

CONSOLIDATION OF MENTAL HEALTH ACT
R.S.N.W.T. 1988,c.M-10

(Current to: April 25, 2013)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.43(Supp.)
R.S.N.W.T. 1988,c.64(Supp.)
 In force March 31, 1992: SI-006-92
S.N.W.T. 1993,c.5
 In force June 30, 1993: SI-007-93
S.N.W.T. 1994,c.29
 In force July 1, 1997: SI-004-97
S.N.W.T. 1997,c.8
S.N.W.T. 1998,c.5
S.N.W.T. 1998,c.24

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34
 In force April 1, 1999
S.N.W.T. 1998,c.38
 In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2003,c.4,s.21
 s.21 in force March 28, 2003
S.Nu. 2008,c.17,s.47
 s.47 in force September 18, 2008
S.Nu. 2010,c.25,s.36
 s.36 in force March 21, 2011: SI-001-2011
S.Nu. 2011,c.25,s.15
 s.15 in force October 31, 2011
S.Nu. 2012,c.17,s.19
 s.19 in force June 8, 2012

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

TABLE OF CONTENTS

Preamble

INTERPRETATION

Definitions	1
-------------	---

AGREEMENTS

Agreements with provinces and territories	2
Agreements with government of Canada, of a province or territory	3

APPOINTMENTS

Joint appointment	4
Appointment by Commissioner or Minister	5

VOLUNTARY PATIENTS

Voluntary admission	6
---------------------	---

INVOLUNTARY PSYCHIATRIC ASSESSMENT

Application	7	(1)
Consultation with elder		(2)
Extension of time		(3)
Authority to detain during consultation		(4)
Order for psychiatric assessment	8	(1)
Authority of order		(2)
Report to Minister		(3)
Contents of report		(4)
Application for order for psychiatric assessment	9	(1)
Contents of application		(2)
Redirection of application		(3)
Notice		(4)
Hearing		(5)
Order for psychiatric assessment		(6)
Direction of order to peace officers		(7)
Authority of order		(8)
Period of detention under order		(9)
Prohibition against order of medical practitioner		(10)
Action by psychologist	10	(1)
Written statement		(2)
Action by peace officer	11	(1)

Written statement	(2)
Action by private person	12 (1)
Transfer to peace officer	(2)

CERTIFICATE OF INVOLUNTARY ADMISSION

Examination and admission	13 (1)
Examination and application for involuntary admission	(2)
Involuntary admission following psychiatric assessment	14
Contents of application	15 (1)
Time to complete application	(2)
Order of medical practitioner	(3)
Authority of application	(4)
Duties of Minister	16 (1)
Decision of Minister	(2)
Written report	(3)
Time for refusing or approving application	(4)
Authority of order	(5)
Transfer of application to Commissioner	(6)
Extension of time	17
Authority of certificate	18
Application for certificate of transfer	18.1 (1)
Effect of order	(2)
Certificate of transfer	19 (1)
Authority of certificate	(2)
Transfer	(3)

TREATMENT

Examination to determine mental competence	19.1 (1)
New examination	(2)
Finding of mental incompetence	(3)
Language of information	(4)
Substitute consent giver	19.2 (1)
Reasonable inquiry	(2)
Priority of claim	(3)
Information to patient	(4)
Choice of substitute consent giver	(5)
Notice to substitute consent giver	(6)
Completion and filing of form	(7)
Language of information	(8)
Application to Nunavut Court of Justice	19.3 (1)
Harm to patient	(2)
Entitlement to information	19.4 (1)
Restriction	(2)
Statement by substitute consent giver	(3)

Duty of medical practitioner		(4)
Statement of medical practitioner		(5)
Language of explanation		(6)
Duties of substitute consent giver		(7)
Appointment of representative	19.5	(1)
Form and content		(2)
Notice to patient		(3)
Transitional		(4)
Appointment of new representative		(5)
Transmission of appointment, revocation to person in charge		(6)
Transmission of appointment, revocation to representative		(7)
Language of notice		(8)
Emergency treatment by medical practitioner	20	(1)
Application		(1.1)
Emergency treatment by nurse or lay dispenser		(2)
Consent to treatment	21	
Exceptional treatment	22	(1)
Experimental treatment		(2)

EXTENSION OF DETENTION

Certificate of renewal	23	(1)
Extension of detention		(2)
First certificate of renewal		(3)
Second certificate of renewal		(4)
Duty		(5)
Filing of certificate of renewal		(6)
Review of certificate	23.1	(1)
New certificate or release		(2)
Exception		(3)
Application to Territorial Court	23.2	(1)
Time of application		(2)
Affidavit of medical practitioner		(3)
Notice of hearing		(4)
Submissions by person in charge		(5)
Authority to detain	23.3	
Hearing	23.4	(1)
Harm to patient		(2)
Order of judge		(3)
Hearing by telephone		(4)
Adjournment		(5)
Order of judge		(6)
Authority to detain		(7)

CHANGE FROM INVOLUNTARY
TO VOLUNTARY PATIENT

Change from involuntary to voluntary patient	24	(1)
Application		(1.1)
Notice		(2)

ESCORT

Authority to escort	25	(1)
Duty of person escorting a person		(2)

REVIEWS

Application to Nunavut Court of Justice	26	(1)
Authority of review		(2)
Repealed		(3)
Review of finding of mental incompetence	26.1	(1)
Review of choice of substitute consent giver		(2)
Effect of application		(3)
Affidavit	26.2	
Order of examination	27	(1)
Written report		(2)
Hearing	28	(1)
Order of judge		(2)
<i>Idem</i>		(3)
<i>Idem</i>		(4)

APPEAL

Appeal	29	(1)
Authority of appeal		(2)
Rehearing		(3)
Appeal decision		(4)

PERSONS ON REMAND OR UNDER
AN ORDER OF THE COMMISSIONER

Application	30	(1)
Exemption		(2)
Order for observation	31	(1)
Written report		(2)
Emergency treatment		(3)
Where remanded for observation	32	(1)
Application of subsection 31(2)		(2)

Order of Commissioner	33
Review and appeal	34

RIGHTS OF A PATIENT

Reason for admission and explanation of need for care and treatment	35	(1)
Written notice		(2)
Interpreter		(3)
Where person cannot comprehend		(4)
Posting of rights	36	(1)
Explanation of notice		(2)
Restraint	36.1	(1)
Documentation of restraint		(2)
Communication by and to a patient	37	
Visitors	38	
Independent medical opinion	39	
Definition of "abuse"	40	(1)
Freedom from abuse		(2)
Offence		(3)
Discrimination in employment	41	(1)
Other discrimination		(2)
Request for destruction of records	42	(1)
Destruction of records		(2)

ABSENCE WITHOUT LEAVE

Absence without leave	43	(1)
Authority of order		(2)

DISCHARGE

Discharge of involuntary patient	44	(1)
Effect of order		(1.1)
Cancellation of certificate or vacation of order		(2)
Exception		(3)
Notice	45	

PROTECTION OF PRIVACY

Publication	46	
Type of hearing	47	(1)
Where public hearing		(2)

CONFIDENTIALITY OF RECORDS

Definitions	48	(1)
Disclosure of patient's health record		(2)
Persons who may examine patient's health record		(3)
Removal of name or means of identifying patient		(4)
Disclosure of name or means of identifying patient		(5)
Disclosure under subpoena	49	(1)
Statement by medical practitioner or psychologist		(2)
Power of court to examine patient's health record		(3)
Return of patient's health record		(4)
Disclosure in action or proceeding		(5)
Examination of record by patient	49.1	(1)
Written request		(2)
Application to judge		(3)
Notice to patient		(4)
Review by court	49.2	(1)
Submissions		(2)
Hearing of submissions		(3)
Order of court		(4)
Correction or statement of disagreement	49.3	(1)
Duty of person in charge		(2)
Examination of record by substitute consent giver	49.4	(1)
Examination of portion of record		(2)
Application		(3)

GOVERNMENT RECORDS

Government records	50	(1)
Availability of records to specified persons		(2)
Research, study or statistics		(3)

ESTATES

Examination as to competency	51	(1)
Certificate of mental incompetence		(2)
Exceptional circumstances		(3)
Exemption		(4)
Commencement of trusteeship	52	
Powers of the Public Trustee	53	
Cancellation of certificate of mental incompetence	54	
Notice of discharge	55	
Leave of judge to bring action	56	(1)
Notice of application		(2)
Service of documents	57	

GENERAL

Availability of substitute consent giver	57.1
Offence and punishment	58
Exemption from liability	59
Limitation period	60 (1)
Computation of time	(2)
Representative	61
Validity of documents	62

REGULATIONS

Regulations	63
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MENTAL HEALTH ACT

Recognizing the many cultures of the peoples of Nunavut, culture should be taken into account when assessing or examining a person to determine whether or not the person has a mental disorder; and

Being committed to the principle that mental health services should be provided in the least restrictive manner;

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:
S.Nu. 2012,c.17,s.19(20).

