

# Assessment & Admission

## A Discussion Paper Series for a New Mental Health Act

Discussion Paper 2 of 4

GNWT

Department of Health and Social Services, Government of the Northwest Territories  
Policy, Legislation and Communications

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## Definitions

*These definitions are only for the purpose of the Discussion Paper. They may or may not be used in the new Act.*

**Mental disorder** would mean a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgement, behaviour, capacity to recognize reality, ability to associate with others or the ability to meet the ordinary demands of life. Mental handicap or a learning disability would not necessarily constitute a mental disorder.

*Question for consideration:*

- 1. The definition for mental disorder contains a new element (i.e. ability to associate with others). British Columbia and Saskatchewan include a similar element in their definition, presumably because some clients with severe psychosis are able to function within their environments but have great difficulty in associating with others. Should the NWT include a similar element in the definition for mental disorder?*
- 2. Do we need to change our existing definition?*

**Mental health facility** would mean a hospital, health centre or other facility, or part of a hospital, health centre or other facility that is specifically designated a mental health facility in regulations to the MHA and would provide for the assessment, care and treatment of an individual with a mental disorder. This type of facility must contain safe locked confinement and adequate staffing models to provide appropriate monitoring of anyone in locked confinement.

## Voluntary Patients

The current NWT *Mental Health Act* and the jurisdictions of BC, Manitoba, Newfoundland and Nova Scotia all include small sections allowing the admission and discharge of voluntary patients.

BC's legislation requires that if the patient is under the age of 16, s/he must be examined by a physician within the first and second month of the admittance, examined again three months after the second exam, within six months of the third exam and then every six months after that. BC's legislation also requires that all patients that are found not to have a mental disorder must be discharged.

Nova Scotia, Newfoundland and Manitoba also allow patients to be detained for 3, 4, and 24 hours, respectively, if the voluntary patient wishes to be discharged but the staff have reason to believe that the patient has a mental disorder and is likely to harm themselves or

others if they leave the facility. Such patients must be examined by a physician within that timeframe or the patients must be allowed to leave.

It is proposed that a new MHA continue to include a section for voluntary admission. If a individual capable of consenting requests admission to the hospital because they need psychiatric services and a psychiatrist or other physician has examined and assessed the individual's mental condition and is of the opinion that the individual would benefit from in-patient admission and treatment, the psychiatrist or other physician could admit and treat the person as a voluntary patient to a mental health facility. A voluntary patient could have the right to consent to or refuse psychiatric or other medical treatment and could at anytime inform the staff of the mental health facility of his or her preference to leave.

The proposed Act could ensure that Voluntary patients be given the same rights and protections as involuntary patients, for example, access to the review board and protection of mental health records.

A voluntary patient could be detained, or if necessary, restrained, for a maximum of 24 hours by psychiatric staff if the voluntary patient wants to be discharged but the staff has reasonable grounds to believe that the patient has a mental disorder, is threatening or attempting to harm him/herself or another individual, has harmed him/herself or another individual, or is likely to suffer serious physical impairment or serious mental deterioration and needs an examination to assess the patient. If a new MHA allowed for this, voluntary patients, when first admitted to a mental health facility, would be required to sign a consent form allowing staff to detain the voluntary patient for up to 24 hours. If the examination did not take place within 24 hours, the patient would be free to leave the facility. If upon examination, it was found that the patient no longer met the voluntary patient criteria, the involuntary admission process could begin.

*Questions for Consideration:*

- Do you agree with adding a provision allowing for the detention of a voluntary patient for a maximum of 24 hours if the staff has reasonable grounds to believe that they may need to be admitted as an involuntary patient?
- How should adults who are under guardianship be handled (e.g.: through Voluntary Admission or Involuntary Admissions)?
- Should the provisions in BC's Act respecting underage patients be included in the proposed legislation?
- Should the provision in BC's Act requiring all patients that are found not to have a mental disorder be discharged be included in the proposed legislation?

- Do you agree with extending all rights and protections available to involuntary patients to voluntary patients?

## Involuntary Patients

The purpose of involuntary services is so people can access psychiatric treatment and care when the nature of the mental disorder impairs their judgment and prevents them from having the capacity of recognizing the consequences of not accessing treatment on a voluntary basis. The rest of this discussion paper deals with the process that could be followed to determine if an individual should be admitted as an involuntary patient. The process has three major steps: initial examination, involuntary psychiatric assessment, and finally involuntary admission. To assist the reader through the process, a flowchart of the process is attached as an Appendix to the paper.

