

PRACTICE GUIDELINES FOR SEEKING CONSENT TO CARE FACILITY ADMISSION

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INTRODUCTION

There are a number of laws in British Columbia (BC) that aim to assist and protect the rights of adults who may be incapable of making their own decisions and may be in need of support. The *Health Care (Consent) and Care Facility (Admission) Act* (HCCCFAA) is the law that governs both consent to health care and consent to facility admission.

In BC, capable adults have the right to consent, withhold consent, or revoke consent to health care. According to Part 2 of the HCCCFAA, health care providers must seek and obtain consent before providing treatment. Similarly, Part 3 of the HCCCFAA requires consent before an adult is admitted into a care facility. While many features of consent to facility admission resemble those for consent to health care, seeking consent to health care and seeking consent to facility admission are separate and distinct processes with their own specific legal requirements. This document is focused on consent to care facility admission.

Practice Guidelines for Seeking Consent to Care Facility Admission (the Guidelines) is based on the legal requirements of Part 3 of the HCCCFAA, and on best practices in BC and other jurisdictions. The Guidelines describe processes for seeking consent to admission to a care facility and for conducting an incapability assessment if an adult seems unable to give or refuse consent to admission to a care facility.

The HCCCFAA requires that a manager only admit an adult to a facility if consent has been received from that adult or a substitute or if it is an emergency admission. In addition, when a manager is seeking consent from an adult, the manager must be satisfied that the adult is capable of making that decision and, if the adult is not capable, identify and seek consent from a substitute. In some instances, seeking consent to facility admission may lead directly to assessing whether a person is incapable of making that decision.

1. PURPOSE OF PRACTICE GUIDELINES

These guidelines establish the foundation for consistent and fair provincial processes for seeking consent to facility admission and assessing for incapability to make such decisions. This document is intended to provide information to enhance the knowledge of those who seek consent to facility admission and those who assess for incapability and support their ability to comply with their responsibilities under Part 3 of the HCCCFAA and regulations. These guidelines are intended to be used in conjunction with the online course *Consent to Care Facility Admission in BC: A Course for Managers and Assessors*. In addition, health care providers should also be guided by their own regulatory bodies' policy and guidelines on consent and incapability assessments.

While this document is intended for use by all those involved in the admission process, it is specifically intended for the managers who are defined in Part 3 of the HCCCFAA as being responsible for the operation of care facilities, and/or admissions into care facilities, as well as assessors who conduct assessments to determine if an adult is incapable of giving or refusing consent to admission to, or continue residence in, a care facility.

Important: These guidelines provide general information about the law of consent to facility admission but are not a substitute for the legislation or for legal advice. Managers and assessors should seek legal advice if faced with a situation in which there is uncertainty, conflict, or ambiguity.

2. BACKGROUND

2.1 DEFINITIONS, KEY TERMS, AND ROLES

The following section includes definitions and describes key terms and roles of persons in the consent to care facility admission process.

Adult means anyone who has reached 19 years of age.

Assessor refers to the person who is responsible for assessing an adult for incapability to consent or refuse consent to facility admission. An assessor must be a physician, or a prescribed health care provider identified in the Health Care Consent Regulation.

Care Facility means:

- a facility that is licensed or designated under the *Community Care and Assisted Living Act*, and provides residential care to adults;
- a private hospital licensed under Part 2 of the *Hospital Act*;
- an institution designated as a hospital under the *Hospital Act* for the treatment of persons convalescing from or being rehabilitated after acute illness or injury, or requiring extended care; or
- any other facility, or class of facility, designated by regulation as a care facility, but does not include a service provider under the *Community Living Authority Act*.

Committee of person is the person (or Public Guardian and Trustee) appointed by the court according to the *Patients Property Act* to make personal and health care decisions for a person who is declared by the Court to be incapable of managing themselves.

Designated Agency means a public body or organization designated to receive and respond to reports that an adult is abused or neglected, according to the *Adult Guardianship Act*. Prescribed by regulation, the designated agencies are the five regional health authorities, Community Living BC, and Providence Health Care Society.