INTERPRETATION

Definitions

1. In this Act,

"appeal" means an appeal under section 29 of this Act; (*appel*)

"Commissioner" includes a person appointed by the Commissioner under section 4 or 5; (*commissaire*)

"hospital" means a medical facility or other place designated by order of the Minister, whether located within or outside Nunavut, for the observation, examination, care or treatment of a mentally disordered person; (*hôpital*)

"Inuit Language" means Inuit Language as defined in the *Inuit Language Protection Act*; (*langue inuit*)

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"justice" means a justice of the peace and includes two or more justices when two or more justices act or have jurisdiction; (*juge de paix*)

"lay dispenser" means a person who is authorized by a Medical Health Officer, appointed under the *Public Health Act*, to administer emergency first aid in a community that is without a resident nurse; (*secouriste*)

"mental disorder" means a substantial disorder of thought, mood, perception, orientation or memory, any of which grossly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life but mental retardation or a learning disability does not of itself constitute a mental disorder; (*troubles mentaux*)

"mentally competent" means having the ability to understand the subject-matter in respect of which consent is requested and the ability to appreciate the consequences of giving or withholding consent; (*mentalement capable*)

"Minister" includes a person appointed by the Minister under section 4 or 5; (*ministre*)

"person in charge" means the person who is responsible for the administration and management of a hospital; (*responsable*)

"psychiatrist" means a medical practitioner who holds a specialist's certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualifications acceptable to the Minister; (*psychiatre*)

"psychologist" means a person who is entitled to practise psychology in Nunavut under the *Psychologists Act*; (*psychologue*)

"Public Trustee" means the Public Trustee as defined in the *Public Trustee Act*; (*curateur public*)

"representative" means a representative appointed by a patient under section 19.5; (*représentant*)

"restrain" means to keep under control in accordance with section 36.1; (*maîtriser*)

"review" means a review under section 26 or 26.1; (*contrôle judiciaire*)

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*; (*conjoint*)

"substitute consent giver" means the person determined under section 19.2 as having the authority to give or withhold consent on behalf of a patient who has been found to be mentally incompetent to consent to treatment and, in subsections 23.2(4) and 24(2), sections 35 and 45, subsections 47(1), 48(3) and 49(5) and section 49.4 includes, in the case of a person who has not been found to be mentally incompetent to consent to treatment, the person who would be entitled under section 19.2 to act as the substitute consent giver, if such a finding had been made. (*subrogé*)

R.S.N.W.T. 1988,c.64(Supp.),s.2; S.N.W.T. 1993,c.5,s.2;

S.N.W.T. 1998,c.34,Sch.C,s.22(2); S.Nu. 2008,c.17,s.47(2); S.Nu. 2011,c.25,s.15(2);

S.Nu. 2012,c.17,s.19(2),(20).

AGREEMENTS

Agreements with provinces and territories

2. The Minister may, on behalf of the Government of Nunavut, enter into agreements with the government of a province or territory for the admission of a person who has a mental disorder to a hospital in that province or territory.

S.Nu. 2012,c.17,s.19(3).

Agreements with government of Canada, of a province or territory

3. The Minister may, on behalf of the Government of Nunavut, enter into agreements with the Government of Canada or the government of a province or territory respecting this Act or the regulations and in particular, but not so as to restrict the generality of this power to enter into agreements,

- (a) the conveyance of a voluntary or involuntary patient from Nunavut to a hospital in a province or territory;
 - (b) the acceptance of a voluntary or involuntary patient by a hospital in a province or territory;
 - (c) the conveyance of an involuntary patient from a hospital in a province or territory to Nunavut for a review or appeal hearing;
 - (d) the review by a review board of a province or territory;
 - (e) the patient's rights;
 - (f) the periodical reports concerning a voluntary or involuntary patient;
 - (g) the discharge of a voluntary or involuntary patient;
 - (h) the discharge notices; and
 - (i) the examination of persons on remand or under an order of the Commissioner under the *Criminal Code*.
- S.Nu. 2012,c.17,s.19(20).

APPOINTMENTS

Joint appointment

4. The Commissioner and the Minister may jointly appoint a person for the whole or a part of Nunavut to act on their behalf for the purposes of sections 16, 17 and 19.

S.Nu. 2012,c.17,s.19(20).

Appointment by Commissioner or Minister

5. Despite section 4, where the Commissioner or the Minister do not agree on a joint appointment,

- (a) the Commissioner may appoint a person for the whole or a part of Nunavut to act on behalf of the Commissioner for the purposes of section 19; and
 - (b) the Minister may appoint a person for the whole or a part of Nunavut to act on behalf of the Minister for the purposes of sections 16 and 17.
- S.Nu. 2012,c.17,s.19(20).

VOLUNTARY PATIENTS

Voluntary admission

- 6.** A hospital may admit a person with a mental disorder as a voluntary patient, where a medical practitioner is of the opinion that the person
- (a) has a mental disorder of a nature and quality that the person is in need of the care or treatment provided in a hospital; and
 - (b) is suitable for admission as a voluntary patient.
- R.S.N.W.T. 1988,c.43(Supp.),s.2; S.Nu. 2012,c.17,s.19(20).

INVOLUNTARY PSYCHIATRIC ASSESSMENT

Application

- 7.** (1) This section applies notwithstanding any other provision of this Act.

Consultation with elder

- (2) Where a medical practitioner is conducting
- (a) a psychiatric assessment under section 8, 9, 10, 11 or 12, or
 - (b) an examination under section 13,
- of an Inuk who
- (c) does not speak English or French fluently, and
 - (d) speaks the Inuit Language fluently,
- the medical practitioner shall, if practicable, and with the consent of the Inuk where that person is mentally competent to give a valid consent,
- (e) consult with an elder who is from the same community and of the same cultural background as the Inuk and who knows the Inuk, and
 - (f) obtain the opinion of the elder referred to in paragraph (e) as to whether the Inuk is suffering from a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that Inuk,
 - (ii) serious bodily harm to another person, or
 - (iii) imminent and serious physical impairment of that Inuk.

Extension of time

- (3) The length of time required to consult with an elder under subsection (2) shall be added to the length of time a medical practitioner is otherwise given under this Act to perform a psychiatric assessment of a person under section 8, 9, 10, 11 or 12 or an examination under section 13.

Authority to detain during consultation

- (4) Consultation under subsection (2) is sufficient authority for a medical practitioner to detain an Inuk in custody at a hospital within Nunavut for the length of time required to complete the consultation. R.S.N.W.T. 1988,c.64(Supp.),s.3; S.Nu. 2008,c.17,s.47(3); S.Nu. 2012,c.17,s.19(20).

Order for psychiatric assessment

8. (1) A medical practitioner may order the detention of a person at a hospital within Nunavut for the purpose of undergoing a psychiatric assessment where

- (a) after examining the person, the medical practitioner has reasonable cause to believe that the person
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iii) has shown or is showing a lack of competence to care for himself or herself;
- (b) the medical practitioner requires more time to gather information before forming an opinion as to whether the person has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person;and
- (c) the person refuses to undergo a psychiatric assessment or is not mentally competent to give a valid consent to undergo a psychiatric assessment.

Authority of order

(2) An order made under subsection (1) is sufficient authority to detain the person who is the subject of the order in custody at a hospital within Nunavut for a period of 48 hours beginning immediately after the examination referred to in subsection (1) is performed.

Report to Minister

(3) A medical practitioner who orders the detention of a person under subsection (1) shall, within 24 hours after the examination that led to the issuing of the order under subsection (1), send a report respecting the order of detention under his or her signature to the Minister.

Contents of report

- (4) A medical practitioner, in a report made under subsection (3), shall
- (a) state that he or she personally examined the person who is detained and that he or she required more time beyond the examination under subsection (1) to observe the person in order to form an opinion as to whether that person has a mental disorder of a nature or quality that will likely result in serious bodily harm to that person or to another person;
 - (b) set out the facts on which he or she issued the order, distinguishing the facts observed by him or her from the facts communicated to him or her by others; and

- (c) state the date on which the examination was made.
R.S.N.W.T. 1988,c.64(Supp.),s.4; S.Nu. 2012,c.17,s.19(4);
S.Nu. 2012,c.17,s.19(20).

Application for order for psychiatric assessment

9. (1) A person may make an application, supported by an affidavit, to a justice or a judge for an order to have the person named in the application undergo a psychiatric assessment by a medical practitioner.

Contents of application

(2) The applicant shall state in the application

- (a) the name of the person who is the subject of the application;
- (b) whether the person referred to in paragraph (a)
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iii) has shown or is showing a lack of competence to care for himself or herself; and
- (c) that he or she has reasonable and probable cause to believe that the person referred to in paragraph (a) apparently has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) **repealed, S.Nu. 2012,c.17,s.19(5),**
 - (iii) imminent and serious physical impairment of that person.

Redirection of application

(3) Where an application is made under subsection (1) to a justice for an order, the justice may exercise the jurisdiction of a justice under this Act or redirect that application to a judge without delay.

Notice

(4) The justice or judge to whom an application is made shall give two days notice of the hearing to the person who is the subject of the application unless the justice or judge is satisfied that

- (a) no notice is necessary; or
- (b) the delay caused by proceeding by notice might entail serious mischief.

Hearing

(5) The justice or judge shall conduct a hearing on the application and hear evidence concerning

- (a) the alleged mental disorder, including
 - (i) medical or psychological evidence, wherever practicable,
 - (ii) testimony of the applicant, and

- (iii) testimony of the subject of the application, wherever practicable; and
- (b) any other matter that the justice or judge considers relevant.

Order for psychiatric assessment

(6) A justice or judge may issue an order in the prescribed form authorizing the psychiatric assessment of the person who is the subject of the application if the justice or judge, based on the available information, is of the opinion that the person apparently has a mental disorder of a nature or quality that will likely result in

- (a) serious bodily harm to that person or another person, or
- (b) imminent and serious physical impairment of that person.

Direction of order to peace officers

(7) A justice or a judge who issues an order under subsection (6) may direct that order to all peace officers within Nunavut and shall name and describe the person with respect to whom the order has been made.

Authority of order

(8) An order made under subsection (6) is sufficient authority for any peace officer to whom it is directed, for a period not exceeding seven days beginning on the day on which the order is made, to take the person named and described in the order in custody to a medical practitioner or hospital within Nunavut without delay.

Period of detention under order

(9) A person may be detained under an order made under subsection (6) at a hospital within Nunavut for psychiatric assessment by a medical practitioner for a period not exceeding 48 hours from the time the person is transferred into the custody of the medical practitioner or hospital.

Prohibition against order of medical practitioner

(10) A medical practitioner shall not issue an order referred to in subsection 8(1) where a peace officer transfers the custody of a person named and described in an order made under subsection (6) to a medical practitioner or a hospital.

S.N.W.T. 1998,c.34,Sch.C,s.22(3)(a); S.Nu. 2012,c.17,s.19(5),(6),(20).

Action by psychologist

10. (1) A psychologist may take a person into custody and then without delay to a medical practitioner or a hospital within Nunavut for the purpose of undergoing a psychiatric assessment where

- (a) the psychologist has reasonable and probable cause to believe that the person
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or

- (iii) has shown or is showing a lack of competence to care for himself or herself;
- (b) the psychologist, based on the available information, is of the opinion that the person apparently has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person;
 and
- (c) proceeding under section 9 would be unreasonable in the circumstances or would result in a delay that would likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person.

