuant to subsection (3), the court may:
- (a) affirm, vary or rescind the detention order;
  - (b) make any order as to costs.
- (8) Where an order issued pursuant to subsection (3) expires or is rescinded, the attending physician shall, in writing and in the prescribed form, notify the patient, the patient's nearest relative and an official representative for the region that the order is no longer in force.

(9) The practice and procedure of Her Majesty's Court of Queen's Bench for Saskatchewan on an application in chambers apply to applications pursuant to this section, with any necessary modification.

(10) The decision of the court pursuant to this section is not subject to appeal to the Court of Appeal for Saskatchewan.

#### Treatment in community

"24.2(1) For the purposes of sections 24.3 and 24.7 **'in the community'** means outside of an in-patient facility.

(2) A psychiatrist may issue a community treatment order respecting a person where the criteria in clause 24.3(1)(a) are present.

#### Community Treatment Order

"24.3(1) A community treatment order must:

(a) state that the psychiatrist has examined the person named in the community treatment order within the immediately 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 psychiatrist, the psychiatrist has probable cause to believe that:

(i) the person is suffering from a mental disorder for which he or she is in need of treatment or care and supervision in the community and that the treatment and care can be provided in the community;

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

(A) has been detained in an in-patient facility for a total of 60 days or longer;

(B) has been detained in an in-patient facility on three or more separate occasions; or

(C) has previously been the subject of a community treatment order;

(iii) if the person does not receive treatment or care and supervision while residing in the community, the person is likely to cause harm to himself or herself or to others, or to suffer substantial mental or physical deterioration, as a result of the mental disorder;

(iv) the services that the person requires in order to reside in the community so that the person will not be likely to cause harm to himself or herself or to others, or to suffer substantial mental or physical deterioration:

(A) exist in the community;

- (B) are available to the person; and
  - (C) will be provided to the person;
  - (v) 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
  - (vi) the person is capable of complying with the requirements for treatment or care and supervision contained in the treatment order;
  - (b) state the facts on which the psychiatrist has formed his or her opinion that the person meets the criteria set out in clause (a);
  - (c) describe the services that will be provided to the person and the treatment that is recommended for the person;
  - (d) state that the person is to submit to the medical treatment that is prescribed by the attending physician and is to attend appointments with the attending physician or with the responsible individuals identified pursuant to clause (e) in the places as scheduled, from time to time, consistent with good medical practice;
  - (e) identify the names of the persons authorized by the regional director who will ensure that the person who is the subject of the community treatment order will receive the services that he or she requires in order to be able to reside in the community;
  - (f) show the date on which the examination was made;
  - (g) be signed by the examining psychiatrist in the presence of one subscribing witness; and
  - (h) be in the prescribed form.
- (2) Subsections 25(2) to (5) apply, with any necessary modification, to the medical treatment that a person is required to submit to pursuant to a community treatment order.
- (3) Where a community treatment order has been validated, the attending physician shall provide a copy of it to:
- (a) the patient;
  - (b) his or her nearest relative; and
  - (c) an official representative for the region.

“Certificate in support of a community treatment order

24.4(1) A certificate in support of a community treatment order is to be in the prescribed form and state that a second psychiatrist:

- (a) has examined the person who is the subject of the order within the preceding 72 hours;
- (b) has probable cause to believe that the criteria in clause 24.3(1)(a) are met;
- (c) has probable cause to believe that the requirements of clauses 24.3(1)(b), (f) and (g) have been satisfied; and
- (d) concurs with the treatment that the person is to follow and the services that will be provided to the person as set out in the community treatment order.

(2) A certificate in support of a community treatment order validates the community treatment order that it supports.

Validation, expiration and revocation

“24.5(1) Every community treatment order is valid for three months from the date of the order or for the period specified in the order, whichever is the lesser.

(2) Where a community treatment order that has been issued pursuant to section 24.3 has expired and has not been renewed, the attending physician shall, in writing, and in the prescribed form, inform the patient, his or her nearest relative and the official representative for the region that the community treatment order is no longer in effect.

(3) Where the attending physician is of the opinion that a person who has been the subject of a community treatment order validated pursuant to section 24.4 no longer meets the criteria prescribed in clause 24.3(1)(a), the attending physician shall:

- (a) issue an order in the prescribed form revoking any community treatment order then in effect;
- (b) advise the person that he or she is no longer subject to the conditions of any community treatment order validated pursuant to section 24.4; and
- (c) provide a copy of the order issued pursuant to clause (a) to:
  - (i) the patient;
  - (ii) his or her nearest relative; and
  - (iii) an official representative for the region.

Compliance

"24.6(1) Where 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 an in-patient facility pursuant to section 24, the attending physician may order that the person be apprehended and immediately conveyed to a place where the attending physician may examine the person.

(2) An order issued pursuant to subsection (1):

(a) is to be in the prescribed form; and

(b) is sufficient authority for any peace officer or other person named or described in the order to apprehend the person who is the subject of the order and immediately convey that person to a place where the psychiatrist may examine the person.