Designated person means the person(s) designated by one of the regional health boards (Fraser Health, Interior Health, Northern Health, Vancouver Island Health, Vancouver Coastal Health) to receive reports of substitutes who are acting in a manner that may be abusive or harmful to the adults for whom they are making decisions.

Emergency: a situation in which it is necessary to take action to:

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

or when the adult is the subject of an emergency measure taken under section 59 of the *Adult Guardianship Act*.

Manager: an individual who is responsible for either or both of:

- a) the operation of a care facility; or
- b) admissions to a care facility.

Person in care means a person who has been admitted to a care facility.

Personal guardian means a committee of person who is declared under the *Patients Property Act* to be incapable of managing themselves, or incapable of managing themselves and their affairs. (HCCCFAA). Note: This document uses the term committee of person (see above).

Prescribed health care provider: a health care provider who is permitted by law to determine whether an adult is incapable of giving or refusing consent to admission to, or continued residence in a care facility. This includes the following providers: registered nurse, nurse practitioner, registered social worker, registered psychologist, registered occupational therapist and registered psychiatric nurse. (A medical practitioner is also permitted to determine whether an adult is incapable or giving or refusing consent to admission to, or continued residence in a care facility.)

Public Guardian and Trustee (PGT): the provincial body that has a statutory role to protect the interests of British Columbians who lack legal capacity to protect their own interests. In the care facility admission context, the PGT must choose a person to make a facility admission decision for an adult who is incapable, if there is no other available and qualified substitute or if there is a dispute about who is to be chosen as substitute.

Representation agreement means an agreement made according to the *Representation Agreement Act*.

Representative means a person authorized by a representation agreement to make or help make decisions on behalf of another (includes an alternate representative).

Substitute refers to the person who is authorized to give or refuse consent to facility admission if an adult is incapable of making that decision.

2.2 CARE FACILITIES AND THEIR CLIENTS

As the above definition of *care facility* indicates, Part 3 of the HCCCFAA applies to a wide range of facilities including those that are publicly-subsidized and those that are not publicly-subsidized (where clients pay the full cost of accommodation and care). The following table sets out the kinds of facility care that are subject to the consent to facility admission requirements of the HCCCFAA and those facilities or situations that are not subject to the requirements.

Consent to care facility admission is required for care facilities that provide:

- long-term care for adults who have complex care needs because of age or disability;
- short-term respite care for adults whose caregivers require a break from their caregiving;
- care for people near the end of their lives (hospices);
- short or long-term rehabilitation/convalescent services; and
- services for adults with mental health and/or substance use problems including:
 - crisis intervention and stabilization services;
 - detox services;
 - mental health and or substance use assessment and treatment services;
 - short and long-term residential care.

Consent to care facility admission under the HCCCFAA does not apply to:

- the admission of a person under 19 years of age to a care facility;
- the admission of a minor or an adult to a group home or other residential service governed by the *Community Living Authority Act*;
- admission to an acute care hospital or mental health facility designated under the *Mental Health Act*;
- moving into an assisted living residence;
- an emergency admission (see Definitions above); and,
- the admission that is part of a court-ordered support and assistance plan under section 56 of the *Adult Guardianship Act*;

These guidelines cannot address all the potential admission scenarios in detail because of the diversity of residents, potential residents, facilities, administrators, health authorities, managers, and assessors. Health authorities and individual facilities may choose to develop more specific and detailed guidelines or procedures on consent to facility admission that reflect the specifics of their client group, that are also consistent with Part 3 of the HCCCFAA.

2.3 GUIDING PRINCIPLES

The following principles will inform and guide how managers and assessors seek consent to facility admission and conduct incapability assessments.

1. All adults are presumed capable of making decisions regarding care facility admission until the contrary is demonstrated.
2. Capable adults have the right to give or refuse consent to admission to a care facility. Capable adults have the right to leave a care facility if they wish.
3. Processes for seeking consent to facility admission and assessing for incapability to consent to facility admission balance the need for respect for adults’ autonomy with the need to protect vulnerable adults from harm.
4. Adults’ ways of communicating with others are not grounds for deciding that they are incapable of giving or refusing consent to care facility admission.
5. Assessments of incapability to facility admission are conducted fairly and demonstrate respect for individuals.