Written statement

(2) Where a psychologist delivers a person taken in custody under subsection (1) to a medical practitioner or a hospital, the psychologist shall provide the medical practitioner or hospital, as the case may be, with a written statement relating the circumstances which led the psychologist to act. S.Nu. 2012,c.17,s.19(7).

Action by peace officer

11. (1) A peace officer may take a person into custody and then without delay to a medical practitioner or a hospital within Nunavut for the purpose of undergoing a psychiatric assessment where

- (a) the peace officer has reasonable and probable cause to believe that the person
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iii) has shown or is showing a lack of competence to care for himself or herself;
- (b) the peace officer, based on the available information, is of the opinion that the person apparently has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person;
 and
- (c) proceeding under section 9 would be unreasonable in the circumstances or would result in a delay that would likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person.

Written statement

(2) Where a peace officer delivers a person taken in custody under subsection (1) to a medical practitioner or a hospital, the peace officer shall provide the medical practitioner or hospital, as the case may be, with a written statement relating the circumstances which led the peace officer to act. S.Nu. 2012,c.17,s.19(8).

Action by private person

12. (1) A person, other than a peace officer, may take another person into custody and then without delay to a medical practitioner or a hospital within Nunavut for the purpose of undergoing a psychiatric assessment where

- (a) the person has reasonable and probable cause to believe that the other person
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iii) has shown or is showing a lack of competence to care for himself or herself;
- (b) the person, based on the available information, is of the opinion that the other person apparently has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that other person or another person, or
 - (ii) imminent and serious physical impairment of that other person;
- (c) proceeding under section 9 would be unreasonable in the circumstances or would result in a delay that would likely result in
 - (i) serious bodily harm to that other person or another person, or
 - (ii) imminent and serious physical impairment of that person;
 and
- (d) a peace officer is not available and it would be unreasonable in the circumstances to delay until a peace officer is available to proceed under section 11.

Transfer to peace officer

- (2) A person who has taken a person in custody under subsection (1) shall,
- (a) where a peace officer becomes available before he or she has taken the person in custody to a medical practitioner or hospital for psychiatric assessment, transfer the custody of the person taken in custody to a peace officer; and

- (b) where he or she delivers the person taken in custody to a medical practitioner or hospital, provide the medical practitioner or hospital, as the case may be, with a written statement relating the circumstances which led he or she to act.
S.Nu. 2012,c.17,s.19(9).

CERTIFICATE OF INVOLUNTARY ADMISSION

Examination and admission

13. (1) A medical practitioner shall admit a person as a voluntary patient to a hospital in accordance with section 6 where

- (a) after examining the person, the medical practitioner has reasonable cause to believe that the person
 - (i) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself,
 - (ii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iii) has shown or is showing a lack of competence to care for himself or herself; and
- (b) the medical practitioner, based on the available information, is of the opinion that the person apparently has a mental disorder of a nature or quality that will likely result in
 - (i) serious bodily harm to that person or another person, or
 - (ii) imminent and serious physical impairment of that person, unless the person remains in the custody of a hospital.

Examination and application for involuntary admission

(2) Where the criteria set out in subsection (1) are satisfied, but a medical practitioner is of the opinion that the person is not suitable for admission as a voluntary patient, the medical practitioner shall apply to admit the person as an involuntary patient to a hospital by completing and filing with the Minister an application for a certificate of involuntary admission as set out in section 15. R.S.N.W.T. 1988,c.43(Supp.),s.3; S.Nu. 2012,c.17,s.19(10).

Involuntary admission following psychiatric assessment

14. Where a medical practitioner has performed a psychiatric assessment under section 8, 9, 10, 11 or 12, the medical practitioner shall

- (a) release the person if the medical practitioner is of the opinion that the person does not have a mental disorder of a nature or quality that will likely result in serious bodily harm to that person or to another person, where the person is detained under section 8 or 9 and the period of detention has not expired;
- (b) admit the person as a voluntary patient to a hospital in accordance with section 6; or

- (c) apply to admit the person as an involuntary patient to a hospital by completing and filing with the Minister an application for a certificate of involuntary admission as set out in section 15, where the medical practitioner is of the opinion that the person is not suitable for admission as a voluntary patient and the person has a mental disorder of a nature or quality that will likely result in
- (i) serious bodily harm to that person or another person, or
 - (ii) **repealed, S.Nu. 2012,c.17,s.19(13),**
 - (iii) imminent and serious physical impairment of that person, unless the person remains in the custody of a hospital.
- R.S.N.W.T. 1988,c.43(Supp.),s.4;
R.S.N.W.T. 1988,c.64(Supp.),s.5; S.Nu. 2012,c.17,s.19(13),(20).

Contents of application

15. (1) Where a medical practitioner applies to the Minister to admit a person as an involuntary patient under subsection 13(2) or paragraph 14(c), the medical practitioner shall, in the prescribed application,

- (a) state that he or she has personally examined the person who is the subject of the application and has made a careful inquiry into all the facts necessary for him or her to form his or her opinion as to the nature and quality of the mental disorder of the person;
- (b) set out the facts on which he or she formed his or her opinion as to the nature and quality of the mental disorder, distinguishing the facts observed by him or her from the facts communicated to him or her by others;
- (c) state the date on which the examination referred to in section 13 or the psychiatric assessment referred to in section 8, 9, 10, 11 or 12 was performed; and
- (d) indicate whether in his or her opinion the person ought to be transferred to a hospital outside Nunavut.

Time to complete application

(2) A medical practitioner shall complete an application made under subsection 13(2) or paragraph 14(c) within 24 hours after the examination referred to in section 13 or psychiatric assessment referred to in section 8, 9, 10, 11 or 12.

Order of medical practitioner

(3) Where a medical practitioner decides to apply to admit a person as an involuntary patient under subsection 13(2) or paragraph 14(c), the medical practitioner may order the detention of that person at a hospital within Nunavut.

Authority of application

(4) An order made under subsection (3) is sufficient authority to detain the person who is the subject of the order in custody at a hospital within Nunavut for a period not exceeding 48 hours from the time the examination referred to in section 13 or the psychiatric assessment referred to in section 8, 9, 10, 11 or 12 was performed.
S.Nu. 2012,c.17,s.19(20).

Duties of Minister

16. (1) The Minister, on receipt of an application made under subsection 13(2) or paragraph 14(c), shall examine the application to ascertain if the medical practitioner

- (a) has examined or performed a psychiatric assessment of the person who is the subject of the application; and
- (b) has completed the application as required by subsection 15(1) within the 24 hours referred to in subsection 15(2).

Decision of Minister

(2) Once the Minister has examined the application, the Minister may, within 24 hours after receipt of the application referred to in subsection (1),

- (a) refuse the application and release from custody the person who is the subject of the application;
- (b) order that a psychiatric assessment be performed of the person who is the subject of the application, within 48 hours after that order, before refusing or approving the application; or
- (c) approve the application and issue a certificate of involuntary admission in the prescribed form.

Written report

(3) The medical practitioner who examines a person under an order made under paragraph (2)(b) shall report, in writing, to the Minister on the mental condition of that person before the expiration of the 48 hours stated in the order.

Time for refusing or approving application

(4) The Minister may, within 24 hours after receipt of the report referred to in subsection (3), refuse or approve the application made under subsection 13(2) or paragraph 14(c).

Authority of order

(5) An order made under paragraph (2)(b) is sufficient authority for a medical practitioner to detain at a hospital within Nunavut the person named in the order for a period not exceeding 72 hours from the time that the person is detained under the order.

Transfer of application to Commissioner

(6) Where the medical practitioner has indicated on an application made under subsection 13(2) or paragraph 14(c) that the person who is the subject of the application ought to be transferred to a hospital outside Nunavut because a hospital within Nunavut is

not equipped to restrain, observe, examine or treat that patient, the Minister shall, once the Minister has issued a certificate of involuntary admission, without delay forward the application to the Commissioner. S.Nu. 2012,c.17,s.19(20).

Extension of time

17. Where the Minister, due to unusual circumstances, cannot approve and issue a certificate of involuntary admission within the time set out in subsection 16(2) or (4), the Minister may order the extension of the period of detention set out in subsection 15(4) or 16(5) by one additional period, which shall not exceed 48 hours.

Authority of certificate

18. A certificate of involuntary admission is sufficient authority for a hospital within Nunavut to admit and detain the person who is the subject of the certificate and to restrain, observe or examine the person for a period not to exceed two weeks from the time the person is admitted to the hospital under the certificate.

R.S.N.W.T. 1988,c.64(Supp.),s.6; S.Nu. 2012,c.17,s.19(20).

Application for certificate of transfer

18.1. (1) Where an involuntary patient is detained under this Act and a medical practitioner is of the opinion that the patient ought to be transferred to a hospital outside Nunavut because a hospital within Nunavut is not equipped to restrain, observe, examine or treat the patient, the medical practitioner may, at any time during the detention, apply to the Commissioner in the prescribed form for a certificate of transfer for the patient.

Effect of order

(2) Subsection (1) applies notwithstanding any order respecting the involuntary patient made under section 23.4. R.S.N.W.T. 1988,c.43(Supp.),s.5; R.S.N.W.T. 1988,c.64(Supp.),s.7; S.N.W.T. 1997,c.8,s.20; S.Nu. 2012,c.17,s.19(20).

Certificate of transfer

19. (1) The Commissioner may issue a certificate of transfer where

- (a) the Commissioner has received an application
 - (i) forwarded by the Minister under subsection 16(6), or
 - (ii) made by a medical practitioner under subsection 18.1(1);
- and
- (b) the Commissioner has examined the application to ensure that this Act and the regulations have been complied with.

Authority of certificate

(2) Subject to subsection (3), a certificate of transfer issued under subsection (1) is sufficient authority to arrange to transfer and to transfer the person named in the certificate to a hospital outside Nunavut.

Transfer

(3) Despite subsection (2), an involuntary patient who is the subject of a certificate of transfer shall not be transferred to a hospital outside Nunavut where that patient has filed an application for review under section 26 or has appealed the decision made on the review under section 29 until

- (a) the review is heard and decided and the time for an appeal has expired or the applicant withdraws his or her application or the Nunavut Court of Justice dismisses the application, or
- (b) the appeal is heard and decided or the appellant abandons the appeal or the Court of Appeal dismisses the appeal,

unless a medical practitioner is of the opinion that a hospital within Nunavut is not equipped to restrain, observe, examine or treat that patient.