## Initial Examination

The current Act sets criteria for assessing whether a person requires involuntary admission if they have “...reasonable cause to believe that the person

- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
- (b) has behaved or is behaving violently towards another person or has cause or is causing another person to fear bodily harm from him or her, or
- (c) has shown or is showing a lack of competence to care for himself or herself”  
(*NWT Mental Health Act* s. 8 (1)).

This criteria is narrow compared to other jurisdictions such as BC, Alberta, Saskatchewan Manitoba, Newfoundland and Nova Scotia who have changed their legislation to include mental or physical deterioration in the criteria for an initial examination (prior to a possible involuntary psychiatric assessment and involuntary admission). This reflects a policy shift and a deepening understanding of the specific needs of people with mental disorders, particularly those who have repeatedly gone through the mental health system. The rationale is that including “substantial mental or physical deterioration” in the criteria allows for earlier treatment for individuals and perhaps a reduced length of hospitalization and reduced risk of further relapses.

An example of this would be an individual who has controlled their mental disorder with medication but who has stopped using their medication and whose behaviour is obviously deteriorating but has not yet become violent. They risk losing their job, alienating their spouse and children and other family members, or injuring themselves or others, but due

to the mental disorder, are unable to recognize that they require treatment. Under the current Act, this individual could not be admitted involuntarily.

A new MHA could include wording that would broaden the criteria under which an individual could be required to undergo an initial examination to determine if he/she should undergo an involuntary psychiatric assessment and from there possibly be admitted as an involuntary patient. Criteria that could trigger an initial examination could include:

- the individual appears to have a mental disorder;
- the individual is threatening of attempting to cause harm to him/herself or others;
- the individual has recently threatened or attempted to cause harm to him/herself or others; or
- the individual has recently caused harm to him/herself or others; or
- the individual is likely to suffer serious physical impairment or mental deterioration or both; and
- because of apparent mental disorder, the individual does not fully understand or fully appreciate the consequences of making an informed decision about undergoing a psychiatric assessment and so has refused a voluntary psychiatric assessment.

*Questions for consideration:*

- Do you agree with having broad criteria for an initial examination?
- Is there anything that should be added (or deleted) to the criteria?

In all other jurisdictions, psychiatrists and other physicians, judges/justices and peace officers are allowed to detain an individual for an initial examination to determine if further assessment and observation is necessary. Newfoundland and Labrador also allows nurse practitioners and those designated in regulations, such as psychologists and registered nurses, to detain an individual for an initial examination.

The current Act authorizes medical practitioners, psychologists, a judge, peace officers and in certain circumstances, a private person to detain an individual for the purpose of a psychiatric assessment. Under the current Act, Community Health Nurses may detain someone for psychiatric assessment but do so as a private person.

To better reflect how health services are delivered in the NWT and who is available in both the large and small communities, the new Act could allow psychiatrists and other

physicians, nurse practitioners, Community Health Nurses, psychologists, other persons prescribed in regulations, judges/justices, peace officers and, in specific circumstances, private residents to detain someone for the purpose of an initial examination that would be done by a physician, nurse practitioner or psychologist.

*Questions for consideration:*

- Do you agree with the list of persons who could detain an individual for an initial examination?
- Should any others be given the power to detain an individual for an initial examination?
- Should anyone be allowed to detain an individual for an initial examination? Should this power be limited to when no professionals listed above are available?

Newfoundland, Nova Scotia and Manitoba allow an initial period of detention of up to 72 hours. Alberta only allows 24 hours. BC limits the initial detention period to 48 hours.

In order to improve the delivery of mental health services to all NWT residents and accommodate remote communities and the longer distances between NWT communities, the new MHA could allow an individual to be detained for up to 72 hours, during which time an initial examination could be done by a physician or nurse practitioner to determine if an involuntary psychiatric assessment should be done. During the 72 hour period, the individual could be transferred to a hospital or health centre where the initial examination could be done. It should be noted that in order to abide by the Charter of Rights and Freedoms and the laws of natural justice, the new Act could not allow a detention period longer than 72 hours.

*Questions for consideration:*

- Should the period of detention be extended to 72 hours?
- Should there be an explicit provision that apprehension and detention occur in the least intrusive manner possible?

The current Act allows for a person to apply to a justice (judge or justice of the peace) to order a psychiatric assessment for another person. The justice is required to give two days' notice to the person unless the justice feels that it is not necessary or that the additional delay would be harmful. If the justice forms the opinion that a psychiatric assessment is necessary, they may issue an order to peace officers to take that person to a physician. That order is valid for 7 days and provides authority to detain that person for 48 hours.