6. Managers and assessors are sensitive to the impact of physical health, mental illness, substance use, and trauma on adults from whom they seek consent and/or assess for incapability.
7. Managers and assessors employ methods to enhance capability in those from whom they seek consent to facility admission and in those they assess for incapability.
8. Managers and assessors respect and protect the privacy, self-esteem, and well-being of adults from whom they seek consent to facility admission and assess for incapability.
9. Managers and assessors focus their efforts on adults' capability to make decisions about admission to care facilities, not on their ability to make other kinds of decisions.

An Important Distinction

Although the requirements for consent to health care and consent to facility admission are both contained in the HCCCFAA, the two kinds of consent are different. Obtaining consent to care facility admission does not eliminate the need to seek and obtain consent to health care treatments that adults may receive after they have been admitted to a care facility. See [Health Care Providers' Guide to Consent to Health Care](#) (2011) and module 4 of the online course, [Consent to Health Care in British Columbia: A Course for Health Care Providers](#).

2.4 THE LEGISLATION

2.4.1 Key Provisions of Part 3 of the *Health Care (Consent) and Care Facility (Admission) Act*

The following key provisions of Part 3 of the HCCCFAA are the basis for these guidelines and will be explained in more detail in subsequent sections of this document.

- An adult must not be admitted to a care facility until consent has been given by the adult or a substitute, unless it is an emergency.
- If an adult is admitted without consent in an emergency, substitute consent for continued residence in the care facility is required within 72 hours.
- Consent to care facility admission must be voluntary, not obtained through fraud or misrepresentation, informed, given by a capable adult, and specific to a particular facility.
- An adult who does not seem able to give or refuse consent to facility admission must be assessed for incapability by a medical practitioner or a prescribed health care provider. The legislation sets out the criteria for incapability and requirements for incapability assessments.

- If an adult is found to be incapable of giving or refusing consent to facility admission, then consent is sought from a qualified substitute authorized to give or refuse consent on the adult's behalf under Part 3 of the HCCCFAA.
- A manager must allow an adult to leave the facility if the adult is capable and wishes to leave or if the adult's substitute wishes the adult to leave (unless the manager has reason to believe the substitute is acting in a manner that may be abusive or harmful to the adult).
- If an adult who has been assessed as incapable wishes to leave the care facility, the manager must seek substitute consent to continued residence within a reasonable time, unless:
 1. substitute consent to continued residence was obtained within the last 90 days, or
 2. the adult's admission to the care facility occurred within the last 30 days.¹
- If an incapable adult wishes to leave the care facility and the manager has reason to believe the person in care may now be capable of giving or refusing consent to care facility admission, the manager must have the person in care assessed within a reasonable time.
- If a manager believes that a substitute is acting in a manner that may be abusive or harmful to the adult, the manager must notify a person designated for this purpose within a health authority and, in the meantime, take steps necessary to protect the adult, which may include refusing to discharge a person in care from a care facility.

Throughout this document, all activities or features of the consent to facility admission process or incapability assessment that are statutory requirements (that is, are required by Part 3 of the HCCCFAA and the Health Care Consent Regulation, Residential Care Regulation or Patients' Bill of Rights Regulation) are noted as such and include the word *must* indicating that they are required by law.

For a more detail about the legislation and regulations, see Appendix A – A Closer Look at the Legislation – Questions and Answers

2.4.2 Consent to Facility Admission and the *Mental Health Act*

The consent to facility admission provisions of the HCCCFAA do not apply to admission to designated mental health facilities under the *Mental Health Act*.²

The provisions of the *Mental Health Act* are intended to allow patients who require protection and care because they have mental disorders to be treated. Adults who are involuntary patients under the *Mental Health Act* may be treated for their mental disorders without their consent

¹ This requirement is included in section 50.1 of the Residential Care Regulation, rather than Part 3 of the HCCCFAA. The Patients' Bill of Rights Regulation also extends this requirement to private hospitals and extended care hospitals, governed by the *Hospital Act*.