R.S.N.W.T. 1988,c.43(Supp.),s.6; R.S.N.W.T. 1988,c.64(Supp.),s.8;
S.N.W.T. 1998,c.24,s.20(2); S.Nu. 2012,c.17,s.19(20).

TREATMENT

Examination to determine mental competence

19.1. (1) Before administering medical or psychiatric treatment to a voluntary or involuntary patient admitted or detained in accordance with this Act, the medical practitioner shall examine the patient to determine whether the patient is mentally competent to give a valid consent to the treatment.

New examination

(2) A new examination under subsection (1) is required each time that there is to be a significant change in the treatment administered to the patient.

Finding of mental incompetence

(3) Where, after an examination made under subsection (1), the medical practitioner is of the opinion that the patient is not mentally competent to give a valid consent, the medical practitioner shall

- (a) make a finding of mental incompetence by completing the prescribed form and filing the form with the person in charge;
- (b) inform the patient of the finding of mental incompetence and of his or her right to have the finding reviewed under subsection 26.1(1); and
- (c) choose the substitute consent giver in accordance with section 19.2.

Language of information

(4) Where a patient does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the information provided to the patient under paragraph (3)(b) is explained to the patient in a language that the patient understands. R.S.N.W.T. 1988,c.64(Supp.),s.9.

Substitute consent giver

19.2. (1) A person may consent on behalf of a voluntary or involuntary patient who has been found to be mentally incompetent to consent, if the person consenting is mentally competent to give a valid consent and is described in one of the following paragraphs:

- (a) a guardian appointed by the court who has authority to consent to treatment on behalf of the patient;
- (b) a representative;
- (c) the spouse of the patient;
- (d) a child of the patient;
- (e) a parent of the patient;
- (f) a brother or sister of the patient;
- (g) any other relative of the patient;
- (h) a friend of the patient.

Reasonable inquiry

(2) Where a finding of mental incompetence is made under subsection 19.1(3), the medical practitioner shall make reasonable inquiry as to the existence and availability of persons described in subsection (1).

Priority of claim

(3) Subject to subsections (4) to (7),

- (a) where two or more persons who are described in different paragraphs of subsection (1) claim the authority to consent on behalf of the patient, the claim of the person who is described in the earlier paragraph prevails; and
- (b) where a person described in subsection (1) withholds consent to treatment, the consent of a person described in a subsequent paragraph is not valid.

Information to patient

(4) Where a finding of mental incompetence is made under subsection 19.1(3), the medical practitioner shall inform the patient of the person who, according to the priorities established in subsection (1), would have the authority to consent on behalf of the patient.

Choice of substitute consent giver

(5) Where the person referred to in subsection (4) is a person described in paragraphs (1)(c) to (h) and the patient objects to that person acting as the substitute consent giver, the medical practitioner shall, giving consideration to the wishes of the patient, choose the person described in subsection (1) who is most appropriate to consent on behalf of the patient.

Notice to substitute consent giver

(6) After choosing a substitute consent giver under this section, the medical practitioner shall notify the proposed substitute consent giver and where that person is unwilling to act as the substitute consent giver, the medical practitioner shall choose another substitute consent giver in accordance with this section.

Completion and filing of form

(7) After choosing a substitute consent giver under subsection (5), the medical practitioner shall

- (a) complete the prescribed form, stating the facts on which the decision is based;
- (b) file the completed form with the person in charge;
- (c) inform the patient of the person who will be acting as the substitute consent giver for the patient; and
- (d) inform the patient of his or her right to have the decision reviewed under subsection 26.1(2).

Language of information

(8) Where a patient does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the information provided to the patient under subsection (4) and paragraphs (7)(c) and (d) is explained to the patient in a language that the patient understands. R.S.N.W.T. 1988,c.64(Supp.),s.9; S.Nu. 2011,c.25,s.15(3).

Application to Nunavut Court of Justice

19.3. (1) A medical practitioner may apply to the Nunavut Court of Justice for instructions as to how to proceed where

- (a) after a reasonable inquiry, no person described in subsection 19.2(1)
 - (i) who claims the authority to consent on behalf of the patient or who is willing to act as the substitute consent giver is found, or
 - (ii) is available at the time the consent is needed;
- (b) there is no guardian or representative, and in the opinion of the medical practitioner, no person described in paragraphs 19.2(1)(c) to (h) is suitable to consent on behalf of the patient;
- (c) a change in circumstances or new information comes to the attention of the medical practitioner and, in the opinion of the medical practitioner, the person acting as the substitute consent giver for the patient
 - (i) is no longer suitable to consent on behalf of the patient, or
 - (ii) does not meet the requirements of subsections 19.4(3) and (7); or

- (d) two or more persons described in the same paragraph of subsection 19.2(1) who claim the authority to consent on behalf of the patient disagree about whether to give or withhold consent and their claim would prevail over other persons described in subsection 19.2(1).

Harm to patient

(2) Subsections 23.4(2) and (3) apply with such modifications as the circumstances require to the hearing of an application made under subsection (1).
R.S.N.W.T. 1988,c.64(Supp.),s.9; S.Nu. 2012,c.17,s.19(20).

Entitlement to information

19.4. (1) A substitute consent giver is entitled to receive all information concerning the patient and the proposed treatment that is necessary for an informed consent.

Restriction

(2) Despite subsection (1), the substitute consent giver is not entitled to receive the information after the patient has been found to be mentally competent.

Statement by substitute consent giver

(3) A person described in paragraphs 19.2(1)(c) to (h) shall not act as a substitute consent giver on behalf of a patient unless the person makes a written statement in the prescribed form indicating that he or she

- (a) has been in personal contact with the patient during the preceding 12 months and has a friendly relationship with the patient;
- (b) believes that the patient does not object to him or her acting as the substitute consent giver; and
- (c) will act in accordance with subsection (7).

Duty of medical practitioner

(4) Subject to subsection (5), a medical practitioner shall not accept the consent of a substitute consent giver who has not signed the statement referred to in subsection (3).

Statement of medical practitioner

(5) Where it is not possible for the medical practitioner to obtain the written statement referred to in subsection (3), the medical practitioner shall explain the requirements of subsection (3) to the proposed substitute consent giver and where the medical practitioner is of the opinion that the proposed substitute consent giver meets the requirements of subsection (3), he or she shall make a signed statement in the prescribed form to that effect.

Language of explanation

(6) Where a proposed substitute consent giver does not speak or understand the same language as the medical practitioner, the person in charge shall ensure that the explanation required under subsection (5) is provided to the proposed substitute consent giver in a language that he or she understands.

Duties of substitute consent giver

(7) A substitute consent giver

- (a) shall exercise his or her powers diligently and in good faith, and shall act for the benefit of the patient;
- (b) where the intentions and wishes of the patient can be ascertained, shall make decisions on behalf of the patient in accordance with the intentions the patient had before becoming mentally incompetent and shall take into consideration the wishes of the patient;
- (c) where the intentions and wishes of the patient cannot be ascertained, shall make decisions on behalf of the patient that are likely to promote the well-being of the patient; and
- (d) shall encourage the patient to participate, to the best of his or her abilities, in the making of decisions by the substitute consent giver on behalf of the patient.

R.S.N.W.T. 1988,c.64(Supp.),s.9; S.Nu. 2012,c.17,s.19(20).

Appointment of representative

19.5. (1) A voluntary or involuntary patient who is mentally competent to do so may appoint a representative who is apparently mentally competent to give or withhold consent to treatment on behalf of the patient at any time when the patient is not mentally competent to consent on his or her own behalf.

Form and content

(2) An appointment of a representative

- (a) shall be made in writing in the presence of a witness; and
- (b) may be subject to any conditions and restrictions contained in it that are not inconsistent with this Act.

Notice to patient

(3) A medical practitioner shall, within 48 hours after a person is admitted or detained in accordance with this Act, give the patient written notice of the right to appoint a representative.

Transitional

(4) As soon as possible after this section comes into force, the person in charge shall give each patient in the hospital notice in the prescribed form, informing the patient of

- (a) the right to appoint a representative; and
- (b) the powers and responsibilities of a representative under this Act.

Appointment of new representative

(5) A patient who has appointed a representative and who is mentally competent may in writing revoke the appointment and appoint a new representative.

Transmission of appointment, revocation to person in charge

(6) Where a patient appoints or revokes the appointment of a representative, the patient shall give or transmit to the person in charge a copy of the written statement making the appointment or revocation.

Transmission of appointment, revocation to representative

(7) Where a patient gives or transmits to the person in charge a written statement appointing or revoking the appointment of a representative, the person in charge shall, without delay, transmit the statement to the representative.

Language of notice

(8) Where a patient does not speak or understand the same language as the medical practitioner or the person in charge, the person in charge shall ensure that the notice provided to the patient under subsections (3) and (4) is explained to the patient in a language that the patient understands. R.S.N.W.T. 1988,c.64(Supp.),s.9.

Emergency treatment by medical practitioner

20. (1) A medical practitioner may administer emergency medical or psychiatric treatment to a person who is being examined or assessed or has been admitted or detained in accordance with this Act, where

- (a) the person is mentally competent to give a valid consent and consents to receiving the treatment;
- (b) the person is not mentally competent to give a valid consent and the substitute consent giver consents to the treatment; or
- (c) the person is not mentally competent to give a valid consent and there is no substitute consent giver or the substitute consent giver is not available and
 - (i) the treatment is necessary to preserve the life or mental or physical health of that person,
 - (ii) the failure to give the treatment or delay in giving the treatment would create a reasonably foreseeable risk of injury to that person or any other person, and
 - (iii) the treatment cannot reasonably be delayed through an alternative means of detention.

Application

(1.1) Subsection (1) applies notwithstanding an application made under subsection 26.1(1) for a review of a finding of mental incompetence or under subsection 26.1(2) for a review of the choice of substitute consent giver.