A new MHA could contain similar elements to the current Act by allowing anyone to apply to a judicial officer (a judge or if a judge is not available, then a justice of the peace) to have someone else undergo an initial examination. The judicial officer would have to consider the application and the evidence from any witnesses and could do so without notifying the person named in the application. The judicial officer could order to restrict access to that information if s/he is satisfied that the release of the information would be detrimental to the health and safety of any person. A judicial officer's order for an examination would be enough to apprehend the person and for physician, nurse practitioner or psychologist to examine and treat the person, for up to 72 hours after the person is apprehended. If the individual is not examined within that timeframe, he/she would have to be released. The order could be valid for 7 days, consistent with the other jurisdictions reviewed.

The current Act allows Peace Officers to take a person into custody and take that person to a physician for a psychiatric assessment without delay. The Act says that the circumstances must be such that going to a judge for an order would be unreasonable or cause a delay that might result in bodily harm to another person. The Peace Officer must give a written statement to the physician as to why they brought that person in for an assessment. If it is not timely or reasonable to have a judge issue an order to apprehend and assess an individual, then a peace officer may apprehend and immediately take a person to a physician or nurse practitioner for examination if the peace officer has reasonable grounds to believe from personal information or information received that the person:

- apparently has a mental disorder
- has caused or is likely to harm themselves or others,
- is likely to suffer substantial physical or mental deterioration or serious physical impairment,
- is acting or recently acted in a disorderly manner, that has high potential of causing harm to themselves or the public
- has shown a lack of competence to care for him or herself that results in....harm to self.

The person may be detained for up to 24 hours in a suitable place for an examination, other than a correctional facility or lock-up unless no other suitable place is available. Some jurisdictions, for example, Newfoundland, extend that time to 72 hours.

A new MHA could contain similar elements to the current Act but could allow a peace officer to take an individual to a physician, nurse practitioner or psychologist for an examination without first getting a judicial order where it is not feasible to get a judge's

order. Where reasonably practical, the peace officer could request assistance from a mental health professional or a health care professional in making the decision to apprehend. To better reflect how health services are delivered in the NWT and who is available in smaller communities and to improve the delivery of mental health services to all NWT residents and respond to the longer distances between NWT communities, the Act could allow a person to be detained by a peace officer for up to 72 hours. The Act could also allow a person to be detained in a suitable place for an examination, other than a correctional facility or lock-up unless no other suitable place is available. The peace officer could be required to justify to the physician, nurse practitioner or psychologist in writing why the person needs to be apprehended and examined.

*Questions for consideration:*

- Who should be included in the definition of “peace officer”?
- When a peace officer requests assistance to make a decision to apprehend, could a health care professional other than doctor be authorized to provide that assistance? Who should be allowed to assist a peace officer in determining if someone should be apprehended for examination?

Given the possibility that an individual could be transferred during his/her detention in order to undergo an initial examination, a new MHA could also include a provision borrowed from Nova Scotia and Newfoundland and Labrador, which could require that if an individual is released, the person who brought the individual to the facility for the initial examination, or another person who has assumed custody of the individual, would be required to arrange and pay for the return of the individual to the place where the individual was apprehended or first detained or to another appropriate location at the individual's request.

*Questions for consideration:*

- *Is it too much or is it only fair to allow the individual to request where he/she be released after being detained?*

## **Involuntary Psychiatric Assessment**

In all jurisdictions, before an individual can be admitted as an involuntary patient to a mental health facility, the individual must undergo an involuntary psychiatric assessment to determine if involuntary admission is necessary. This is most often done through a certificate for involuntary psychiatric assessment or a limited admission certificate issued by the person who carried out the initial examination on the individual. Nova Scotia and Manitoba use a certificate or application for involuntary psychiatric assessment. Alberta

and Newfoundland and Labrador use an initial and limited involuntary admission certificate. BC requires a medical certificate. If the person doing the initial examination is satisfied that the individual

- appears to have a mental disorder;
- is threatening or attempting to cause harm to him/herself or others;
- has recently threatened or attempted to cause harm to him/herself or others;
- has recently caused harm to him/herself or others; or
- is likely to suffer serious physical impairment or mental deterioration or both; and
- is likely to benefit from psychiatric treatment and is not suitable to be admitted as a voluntary patient

the person doing the examination may issue a certificate that moves the process to involuntary psychiatric assessment.