² HCCCFAA, section 2.

and may not be at liberty to leave a facility. Section 37 of the *Mental Health Act* authorizes a director to release a patient *on leave* into the community without affecting the legal status of the involuntary detention. An adult who is on *extended leave* and transferred to a care facility continues to receive treatment, but in the care facility rather than in a mental health facility.

An adult on extended leave under the *Mental Health Act* is subject to Part 3 of the HCCCFAA who is being admitted to a care facility. Even though the adult is still an involuntary patient, the manager must seek and obtain consent from the adult for admission to the care facility, or from the adult's substitute, if the adult is assessed as incapable of giving or refusing consent to admission. Incapability will be assessed and determined for an adult on extended leave in the same manner as for any other adult for whom care facility admission consent is needed. An adult is not considered to be incapable merely by virtue of being an involuntary patient under the *Mental Health Act*. If the adult is determined to be incapable of giving or refusing consent to care facility admission, the same list of substitutes (in section 22 of the HCCCFAA) applies.

For more information, see [Guide to the Mental Health Act](#).

2.4.3 Consent to Facility Admission and the Adult Guardianship Act

The provisions of Part 3 of the HCCCFAA intersect with the provisions of Part 3 of the *Adult Guardianship Act* in terms of protections for vulnerable adults who may be abused, neglected or self-neglecting, and are unable to seek support or assistance.

Section 24(1) (b) of the HCCCFAA allows adults to be admitted to a care facility without consent or an assessment for incapability if they are the subject of emergency measures taken under section 59 of the *Adult Guardianship Act*.³

A support and assistance order made by a court under section 56 of the *Adult Guardianship Act* may require that an adult be admitted to a care facility. Under such circumstances, consent to care facility admission is not required for the period specified in the order (which may be up to one year and can be renewed once by the court for up to one year). Once the specified period is over, and the court order is no longer in effect, consent for the adult to remain in the care facility (from the adult or their substitute) would now be required.

³ Section 59 (1) (c) of the *Adult Guardianship Act* requires that an adult is "apparently incapable of giving or refusing consent" to the emergency measure being taken.

3. SEEKING CONSENT TO CARE FACILITY ADMISSION

This part of the Guidelines looks at the process of seeking consent to facility admission including when consent is sought, who seeks consent, and what steps must be taken to ensure that the process is both valid and fair.

Note that the following discussion assumes that an adult has been deemed eligible for publicly-subsidized services in a care facility or is considering admission to receive non-subsidized services in a care facility.

3.1 THE ROLE OF THE MANAGER

The role of the manager is essential in the consent to care facility admission process. In addition to being responsible for seeking and obtaining consent, the manager decides whether an incapability assessment is needed to determine if an adult is incapable of giving or refusing consent. The manager is responsible for coordinating the assessment and may conduct the assessment themselves if they are qualified to do so.

The legislation defines a manager as an individual responsible for either or both of:

- the operation of a care facility, or
- admissions to a care facility.