Emergency treatment by nurse or lay dispenser

(2) A nurse duly registered under the *Nursing Profession Act* (Northwest Territories) or a lay dispenser shall not administer emergency medical or psychiatric treatment to a person who is admitted or detained in accordance with this Act unless

- (a) that person cannot be immediately placed under the care of a medical practitioner;
- (b) the treatment is necessary to preserve the life or mental or physical health of that person;
- (c) the failure to give the treatment or a delay in giving the treatment would create a reasonably foreseeable risk of injury to that person or any other person;
- (d) the treatment cannot reasonably be delayed through an alternative means of detention; and
- (e) the nurse or the lay dispenser communicates with a medical practitioner who authorizes the treatment or makes every reasonable attempt to communicate with a medical practitioner before administering the treatment.

R.S.N.W.T. 1988,c.43(Supp.),s.7;

R.S.N.W.T. 1988,c.64(Supp.),s.10,11; S.N.W.T. 1993,c.5,s.4;

S.N.W.T. 1998,c.38,Sch.D,PartII,s.5(a).

Consent to treatment

21. Subject to sections 22 and 26.1, a medical practitioner may administer medical or psychiatric treatment to a voluntary or involuntary patient admitted or detained in accordance with this Act, where

- (a) the patient is mentally competent to give a valid consent and consents to receiving the treatment; or
- (b) the patient is not mentally competent to give a valid consent and the substitute consent giver consents to the treatment.

R.S.N.W.T. 1988,c.64(Supp.),s.12; S.N.W.T. 1993,c.5,s.5.

Exceptional treatment

22. (1) The treatment referred to in section 21 does not include psychosurgery, lobotomy or other irreversible forms of treatment, unless the patient who is to be treated is mentally competent to give a valid consent and has consented to the treatment.

Experimental treatment

(2) No experimental treatment involving any significant risk of physical or psychological harm shall be administered to a patient.

R.S.N.W.T. 1988,c.64(Supp.),s.13; S.N.W.T. 1993,c.5,s.6.

EXTENSION OF DETENTION

Certificate of renewal

23. (1) Where a certificate of involuntary admission has been issued under subsection 16(2) and a medical practitioner is of the opinion that an extension is required to detain an involuntary patient in a hospital within Nunavut to restrain, observe, examine or treat the patient, the medical practitioner may complete a certificate of renewal in accordance with this section.

Extension of detention

(2) A patient who is detained under a certificate of involuntary admission may be further detained, restrained, observed or examined for not more than

- (a) one additional month under a first certificate of renewal; and
- (b) one additional month under a second certificate of renewal.

First certificate of renewal

(3) A first certificate of renewal must be

- (a) signed by the medical practitioner referred to in subsection (1) and a second medical practitioner; and
- (b) completed and filed before the expiry of the certificate of involuntary admission.

Second certificate of renewal

(4) A second certificate of renewal must be

- (a) signed by the medical practitioner referred to in subsection (1) and a psychiatrist; and
- (b) completed and filed before the expiry of the first certificate of renewal.

Duty

(5) No medical practitioner shall sign a certificate of renewal unless the medical practitioner

- (a) has personally examined the involuntary patient referred to in the certificate of renewal; and
- (b) has reasonable cause to believe that the involuntary patient
 - (i) has a mental disorder of a nature or quality that will likely result in
 - (A) serious bodily harm to the patient or another person,
 - or
 - (B) **repealed, S.Nu. 2012,c.17,s.19(14),**

- (C) imminent and serious physical impairment of the patient,
unless the patient is detained, restrained, examined, observed or treated in a hospital as an involuntary patient, and
- (ii) is not suitable for admission as a voluntary patient.

Filing of certificate of renewal

(6) A certificate of renewal shall be filed without delay with the person in charge, by the medical practitioner referred to in subsection (1).

R.S.N.W.T. 1988,c.64(Supp.),s.14; S.N.W.T. 1998,c.24,s.20(3);

S.Nu. 2012,c.17,s.19(14),(20).

Review of certificate

23.1. (1) Where a certificate of renewal is filed under subsection 23(6), the person in charge shall, without delay, review the certificate to determine whether it has been completed in compliance with this Act and, where the certificate is not properly completed, the person in charge shall inform the medical practitioner who filed the certificate.

New certificate or release

(2) Despite section 62, where a certificate of renewal has been improperly completed, unless the involuntary patient who is the subject of the certificate is re-examined and a certificate of renewal is completed and filed in accordance with section 23, the person in charge shall release the involuntary patient if the previous authority for detaining the patient under this Act has expired.

Exception

(3) Subsection (2) does not apply where the irregularity in completion is minor.
R.S.N.W.T. 1988,c.64(Supp.),s.14; S.Nu. 2012,c.17,s.19(20).

Application to Territorial Court

23.2. (1) Where a medical practitioner is of the opinion that a further extension is required to detain an involuntary patient in a hospital within Nunavut to restrain, observe, examine or treat the patient, the medical practitioner may apply to a judge

- (a) for a first order extending the detention for not more than an additional three months, where a second certificate of renewal respecting the patient has been completed and filed in accordance with section 23;
- (b) for a second order extending the detention for not more than an additional six months, when a first order extending detention has been made respecting the patient; and
- (c) for subsequent orders, each extending the detention for not more than six months, where a second or subsequent order extending detention has been made respecting the patient.

Time of application

(2) An application made under

- (a) paragraph (1)(a) for a first order must be filed at least 14 days before the expiry of the second certificate of renewal; and
- (b) paragraphs (1)(b) or (c) for a second or subsequent order must be filed at least 14 days before the expiry of the preceding order extending detention.

Affidavit of medical practitioner

(3) A medical practitioner applying under subsection (1) shall support the application with an affidavit stating

- (a) that the medical practitioner has personally examined the involuntary patient who is the subject of the application and the medical practitioner is of the opinion that
 - (i) the patient has a mental disorder of a nature or quality that likely will result in
 - (A) serious bodily harm to the patient or another person, or
 - (B) **repealed, S.Nu. 2012,c.17,s.19(15),**
 - (C) imminent and serious physical impairment of the patient,unless the patient is detained, restrained, examined, observed or treated in a hospital as an involuntary patient, and
 - (ii) the patient is not suitable for admission as a voluntary patient;
- (b) the reasons for requesting the extension;
- (c) whether the application is for a first, second or subsequent order; and
- (d) the number of months of additional detention requested, up to the maximum allowed under subsection (1).

Notice of hearing

(4) A medical practitioner applying under subsection (1) shall give notice in the prescribed form of the hearing of the application to the patient, the substitute consent giver and the person in charge.

Submissions by person in charge

(5) Where a person in charge receives notice of a hearing under subsection (4), the person in charge may make submissions at the hearing.

R.S.N.W.T. 1988,c.64(Supp.),s.14; S.N.W.T. 1998,c.34,Sch.C,s.22(3)(b); S.Nu. 2012,c.17,s.19(15),(20).

Authority to detain

23.3. An application made under section 23.2 is sufficient authority for a hospital within Nunavut to detain the involuntary patient who is the subject of the application and to restrain, observe or examine the patient, until the application is heard and decided. R.S.N.W.T. 1988,c.64(Supp.),s.14; S.Nu. 2012,c.17,s.19(20).

Hearing

23.4. (1) Where an application is made under section 23.2, a judge shall conduct a hearing on the application and hear evidence concerning

- (a) the alleged mental disorder, including
 - (i) medical evidence,
 - (ii) testimony of the applicant, and
 - (iii) testimony of the subject of the application, wherever practicable; and
- (b) any other matter the judge considers relevant.

Harm to patient

(2) Where a hearing is to be held under subsection (1) and a medical practitioner is of the opinion that the attendance at the hearing of the involuntary patient who is the subject of the application is likely to result in harm to the treatment or recovery of the patient, the medical practitioner may file with the court an affidavit to that effect.

Order of judge

- (3) Where an affidavit is filed under subsection (2), the judge may
- (a) conduct the hearing in the absence of the patient;
 - (b) require that the patient be brought to the hearing; or
 - (c) adjourn the hearing until a fixed date when it is likely that attendance at the hearing would not result in harm to the treatment or recovery of the patient.

Hearing by telephone

(4) Where a judge conducting a hearing under subsection (1) is of the opinion that special circumstances exist, the hearing may be conducted by telephone.

Adjournment

(5) Where a hearing is commenced under subsection (1), the judge may adjourn the hearing to a fixed date.

Order of judge

- (6) After conducting a hearing under subsection (1), the judge may
- (a) order an extension of detention for a specified number of months, up to the number requested in the application;
 - (b) refuse to order an extension of detention; or
 - (c) make any other order that the judge considers necessary in the circumstances.

Authority to detain

(7) An order extending detention made under this section is sufficient authority for a hospital within Nunavut to detain the patient who is the subject of the order and to restrain, observe or examine the patient for a period not to exceed the time permitted by the order. R.S.N.W.T. 1988,c.64(Supp.),s.14; S.N.W.T. 1998,c.34,Sch.C,s.22(3)(c); S.Nu. 2012,c.17,s.19(20).

CHANGE FROM INVOLUNTARY TO VOLUNTARY PATIENT

Change from involuntary to voluntary patient

24. (1) An involuntary patient whose authorized period of detention under this Act has not expired may be continued as a voluntary patient

- (a) where a medical practitioner is of the opinion that the patient is suitable for admission as a voluntary patient; and
- (b) on the completion of the prescribed form by the medical practitioner and the filing of the form with the Minister.

Application

(1.1) Subsection (1) applies notwithstanding any order respecting the involuntary patient made under section 23.4.

Notice

(2) The medical practitioner shall notify, in writing, the involuntary patient's substitute consent giver of the change of status under subsection (1).
R.S.N.W.T. 1988,c.64(Supp.),s.15.

ESCORT

Authority to escort

25. (1) An order by a justice under section 9, a certificate of involuntary admission or a certificate of transfer is sufficient authority to the person to whom it is addressed to take the person named in that order or certificate in custody and escort that person to a hospital named in that order or certificate.

Duty of person escorting a person

(2) A person escorting a person named in an order or certificate shall retain the custody of that person and remain at the hospital until the hospital accepts the custody of that person.

REVIEWS

Application to Nunavut Court of Justice

26. (1) An involuntary patient, or any person on behalf of an involuntary patient, may apply to the Nunavut Court of Justice for a review of any decision which authorizes an involuntary patient's detention under this Act.