Duty to provide care and treatment

"24.7 Where a community treatment order has been validated pursuant to section 24.4, the attending physician shall endeavour, with all resources reasonably available in the community, to provide the person who is the subject of the order with services so that the compulsory treatment or care and supervision of the person will no longer be required".

Section 25 amended

**14 Subsection 25(2) is amended by striking out "an involuntary patient" and substituting "a patient who is detained pursuant to section 24 or 24.1".**

Section 28 amended

**15 Section 28 is amended:**

**(a) by adding "subsection (5)," after "Subject to" in subsection (1); and**

**(b) by adding the following subsections after subsection (4):**

"(5) On order of the attending physician, a patient detained in an in-patient facility pursuant to section 24 may be transferred from one facility to another facility if the two facilities 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 and an official representative for the region".



New sections 28.1 and 28.2

**16 The following sections are added after section 28:**

No appeal

"28.1 Notwithstanding any other provision of this Act, no review or appeal lies from a decision to transfer a patient pursuant to subsection 28(5).

Patients from outside Saskatchewan

"28.2(1) The director may order the return to another jurisdiction of a person who has been detained for the purposes of psychiatric treatment in Saskatchewan if an order has been issued by a person with the lawful authority to make that order in that jurisdiction for the person to be given a compulsory psychiatric examination.

(2) The director may impose any terms and conditions on an order that the director considers necessary for the purposes of this section.

(3) Every order to return a person to another jurisdiction pursuant to this section is to be in the prescribed form.

(4) Where an order is made pursuant to subsection (1), a copy of the order is to be given to the person who is subject to the order and to an official representative for the region.

(5) The person who is subject to the order or an official representative of the region may appeal the order made pursuant to subsection (1) to Her Majesty's Court of Queen's Bench for Saskatchewan, and section 36 applies with any necessary modification".

New section 31.1

**17 The following section is added after section 31:**

Notice to patient

"31.1 Where a certificate or certificates issued pursuant to section 24 with respect to a patient expire and have not been replaced by a set of new certificates issued pursuant to section 24, the attending physician shall immediately cause the patient to be informed in writing that:

(a) the certificate or certificates have expired; and

(b) he or she is no longer subject to detention or treatment pursuant to section 24".

Section 32 amended

**18 Subsection 32(4) is amended:**

(a) **by striking out "chairman" and substituting "chairperson"; and**

(b) **by striking out "vice-chairman" and substituting "vice-chairperson".**

Section 33 amended

**19 Subsection 33(1) is repealed and the following subsections substituted:**

“(1) The attending physician shall immediately cause written notice to be given to the patient, his or her nearest relative and an official representative for the region in which the facility is located where that patient:

- (a) is subject to detention in an in-patient facility 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).

“(1.1) Notice pursuant to subsection (1) must include the following information:

- (a) the existence and function of the review panel appointed for the region where the facility is located;
- (b) the name and address of the chairperson of the review panel; and
- (c) the right of appeal to the review panel, pursuant to section 34”.

Section 34 amended

**20(1) Section 34 is amended in the manner set forth in this section.**

**(2) Subsection (1) is amended by striking out “clause 33(1)(a) or (b)” and substituting “clause 33(1)(a), (b) or (c)”.**

**(3) Subsection (2) is amended:**

- (a) by striking out “clause 33(1)(a) or (b)” and substituting “clause 33(1)(a), (b) or (c)”;**
- (b) by striking out “chairman” and substituting “chairperson”; and**
- (c) by striking out “alleging that he should not be detained or transferred, as the case may be”.**

**(4) Subsection (3) is amended by striking out “on behalf of the person detained or transferred, as the case may be”.**

**(5) Subsection (5) is amended by striking out “chairman” and substituting “chairperson”.**

**(6) The following subsections are added after subsection (5):**

“(5.1) There is no right of appeal pursuant to subsection (5) where an appeal of the decision at issue has been considered by the review panel in the preceding 21 days.

“(5.2) Where a community treatment order is issued pursuant to section 24.3 that would extend the period of time of the community treatment order beyond:

- (a) six months; or
- (b) any multiple of six months;

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”.

**(7) Subsection (6) is amended by striking out “chairman” and substituting “chairperson”.**

**(8) Subsection (9) is amended by striking out “chairman” and substituting “chairperson”.**

**(9) Subsection (10) is amended by striking out “chairman” and substituting “chairperson”.**

Section 36 amended

**21 The following subsection is added after subsection 36(1):**

“(1.1) Notwithstanding the provisions of any other Act or the Queen's Bench Rules, once an appeal of a section 24 certificate or a section 24.3 community treatment order is registered with Her Majesty's Court of Queen's Bench for Saskatchewan the appeal shall continue on any new and subsisting certificate or community treatment order notwithstanding that the original certificate or community treatment order that is the basis of the appeal is no longer in effect”.

Section 38 amended

**22 Subsection 38(4) is amended by adding the following clause after clause (a):**

“(a.1) the information is required to assist a person who is receiving services pursuant to this Act to receive other services which are necessary to maintain or restore the mental health of that person”.

New section 39

**23 Section 39 is repealed and the following substituted:**

Immunity

"39 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by that person, in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility".

Coming into force

24 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.