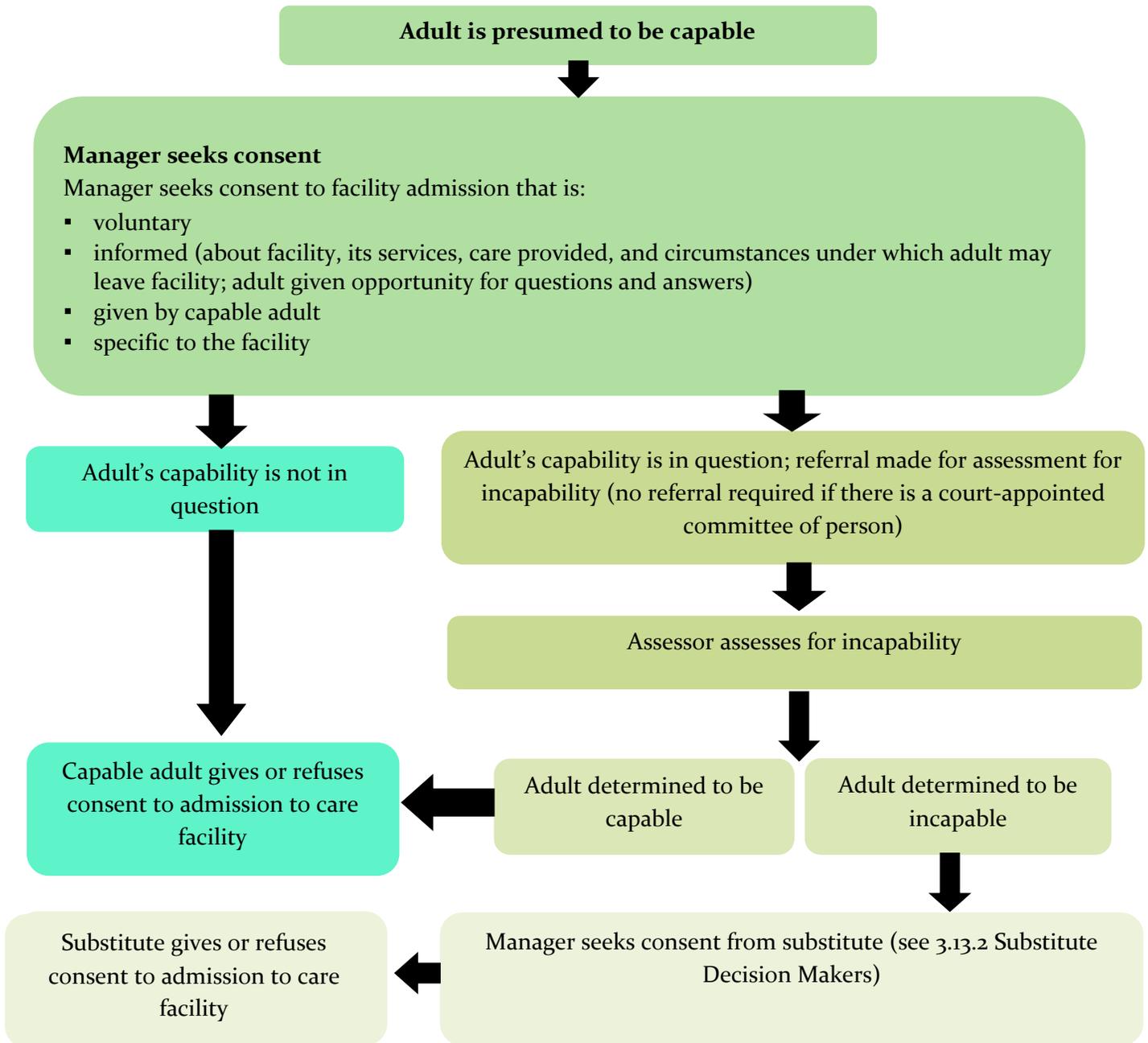
When admission to a private-pay care facility is being considered, the manager will be the person responsible for the operation of that facility. If admission for publicly-subsidized care is being considered, a specific care facility may not have yet been identified. For this reason, the manager will be a health authority employee who is responsible for admissions to publicly-subsidized care facilities. The role of manager is not based on a person's title but rather who has responsibility for admissions to, or operation of, a care facility (or both).

3.2 THE CONSENT PROCESS

The process of seeking consent to facility admission is based on an understanding of its legal requirements and includes discussion and exchanges of information between clients and their families and managers seeking consent. The process of seeking consent may also lead to an incapability assessment and the selection of a substitute for an incapable adult.

Before looking closely at the steps required in the consent process, the figure on the following page is offered to illustrate the range of relationships between the various components of the consent process – that is, in seeking consent to facility admission, assessing for incapability if needed, and seeking consent from substitutes. There are many factors that may alter and complicate the sequence of events illustrated; the following summary is a depiction of the process of seeking consent to facility admission in its most basic form.