The paper has already discussed the criteria set out in the current Act for involuntary admission, in its discussion of the initial examination stage. Criteria that could trigger an involuntary psychiatric assessment could be same as that which would trigger an initial examination with the addition that the individual is likely to benefit from psychiatric treatment for a confirmed mental disorder and is not suitable to be admitted as a voluntary patient (the same as the above).

In all other jurisdictions the involuntary psychiatric assessment must be done by a psychiatrist or other physician, and not by the same physician who did the initial examination. The current NWT Act also allows only psychiatrists and physicians to do psychiatric assessments. A new MHA could maintain the status quo in regards to who can perform involuntary psychiatric assessments, with the added condition that if an initial examination was done by a physician, a different physician would be required to perform the involuntary psychiatric assessment.

Other jurisdictions' mental health legislation establishes the same periods of detention for involuntary psychiatric assessment that apply to the initial examination, 24 hours, 48 hours, or 72 hours. It is suggested that a new NWT MHA require the same limit to the amount of time an individual could be detained for an involuntary psychiatric assessment as an individual could be detained for an initial examination – 72 hours.

*Questions for consideration:*

- Should a new MHA allow nurse practitioners, psychologists or other professionals, other than physicians, to perform involuntary psychiatric assessments?

- Should a new MHA include authority to transfer an individual to a mental health facility outside of the NWT in order to carry out an involuntary psychiatric assessment?

## INVOLUNTARY ADMISSION

Mental health legislation in other jurisdictions require that if a psychiatrist or other physician is of the opinion, after having completed an involuntary psychiatric assessment, that an individual

- has a mental disorder;
- is threatening of attempting to cause harm to him/herself or others;
- has recently threatened or attempted to cause harm to him/herself or others;
- has recently caused harm to him/herself or others; or
- is likely to suffer serious physical impairment or mental deterioration or both; and
- is likely to benefit from psychiatric treatment and is not suitable to be admitted as a voluntary patient

the psychiatrist or other physician may issue a declaration or certificate of involuntary admission (or another medical certificate in the case of BC – two of which lead to involuntary admission).

Currently, in the NWT *Mental Health Act*, if a physician is of the opinion that an individual should be admitted on an involuntary basis, the physician must complete and file an application with the Minister (or a person this has been delegated to). The Minister must check that the application is filled out within 24 hours as required under the current Act. The Minister has another 24 hours to consider whether to refuse the application to admit the person, to order another psychiatric assessment, or to approve the admission.

A new MHA could change the current model from a Minister approving/issuing the certificate to a model in which a psychiatrist or other physician issues a certificate for involuntary admission that leads to an individual's involuntary admission, on the basis of an involuntary psychiatric assessment, and only after an initial examination has occurred previous to this. If a psychiatrist or other physician is of the opinion, after having completed an involuntary psychiatric assessment, that an individual

- has a mental disorder;
- is threatening of attempting to cause harm to him/herself or others;
- has recently threatened or attempted to cause harm to him/herself or others;
- has recently caused harm to him/herself or others; or

- is likely to suffer serious physical impairment or mental deterioration or both; and
- is likely to benefit from psychiatric treatment and is not suitable to be admitted as a voluntary patient

The psychiatrist or other physician could issue a certificate of involuntary admission. If having done an involuntary psychiatric assessment, a psychiatrist or other physician reaches the opinion that the individual does not meet the criteria listed above, the individual would be released.

In other jurisdictions, the formal admission may be accepted by the director of the facility (BC), the CEO of a facility (Nova Scotia), a tribunal (New Brunswick) or a physician (Manitoba and Yukon). In addition, in Manitoba a medical director and in Nova Scotia the CEO of the facility is required to promptly ensure that the involuntary admission was completed in accordance with the legislation.

The proposed new Act could allow that a psychiatrist or other physician who did not carry out the involuntary psychiatric assessment or the initial examination could accept the formal admission of an involuntary patient to the mental health facility where he/she practices. Through delegation, a nurse practitioner with admitting privileges for that mental health facility could process the admission as well. In addition, a new MHA could require that the person in charge of the mental health facility promptly ensure that the involuntary admission was completed in accordance with the legislation.

Where it is not practical, due to extenuating circumstances, to immediately deliver an individual to an appropriate mental health facility at which proper treatment could be received, a new MHA could allow that the individual could be held at an appropriate place for a maximum period of 7 days, until s/he can be delivered to the appropriate mental health facility. It is suggested that such a provision would work well for the NWT, where involuntary patients are sometimes transferred in order to gain access to appropriate treatment.