Authority of review

(2) An application made under subsection (1) is sufficient authority for a hospital within Nunavut to detain at a hospital the involuntary patient who is the subject of the review and restrain, observe or examine the patient until

- (a) the review is heard and decided and, if the certificate or order authorizing detention is upheld, until the time for an appeal has expired; or
- (b) the applicant withdraws the application.

(3) **Repealed, R.S.N.W.T. 1988,c.64(Supp.),s.17.**

R.S.N.W.T. 1988,c.64(Supp.),s.17; S.Nu. 2012,c.17,s.19(20).

Review of finding of mental incompetence

26.1. (1) A patient, or any person on behalf of the patient, may apply to the Nunavut Court of Justice for a review of a finding of mental incompetence made under subsection 19.1(3).

Review of choice of substitute consent giver

(2) Where a patient objects to the choice made by the medical practitioner under subsection 19.2(5), the patient, or any person on behalf of the patient, may apply to the Nunavut Court of Justice for a review of the choice of a substitute consent giver for that patient.

Effect of application

(3) Where an application is made for a review under this section, no treatment, other than emergency treatment, shall be administered to the patient

- (a) until the Nunavut Court of Justice hears the application and determines the matter; or
- (b) where the patient appeals the decision of the Nunavut Court of Justice, until the matter is finally determined by the Court of Appeal, unless the Court of Appeal orders otherwise.

R.S.N.W.T. 1988,c.64(Supp.),s.18; S.Nu. 2012,c.17,s.19(20).

Affidavit

26.2. An application made under section 26 or 26.1 shall be supported by an affidavit of the applicant setting out fully the facts in support of the application.

R.S.N.W.T. 1988,c.64(Supp.),s.18.

Order of examination

27. (1) Where the judge is of the opinion that an independent medical opinion is necessary, the judge may, before hearing the review, order the examination of a patient making an application under section 26 or 26.1 by a medical practitioner other than the one who has examined or assessed the patient.

Written report

(2) The medical practitioner who examines a patient under an order made under subsection (1) shall report, in writing, to the judge on the mental condition of that patient before the expiration of the time stated in the order. R.S.N.W.T. 1988,c.64(Supp.),s.19.

Hearing

28. (1) Where an application is made for a review under section 26 or 26.1, the judge may hear evidence concerning

- (a) the mental condition of the person named in the application including
 - (i) medical evidence,
 - (ii) in the case of an application made under section 26, testimony from the medical practitioner who initially examined or assessed the person detained as an involuntary patient,
 - (iii) in the case of an application made under subsection 26.1(1), testimony from the medical practitioner who made the finding of mental incompetence,
 - (iv) in the case of an application made under subsection 26.1(2), testimony from the medical practitioner who chose the substitute consent giver,
 - (v) testimony from the medical practitioner who has submitted a report pursuant to subsection 27(2), if any,
 - (vi) psychological evidence, and
 - (vii) testimony from a psychologist or psychiatrist who has examined or assessed the person named in the application;and
- (b) any other evidence the Nunavut Court of Justice considers appropriate.

Order of judge

- (2) Within 14 days after an application is made under section 26, the judge shall
- (a) confirm the certificate of renewal or order extending detention;
 - (b) cancel the certificate of renewal or order extending detention and order the discharge of the person; or
 - (c) make any other order the judge considers appropriate.

Idem

(3) Within 14 days after an application is made under subsection 26.1(1), the judge shall

- (a) confirm the finding of mental incompetence;
- (b) cancel the finding of mental incompetence; or
- (c) make any other order the judge considers appropriate.

Idem

(4) Within 14 days after an application is made under subsection 26.1(2), the judge shall

- (a) confirm the choice of substitute consent giver;
 - (b) cancel the choice of substitute consent giver and choose another substitute consent giver from the persons described in subsection 19.2(1) or direct the medical practitioner to choose another substitute consent giver; or
 - (c) make any other order the judge considers appropriate.
- R.S.N.W.T. 1988,c.64(Supp.),s.20; S.Nu. 2012,c.17,s.19(20).

APPEAL

Appeal

29. (1) Within 30 days after a decision of the Nunavut Court of Justice under this Act, the patient, or any person on behalf of the patient, may appeal to the Court of Appeal.

Authority of appeal

(2) An appeal made under subsection (1) is sufficient authority for a medical practitioner to detain at a hospital the patient who is the subject of the appeal until

- (a) the appeal is heard and decided;
- (b) the appellant abandons the appeal; or
- (c) the Court of Appeal dismisses the appeal.

Rehearing

(3) An appeal made under subsection (1) shall be a rehearing of the matter on the merits and, in addition to any further evidence adduced by the applicant, the Court of Appeal may direct that any transcript taken by the Nunavut Court of Justice at the review hearing be put in evidence on the appeal and may direct that further evidence be given as it considers necessary.

Appeal decision

(4) On an appeal under subsection (1), the Court of Appeal shall, within 14 days,

- (a) confirm the decision of the Nunavut Court of Justice;
- (b) quash the decision of the Nunavut Court of Justice and
 - (i) in the case of an appeal of a review under section 26, order the discharge of the person,

- (ii) in the case of an appeal of a review under subsection 26.1(1), cancel the finding of mental incompetence, or
- (iii) in the case of an appeal of a review under subsection 26.1(2), cancel the choice of substitute consent giver and
 - (A) choose another substitute consent giver from the persons listed in subsection 19.2(1), or
 - (B) direct the medical practitioner to choose another substitute consent giver; or
- (c) make any other order the Court of Appeal considers appropriate. R.S.N.W.T. 1988,c.64(Supp.),s.21; S.Nu. 2012,c.17,s.19(20).

PERSONS ON REMAND OR UNDER AN ORDER OF THE COMMISSIONER

Application

30. (1) Sections 31 to 34 only apply to a person who is charged with or convicted of an offence under an Act of Canada or an Act of Nunavut or a regulation made under an Act of Canada or an Act of Nunavut.

Exemption

(2) Sections 31 to 34 do not apply to a young person as defined in the *Young Offenders Act* or *Youth Criminal Justice Act* (Canada). S.Nu. 2003,c.4,s.21; S.Nu. 2012,c.17,s.19(20).

Order for observation

31. (1) Where in the opinion of a justice or judge, supported by

- (a) the evidence, or
- (b) the report of at least one medical practitioner, in writing, where the prosecutor and the accused consent,

there is reason to believe that a person who appears before him or her charged with or convicted of an offence, has a mental disorder, the justice or judge, as the case may be, may order the person to attend a hospital as specified in the order and within the time stated in the order for observation for a period not exceeding 30 days.

Written report

(2) The medical practitioner who examines a person under an order made under subsection (1) shall report, in writing, to the justice or judge, as the case may be, on the mental condition of that person before the expiration of the time stated in the order.

Emergency treatment

(3) A person who is remanded to custody for observation may be given emergency treatment as specified in section 20. S.N.W.T. 1998,c.34,Sch.C,s.22(4); S.Nu. 2012,c.17,s.19(20).

Where remanded for observation

32. (1) A person who, under the *Criminal Code*, is remanded to custody for observation may be admitted to, examined and detained in and discharged from a hospital in accordance with the law.

Application of subsection 31(2)

(2) Subsection 31(2) applies to a person who is remanded to custody for observation.

Order of Commissioner

33. A person who, under the *Criminal Code*, is detained under an order of the Commissioner because the person was unfit to stand trial on account of insanity or was insane at the time the offence was committed, may be admitted to, examined, treated and detained in and discharged from a hospital in accordance with the law.

Review and appeal

34. No review or appeal lies under this Act from an order made under sections 31 to 33.

RIGHTS OF A PATIENT

Reason for admission and explanation of need for care and treatment

35. (1) A medical practitioner shall inform a voluntary or involuntary patient and the patient's substitute consent giver orally, in a language which the patient and the patient's substitute consent giver can understand, of the reason for the admission of the patient to a hospital and the need for care and treatment before admitting the patient to a hospital.

Written notice

(2) A medical practitioner shall give an involuntary patient and the substitute consent giver a written notice, within 48 hours after the examination or assessment under section 8, 9, 10, 11, 12 or 13, stating

- (a) the authority for the detention of the patient; and
- (b) the right of the patient to consult counsel, to apply to the Nunavut Court of Justice for a review of the decision to detain the patient and to appeal the decision of the Nunavut Court of Justice to the Court of Appeal.

Interpreter

(3) Where the voluntary or involuntary patient does not speak or understand the same language as the medical practitioner, the hospital shall obtain a suitable interpreter and provide the reason for the admission of the patient to a hospital and the need for care and treatment referred to in subsection (1) or the written notice referred to in subsection (2) in the language spoken by the voluntary or involuntary patient and the patient's substitute consent giver.

Where person cannot comprehend

(4) Despite subsections (1) and (2), where an involuntary patient is not in a state to comprehend the reason for admission to a hospital and the need for care and treatment, or the written notice, the hospital shall, having regard to the circumstances in each case, ensure that the reason or written notice, as the case may be, is given at the first reasonable opportunity once the involuntary patient is able to comprehend it.

R.S.N.W.T. 1988,c.64(Supp.),s.22,23,24; S.Nu. 2012,c.17,s.19(20).

Posting of rights

36. (1) The rights of a patient set out in section 35, this section and in sections 37 to 42 shall be conspicuously posted in a hospital in places accessible to voluntary and involuntary patients.

Explanation of notice

(2) Where a patient does not understand the language of the notice posted under subsection (1), the hospital shall ensure that the patient's rights are explained to the patient in a language the patient understands.

Restraint

36.1. (1) Where it is necessary for a person who is examined, admitted or detained in accordance with this Act to be kept under control through the use of restraint, the person ordering or applying the restraint shall keep the patient under control by the minimal use of such force or mechanical or chemical means as is reasonable having regard to the physical and mental condition of the patient.

Documentation of restraint

(2) Where a voluntary or involuntary patient who has been admitted or detained in accordance with this Act is restrained, the person ordering the restraint shall clearly document the use of restraint in the patient's health record by entering

- (a) a statement that the patient is being restrained;
- (b) a description of the behaviour of the patient that required the patient to be restrained or continue to be restrained;
- (c) a description of the means of restraint; and
- (d) in the case of chemical restraint, a statement of the chemical used, the method of administration and the dosage.