SUMMARY: SEEKING CONSENT TO CARE FACILITY ADMISSION



WHEN CONSENT TO FACILITY ADMISSION IS NOT REQUIRED

Consent to facility admission is always required before an adult is admitted to a care facility unless:

- it is an emergency and either: a) the adult has been determined to be incapable of giving or refusing consent to facility admission, or; b) the adult is subject to emergency measures under Section 59 of the *Adult Guardianship Act* (see 3.12 - Emergency Admissions), or
- admission to the care facility is to provide support and assistance that has been court ordered under section 56 of the *Adult Guardianship Act*.⁴

3.3 LEGAL REQUIREMENTS FOR CONSENT TO FACILITY ADMISSION

The elements of consent are common to most consent requirements and are the basis of consent laws in many jurisdictions. The basic elements of consent are that consent must be **voluntary**, the adult must have the **capability** to consent, and the consent must be **informed**. The requirements for consent to facility admission under the HCCCFAA reflect these basic elements of consent.

- 21** (1) An adult consents to admission to a care facility if:
- (a) the consent is given **voluntarily**,
 - (b) the consent is **not obtained by fraud or misrepresentation**,
 - (c) **the adult is capable** of making a decision about whether to give or refuse consent to admission,
 - (d) **the adult has the information** a reasonable person would require to understand that the adult will be admitted to a care facility and to make a decision, including information about
 - (i) the care the adult will receive in **the** care facility,
 - (ii) the services that will be available to the adult, and
 - (iii) the circumstances under which the adult may leave **the** care facility, and
 - (e) the adult has an opportunity to ask questions and receive answers about admission.
- (2) consent may be expressed orally or in writing or may be inferred from conduct.⁵

These requirements apply to adults giving or refusing consent or to substitutes who make decisions on behalf of others. The following provides a closer examination of the individual elements of valid consent to care facility admission.

- **Voluntary:** The adult must have a genuine opportunity to provide or withhold consent

⁴ Under section 56 of the *Adult Guardianship Act*, the court can make an order for an adult to be admitted into a care facility for a specified period up to one year (which can be renewed once by the court for up to one year). Once the specified period is over, consent would be required for the adult to remain in the care facility.

⁵ Emphasis added

and must be able to say yes or no *without pressure* that would equate to an overpowering of will. It is important for managers to be aware of any pressure or undue influence being exerted on an adult either to accept or refuse admission to a care facility. Such pressure can come from spouses, family members, other health care providers, or administrators who may feel strongly about where the adult should be living. For example, health care providers responsible for discharge planning from acute care may feel added pressure to make hospital beds available. Managers should be alert to these possibilities and, where appropriate, arrange to see the adult alone to establish that the decision is truly that of the adult. In addition, managers must maintain their own neutrality when they provide information and seek consent.

- **No fraud or misrepresentation:** The consent to facility admission process must not involve fraud which is deliberate deception used to secure unfair or unlawful gain, or to deprive a victim of a legal right. Fraud or misrepresentation may occur through deliberately providing inaccurate information or failing to provide full and complete information.
- **Capable Adult:** Consent to facility admission is valid only if given by a capable adult, which means an adult who is able to understand and appreciate the decision being made. All adults are presumed to be capable unless there is reason to think otherwise.
- **Informed:** *Informed* consent means that the adult knows to what they are agreeing and has been provided with information to assist them in understanding the decision, the information a reasonable person would need to make this decision. The adult needs to clearly understand the consequences of providing or withholding consent. The information needs to be provided in a way that is meaningful and appropriate to the adult in the circumstances.
- **Specific:** In addition, consent to facility admission must be specific to a particular facility, as evident by the use of the word *the* in the legislation (section 21 of the HCCCFAA refers to the care facility, not a care facility).

3.4 PROVIDING INFORMATION

The HCCCFAA requires that those providing information to the adult communicate in a manner appropriate to the adult's skills and abilities, and ensure the adult knows that others (spouse, relatives, or friends) may help the adult understand, or demonstrate an understanding, of the information.

The legislation states that adults must be given “information a reasonable person would require” to make the decision and to understand that giving consent will lead to admission to a care facility. The information specified in the legislation suggests the general kind and scope of

information that should be provided to adults or their substitutes. According to HCCCFAA, this information includes:

- the care the adult will receive in the care facility
- the services that will be available to the adult, and
- the circumstances under which the adult may leave the care facility.

Adults, however, should be provided with as much detailed information as possible regarding the facility. The following questions are some examples of the type of information a reasonable person would want to have before making a decision to move to a particular care facility.