Similar to Nova Scotia, a new MHA could also allow that if after having been admitted as an involuntary patient to a mental health facility, an attending physician believes the individual requires medical treatment or other health services other than mental health treatment and services, but that this medical treatment or health service cannot be supplied in a mental health facility, the patient could be detained, transferred and treated at another health care facility. When the medical treatment or health service is complete, the involuntary patient would then have to be readmitted to the mental health facility if still subject to involuntary admission. While receiving medical treatment or other health services elsewhere, the patient would still have the status of an involuntary patient as if s/he had been admitted to the mental health facility.

*Questions for consideration:*

- *Is allowing a second psychiatrist or physician (different from the psychiatrist or physician who carried out the involuntary psychiatric assessment) to admit an individual a practical option in the NWT? What could be an alternative 'check & balance'?*
- *In the NWT's current Act, the Minister (or his/her delegate) acts as the check & balance by requiring the Minister (or the delegate) to ensure the Involuntary Admission procedure was completed according to the law. Could the person in charge of the mental health facility be responsible for ensuring the Involuntary Admission is completed in accordance with the Act? Is that a good option for the NWT? Could another option be the Medical Director or a CEO of an Authority with the power to delegate this responsibility?  
What would be an appropriate place where an individual could be held while he/she awaits formal involuntary admission into an appropriate mental health facility? Would a regular hospital suffice? Could a correctional facility be an option?*

In regards to the length of the initial involuntary admission, the legislation across jurisdictions is quite similar although there are minor differences. Manitoba's Act allows for the initial involuntary admission to last for 21 days while Newfoundland and Labrador, Nova Scotia and Alberta allow the initial involuntary admission to last one month. The rationale for setting the initial renewal period to one month is because this is considered the average time (4-6 weeks) required for a patient to stabilize. In addition, in Manitoba, a Medical Director is required to promptly ensure that the Involuntary Admission is completed in accordance with the Act.

Under the current Act, if someone is involuntarily admitted then that is sufficient authority to detain the person and to restrain, observe or examine the person for two weeks.

In Newfoundland and Labrador, a physician must assess a patient 72 hours before the involuntary admission expiry period and may either discharge or may renew. Manitoba and Nova Scotia do not specify a time frame in which the patient must be assessed. Both require that a psychiatrist file any renewals. Alberta requires that two physicians must separately examine the patient and one of those physicians must be a psychiatrist.

A new MHA could change the timeframe from two weeks to one month and allow for observation, detention, restraint, assessment, control, care for, the authorization of treatment, and treatment of an individual during that month. An attending physician could be required to assess the involuntary patient on a regular basis and shortly before the detention period expires to determine if the criteria for involuntary admission continues to

be met. Assessments could also be completed at the patient's request. If the patient improves and their condition no longer matches the criteria for involuntary admission, the involuntary admission would have to be cancelled and the patient would have to be released. Otherwise, after one month, a certificate for involuntary admission renewal would need to be issued.

*Question for consideration:*

- *Do you agree with extending the duration of the initial admission period from two weeks to one month? yes*
- *How often and when should assessments of involuntary patients be done?*

### **Renewals of Involuntary Admissions**

How often a certificate of involuntary admission renewal and involuntary psychiatric assessment are required varies across the country. In Alberta, the first and second renewals are valid for one month while the 3<sup>rd</sup> and any subsequent renewals are valid for 6 months. Manitoba's renewal certificates are valid for 3 month periods regardless of how many times the patient has been renewed and reassessed. In Newfoundland and Labrador and Nova Scotia, the first renewal lasts for one month, the second renewal allows for the detention of the patient for up to 2 months and the third and subsequent renewals allow for the detention of the patient for up to 3 months.

Currently, the NWT MHA states that the detention can be renewed for one month the first time it is renewed. The second renewal is for one additional month and requires the examination of a psychiatrist or other physician. Beyond that time, a judge may extend the detention to three months with subsequent renewals every six months.

A new MHA could set shorter renewal timeframes in an effort to be more fair and follow the model set by Nova Scotia and Newfoundland and Labrador, where the first renewal certificate is valid for one month, the 2<sup>nd</sup> renewal is valid for two months, while 3<sup>rd</sup> & subsequent renewal certificates are valid for 3 months. There could be no limit as to the number of certificates of involuntary admission renewal that could be issued. The rationale for setting the initial renewal period to one month is because this is considered the average time (4-6 weeks) required for a patient to stabilize.

*Questions for consideration:*

- How long should the renewal periods be? What is fair to all parties involved in the treatment and care of involuntary patients?