R.S.N.W.T. 1988,c.64(Supp.),s.25.

Communication by and to a patient

37. No communication written by a voluntary or involuntary patient in a hospital or to a voluntary or involuntary patient in a hospital shall be opened, examined or withheld and its delivery shall not in any way be obstructed or delayed by any member of the staff at the hospital unless

- (a) a medical practitioner considers that the communication would be detrimental to the patient's health or to another person and orders that any communication to or from that patient may be opened, examined or withheld; and

- (b) the patient is informed, in writing, of the order of the medical practitioner made under paragraph (a).

Visitors

38. A voluntary or involuntary patient may communicate by telephone or receive visitors at hours fixed by the hospital unless

- (a) a medical practitioner considers that the communication or visitors would be detrimental to the patient's health or to another person and orders that the involuntary patient not be permitted to communicate by telephone or receive visitors, and
- (b) the patient is informed, in writing, of the order of the medical practitioner made under paragraph (a),

but a patient may communicate by telephone with a lawyer at any time and a lawyer acting for the patient may visit the patient at any time.

Independent medical opinion

39. An involuntary patient has a right to an independent medical opinion regarding his or her mental disorder or the treatment the involuntary patient is receiving for his or her mental disorder from a medical practitioner.

Definition of "abuse"

40. (1) In this section, "abuse" includes any act that physically, mentally or emotionally injures, damages, causes undue discomfort or fear or takes unfair advantage of a patient.

Freedom from abuse

(2) An involuntary or voluntary patient has a right to security of the person and shall not be subject to any abuse at any time during observation, examination, care or treatment.

Offence

(3) Every person, other than a person with a mental disorder, who contravenes subsection (2) is guilty of an offence. S.Nu. 2012,c.17,s.19(20).

Discrimination in employment

41. (1) No person shall directly or indirectly refuse to employ or continue to employ a person on the basis that the person previously had a mental disorder.

Other discrimination

(2) No person shall discriminate against a person by denial, restriction or otherwise with respect to any service, facility, goods, accommodation, rights, licence or privilege available or accessible to the public or a section of the public, on the basis that the person previously had a mental disorder. S.Nu. 2012,c.17,s.19(20).

Request for destruction of records

42. (1) A person who was an involuntary patient and has been discharged from a hospital may request that all court records pertaining to proceedings under this Act or the regulations with respect to that person be destroyed.

Destruction of records

(2) On receipt of a request made under subsection (1), the court shall destroy the records.

ABSENCE WITHOUT LEAVE

Absence without leave

43. (1) Where an involuntary patient leaves a hospital without a leave of absence, the hospital may authorize a peace officer to return that patient to the hospital.

Authority of order

(2) An authorization given under subsection (1) is sufficient authority for a peace officer to apprehend the involuntary patient referred to in subsection (1) and return that patient to the hospital.

DISCHARGE

Discharge of involuntary patient

44. (1) Subject to subsection (3), a person in charge shall

- (a) continue the involuntary patient as a voluntary patient under section 24 or discharge the involuntary patient when a medical practitioner is of the opinion that the involuntary patient no longer has a mental disorder of a nature or quality that will likely result in serious bodily harm to the patient, serious bodily harm to another person or imminent and serious physical impairment to the patient;
- (b) discharge the involuntary patient when the Nunavut Court of Justice or the Court of Appeal on review or appeal, as the case may be, cancels the detention authorized by this Act, a certificate of involuntary admission, a certificate of renewal or an order to extend the period of detention and orders the discharge of that patient; or
- (c) discharge the involuntary patient at the expiration of the period of detention, unless a certificate of involuntary admission has been obtained, a certificate of renewal has been completed and filed or an order extending the period of detention has been applied for.

Effect of order

(1.1) Paragraph (1)(a) applies notwithstanding any order respecting the involuntary patient made under section 23.4.

Cancellation of certificate or vacation of order

(2) Where an involuntary patient is discharged under paragraph (1)(a) or an involuntary patient who has been transferred to another jurisdiction is discharged in accordance with the law of that jurisdiction, the certificate of involuntary admission or any certificate of renewal respecting the patient shall be deemed to be cancelled and any order extending the detention of the patient shall be deemed to be vacated.

Exception

(3) Subsection (1) does not authorize the discharge into the community of a patient who is subject to lawful detention otherwise than under this Act.

R.S.N.W.T. 1988,c.43(Supp.),s.10; R.S.N.W.T. 1988,c.64(Supp.),s.26;

S.Nu. 2012,c.17,s.19(20).

Notice

45. When an involuntary patient is discharged from a hospital, the hospital shall, where possible, give notice of the discharge

- (a) to the patient's substitute consent giver unless
 - (i) the patient being discharged requests that the substitute consent giver not be notified, and
 - (ii) the medical practitioner agrees that the request of the patient that the substitute consent giver not be notified is reasonable;
- (b) to the medical practitioner or hospital that referred the patient, if any; and
- (c) to the Minister.

R.S.N.W.T. 1988,c.64(Supp.),s.27.

PROTECTION OF PRIVACY

Publication

46. No person shall publish by any means any report of a hearing, decision, review or appeal held or made under this Act concerning a person who is alleged to have a mental disorder, in which the name of that person or any information serving to identify that person is disclosed. S.Nu. 2012,c.17,s.19(20).

Type of hearing

47. (1) Subject to subsection (2), no person other than an officer of the court, the parties and the substitute consent giver and their counsel and such other persons as the justice, the judge or the presiding judge of the Court of Appeal, as the case may be, in his or her discretion expressly permits, shall be present at the hearing in all proceedings.

Where public hearing

(2) A hearing shall be public where a person who is the subject of the proceedings requests a public hearing. R.S.N.W.T. 1988,c.64(Supp.),s.28;

S.N.W.T. 1998,c.34,Sch.C,s.22(5).

CONFIDENTIALITY OF RECORDS

Definitions

48. (1) In sections 48 to 49.4,

"medical practitioner" includes a person who is entitled to practise medicine in a province or territory; (*médecin*)

"nurse" means a registered nurse, nurse practitioner or temporary certificate holder entitled to practice in Nunavut under the *Nursing Profession Act* (Northwest Territories) or a licensed practical nurse under the *Licensed Practical Nurses Act*; (*infirmière*)

"patient" includes a voluntary and involuntary patient and a former patient; (*malade*)

"patient's health record" means the patient's health record compiled in a hospital or in the office of a medical practitioner or a psychologist in respect of the mental disorder of the patient and includes any medical or psychological reports on the mental disorder of the patient that are sent to the hospital by a medical practitioner or a psychologist. (*dossier médical du malade*)

Disclosure of patient's health record

(2) Subject to subsections (3) and (5), no person shall disclose, transmit or examine a patient's health record.

Persons who may examine patient's health record

(3) A patient's health record may be examined by the medical practitioner and the person in charge of the hospital, and the person in charge of the hospital may transmit the patient's health record to or permit the examination of the patient's health record by

- (a) any person with the consent of the patient where the patient is mentally competent;
- (b) any person with the consent of the substitute consent giver, where the patient is not mentally competent;
- (c) any person employed in or on the staff of the hospital for the purpose of assessing or treating or assisting in assessing or treating the patient;
- (d) a medical practitioner, nurse or psychologist for the purpose of assessing or treating or assisting in assessing or treating the patient outside the hospital;
- (e) the person in charge of another hospital to which the patient is transferred, admitted or referred; or
- (f) a person for the purpose of research, academic pursuits or the compilation of statistical data.

Removal of name or means of identifying patient

(4) Where a patient's health record is transmitted or copied for use outside the hospital for the purpose of research, academic pursuits or the compilation of statistical data, the person in charge of the hospital shall remove from the part of the patient's health record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient.

Disclosure of name or means of identifying patient

(5) Where the patient's health record is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the patient's health record for a purpose other than research, academic pursuits or the compilation of statistical data.

R.S.N.W.T. 1988,c.64(Supp.),s.29,30; S.N.W.T. 1993,c.5,s.7,8;
S.N.W.T. 1998,c.38,Sch.D,PartII,s.5(b); S.Nu. 2010,c.25,s.36(2);
S.Nu. 2012,c.17,s.19(20).

Disclosure under subpoena

49. (1) Subject to subsections (2) and (3), the person in charge of a hospital shall disclose, transmit or permit the examination of a patient's health record

- (a) pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction; or
- (b) where required to do so by an enactment.

Statement by medical practitioner or psychologist

(2) Where the disclosure, transmittal or examination of a patient's health record is required by

- (a) a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction, or
- (b) by an enactment,

and a medical practitioner or a psychologist states, in writing, that he or she is of the opinion that the disclosure, transmittal or examination of the patient's health record or of a specified part of the patient's health record is likely to result in

- (c) harm to the treatment or recovery of the patient,
- (d) injury to the mental condition of another person, or
- (e) bodily harm to another person,

no person shall comply with the requirement with respect to the patient's health record or the part of the patient's health record specified by a medical practitioner or a psychologist except

- (f) under an order of the court before which the matter is or may be in issue, or
- (g) where the disclosure, transmittal or examination is not required by a court, under an order of the Nunavut Court of Justice,

made after a hearing from which the public is excluded and that is held on reasonable notice to the medical practitioner.

Power of court to examine patient's health record

(3) On a hearing under subsection (2), the court shall consider whether the disclosure, transmittal or examination of the patient's health record or the part of the patient's health record specified by a medical practitioner or a psychologist is likely to result in

- (a) harm to the treatment or recovery of the patient,
- (b) injury to the mental condition of another person, or
- (c) bodily harm to another person,

and for this purpose the court may examine the patient's health record and, if satisfied that such a result is likely, the court shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of patient's health record

(4) Where a patient's health record is required under subsection (1) or (2.1) or paragraph 3.1(a), the clerk of the court in which the patient's health record is admitted in evidence or, if not admitted in evidence, the person to whom the patient's health record is transmitted, shall return the patient's health record to the person in charge of the hospital as soon as possible after the determination of the matter in issue in respect of which the patient's health record was required.

Disclosure in action or proceeding

(5) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a hospital in the course of his or her employment in the hospital except

- (a) where the patient is mentally competent, with the consent of the patient;
- (b) where the patient is not mentally competent to give a valid consent, with the consent of the substitute consent giver;
- (c) where the action or proceeding is before a court, the court determines that the disclosure is essential in the interests of justice; or
- (d) where the action or proceeding is not already before a court, a court of competent jurisdiction, after a hearing from which the public is excluded and that is held on reasonable notice to the patient or, where the patient is not mentally competent to give a valid consent, to the substitute consent giver, determines that the disclosure is essential in the interests of justice.

R.S.N.W.T. 1988,c.64(Supp.),s.31; S.N.W.T. 1993,c.5,s.9;
S.Nu. 2012,c.17,s.19(17),(18),(20).

Examination of record by patient

49.1. (1) Subject to section 49.2, a patient is entitled to examine and copy, at the expense of the patient, the patient's health record or a copy of the record.

Written request

(2) A patient who wishes to examine or copy the patient's health record shall make a written request to the person in charge.

Application to judge

(3) Within seven days after receiving a request under subsection (2), the person in charge

- (a) shall allow the patient to examine or copy the patient's health record or a copy of it; or
- (b) on the advice of a medical practitioner, may apply to a judge for an order allowing the person in charge to withhold all or part of the patient's health record.

Notice to patient

(4) A person in charge who makes an application under paragraph (3)(b) shall give the patient written notice of the application and the grounds on which the application is based. R.S.N.W.T. 1988,c.64(Supp.),s.32; S.N.W.T. 1998,c.34,Sch.C,s.22(6).

Review by court

49.2. (1) Within seven days after receiving an application under paragraph 49.1(3)(b), the court shall examine the patient's health record and consider whether disclosing all or part of the patient's health record to the patient is likely to result in

- (a) harm to the treatment or recovery of the patient;
- (b) injury to the mental condition of another person; or
- (c) bodily harm to another person.

Submissions

(2) The patient and the medical practitioner referred to in paragraph 49.1(3)(b) may make submissions to the court before it makes its decision.

Hearing of submissions

(3) The court shall hear any submissions of the medical practitioner or person in charge in the absence of the patient and may hear any submissions of the patient in the absence of the medical practitioner or person in charge.

Order of court

(4) Where the court is of the opinion that disclosing all or part of the patient's health record is likely to have a result referred to in paragraph (1)(a), (b) or (c), the court shall

- (a) order the person in charge not to disclose the record or part of the record; and
- (b) state in the order the grounds on which the disclosure is refused.
R.S.N.W.T. 1988,c.64(Supp.),s.32.

Correction or statement of disagreement

49.3. (1) A patient who is allowed to examine or copy the patient's health record or part of it is entitled to

- (a) request the correction of information in the record where the patient believes there is an error or omission in the record;
- (b) require that a statement of disagreement be attached to the record reflecting any correction that was requested but not made; and
- (c) require that notice of the correction or notice of the statement of disagreement be given to any person to whom the record was disclosed within the year before the correction was requested or the statement of disagreement was required.

Duty of person in charge

(2) Where a patient

- (a) makes a request under paragraph (1)(a), the person in charge shall make the requested correction or inform the patient of his or her rights under paragraphs (1)(b) and (c); or
- (b) requires that a statement of disagreement be attached or a notice of correction or disagreement be given in accordance with paragraph (1)(b) or (c), the person in charge shall complete the required form and attach the statement or give the notice as required by the patient.
R.S.N.W.T. 1988,c.64(Supp.),s.32.

Examination of record by substitute consent giver

49.4. (1) Where a patient is mentally incompetent, the substitute consent giver is entitled, at the expense of the substitute consent giver, to examine and copy the patient's health record or a copy of it.

Examination of portion of record

(2) Where a patient is mentally competent, a person who acted as a substitute consent giver at a time when the patient was mentally incompetent is entitled, at his or her expense, to examine and copy that portion of the patient's health record that pertains to decisions made by the person in the capacity of substitute consent giver.

Application

(3) Subsections 49.1(2) to (4) and sections 49.2 and 49.3 apply, with such modifications as the circumstances require, to the disclosure of a patient's health record to a substitute consent giver. R.S.N.W.T. 1988,c.64(Supp.),s.32.

GOVERNMENT RECORDS

Government records

50. (1) A department or agency of the Government of Nunavut may keep records containing information obtained by the department or agency for the purposes of administering this Act.

Availability of records to specified persons

(2) A record kept under subsection (1) may, at the discretion of the department or agency keeping the record, be made available for inspection to a medical practitioner, a hospital or any other person for the purpose of research, academic pursuits or the compilation of statistical data.

Research, study or statistics

(3) Where a record is made available, under subsection (2), for the purpose of research, academic pursuits or the compilation of statistical data, subsections 48(4) and (5) apply. S.Nu. 2012,c.17,s.19(20).

ESTATES

Examination as to competency

51. (1) A medical practitioner who is examining or assessing a patient under section 8, 9, 10, 11, 12 or 13 shall examine the patient to determine whether the patient is mentally competent to manage his or her estate.

Certificate of mental incompetence

(2) Where a medical practitioner who performs an examination under subsection (1) is of the opinion that the patient is not mentally competent to manage his or her estate, the medical practitioner shall

- (a) issue a certificate of mental incompetence in the prescribed form; and
- (b) transmit the certificate to the Public Trustee.

Exceptional circumstances

(3) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the medical practitioner shall notify the Public Trustee as soon as possible that a certificate of mental incompetence has been issued.

Exemption

(4) Subsections (1) to (3) do not apply to a patient whose estate is governed by a trusteeship order given under the *Guardianship and Trusteeship Act*. S.N.W.T. 1994,c.29,s.65(2).

Commencement of trusteeship

52. The Public Trustee shall be trustee of the estate of a patient who is named in a certificate of mental incompetence issued under subsection 51(2) and shall assume

management of that estate on receipt of the certificate of mental incompetence if the patient has no other trustee. S.N.W.T. 1994,c.29,s.65(3).

Powers of the Public Trustee

53. The Public Trustee who is trustee of the estate of a patient has the same powers and duties as if the Public Trustee had been appointed trustee under the *Guardianship and Trusteeship Act* and had been given all the powers enumerated in section 36 of that Act. S.N.W.T. 1994,c.29,s.65(5).

Cancellation of certificate of mental incompetence

54. The medical practitioner may, after examining a patient to determine whether the patient is mentally competent to manage his or her estate, cancel the certificate of mental incompetence issued in respect of the patient and the medical practitioner shall forward a notice of cancellation in the prescribed form to the Public Trustee.

Notice of discharge

55. Where a certificate of mental incompetence has been issued, the person in charge of a hospital shall transmit to the Public Trustee a notice of the discharge from the hospital of an involuntary patient who was detained under this Act and the regulations and in respect of whom a certificate of mental incompetence is in force.

Leave of judge to bring action

56. (1) No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is trustee under this Act without the leave of a judge of the court in which the action is intended to be brought.

Notice of application

(2) The Public Trustee shall be served with notice of an application for leave under subsection (1). S.N.W.T. 1994,c.29,s.65(3).

Service of documents

57. Where an action or proceeding is brought or taken against the estate of a person with a mental disorder

- (a) who has been admitted to a hospital, and
 - (b) for whose estate a trustee has not been appointed,
- the originating notice and any other document requiring personal service must be
- (c) endorsed with the name of the hospital of which that person is a patient, and
 - (d) served on
 - (i) the Public Trustee, and
 - (ii) the person or, where the medical practitioner is of the opinion that personal service on the person would cause or would be likely to cause serious harm to that person by reason of his or her mental condition, the person in charge of the hospital.

S.N.W.T. 1994,c.29,s.65(3); S.Nu. 2012,c.17,s.19(19).

GENERAL

Availability of substitute consent giver

57.1. Where there is a requirement under this Act to give information or notice to a substitute consent giver, and

- (a) no substitute consent giver exists, the requirement does not apply;
or
- (b) the substitute consent giver is not available, the requirement is satisfied if the information or notice is given to the substitute consent giver as soon as possible after he or she becomes available.
R.S.N.W.T. 1988,c.64(Supp.),s.33.

Offence and punishment

58. Every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Exemption from liability

59. No person shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by that person in good faith pursuant to or in the exercise of the powers conferred by this Act or the regulations.

Limitation period

60. (1) Subject to subsection (2), all actions, prosecutions or other proceedings against a person or hospital for anything done or omitted to be done under this Act or the regulations may not be commenced more than two years after the time when the act or omission complained of occurred.

Computation of time

(2) The time during which a mentally disordered person is confined to a hospital for a mental disorder shall not be computed against that person for the purposes of subsection (1) and that person may bring an action any time within two years after he or she has been discharged from a hospital and no longer has a mental disorder.
S.Nu. 2012,c.17,s.19(20).

Representative

61. Where a certificate of involuntary admission has been issued under this Act and a trustee has not been appointed for the estate of the person named in the certificate,

- (a) that person may, where he or she is mentally competent to do so, name a representative to commence an action or proceeding on his or her behalf; or

- (b) where the person named in the certificate is not mentally competent to name a person to commence an action or proceeding on his or her behalf, the Public Trustee may commence an action or proceeding.
R.S.N.W.T. 1988,c.64(Supp.),s.34; S.N.W.T. 1994,c.29,s.65(3).

Validity of documents

62. A certificate of involuntary admission, certificate of transfer or other order or form issued under this Act or the regulations shall not be held insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or any proceedings in connection with it.

REGULATIONS

Regulations

63. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) respecting the examination or psychiatric assessment of persons;
- (b) governing the admission, detention, leave of absence, transfer, discharge and placement of patients admitted to a hospital under this Act;
- (c) respecting the duties of a person escorting a person in custody under section 25;
- (d) prescribing additional duties of a person appointed under section 4 or 5;
- (d.1) respecting the procedures to be used in an application to a court under this Act;
- (e) prescribing the forms required for the carrying out of the provisions of this Act and the regulations;
- (f) prescribing any matter or thing that by this Act may or is to be prescribed; and
- (g) respecting any other matter that the Commissioner considers necessary or advisable to carry out effectively the intent and purpose of this Act.
R.S.N.W.T. 1988,c.64(Supp.),s.35.