- How many people does the facility accommodate?
- How long will the adult be staying?
- What is the philosophy of care or treatment model?
- What social and recreational activities are available?
- Are special/culturally appropriate diets available?
- Is a private room available?
- When will the adult be able and expected to move in?
- What will the cost of accommodation be? What extra fees may be charged?

Managers should discuss information with the adult and their family or caregivers and may provide a written summary of the information, to which the adult and their family can refer to during the consent and admission process. For an extensive list of questions that adults and their families may ask when contemplating facility care, see Appendix B.

Managers must also provide information about the circumstances under which an adult may leave the care facility. This includes informing the adult of the right to leave the care facility or transfer to another care facility and how and under what circumstances those options are available. This also includes informing the adult that in the future a substitute may decide whether the adult continues to reside in the facility if the adult later becomes incapable of making this decision (see 4, Consent to Continued Residence in a Care Facility).

3.5 PROVIDING THE OPPORTUNITY FOR QUESTIONS

HCCCFAA requires that an adult be given the opportunity to ask questions and receive answers about the proposed care facility. To support an adult and their family members to consider a large amount of information at what may be a difficult time, information should be provided in a way that meets their needs. An adult may benefit from having a family member or friend support them to consider this information. This part of the process of seeking consent provides the manager with an opportunity to observe whether the adult seems able to absorb the information given, a crucial step in seeking consent and a possible trigger for the need to assess for incapability.

3.6 UNDERSTANDING AND APPRECIATION

Capability to consent to admission requires the ability to *understand* information that is relevant to making a decision about the admission and *appreciate* the reasonably foreseeable consequences of a decision or lack of decision. Understanding refers to the ability to receive and remember the information. Appreciation refers to the ability to weigh the information in the context of one's own life circumstances.

Understand: To understand refers to a person's cognitive abilities to process, assimilate, and retain information about the available options for responding to the particular decision.

Appreciate: To appreciate means to be able to attach personal meaning to the facts of a given situation. Some adults may be able to understand and retain information but may be unable to see how the facts apply to their situation. For example, an adult with memory loss may understand why long-term care is appropriate for some people but may not recognize why they might need it as they view their daily life as normal and safe. To appreciate, adults must be able to not only possess the cognitive ability to understand information, they must also be able to rationally apply this information in the context of their own lives.

Determining whether adults understand the information being given and appreciate how the information applies to their situations requires plain, unambiguous communication on the part of the manager.

A manager seeking consent, or an assessor, may ask some of the following questions to explore an adult's understanding of the admissions decision:

- What care and support do you think you need?
- What kind of living environment would best meet those needs?
- Do you think the care being provided in this care facility would meet your needs?
- If you consent to living in this care facility you would have to leave your home; what do you think about that?
- What do you think will happen if you don't consent to living this care facility? How would your care needs be met?

Managers should present information and ask questions in a neutral fashion to ensure that the adult does not feel threatened or coerced. A manager should not agree or disagree with the adult's responses to the questions and should document the adult's answers and their assessment of the adult's ability to understand and appreciate both circumstances and needs.

It may be helpful for the manager to remind the adult of the clinical assessment process which identified the need for care, being careful not to be coercive or make it sound as though the adult has no choice in the matter. The process of seeking consent is all about choice.

At this point, managers may need to summarize the situation by reviewing the following information with the adult:

- a clinical assessment has identified the adult's need for residential care
- the location, services, and features of the facility to which they may be admitted
- the circumstances under which the adult may leave the facility
- the need for consent to be admitted to the facility and the fact that consent is now being sought – the adult is now being asked to make that decision, to say *yes* or *no*.

While approaches to seeking consent to facility admission will vary, it should be remembered that consent to facility admission is based on respect for individual autonomy. For consent to be valid, an adult must feel that it is possible to refuse consent or to change their mind.

3.7 WHEN TO ASSESS FOR INCAPABILITY

All adults are presumed to be capable of making their own decisions, unless a manager has reason to question an adult's capability to consent to facility admission. Reasonable grounds for undertaking an assessment of incapability may come from written documentation such as: previous clinical assessments that contain concerns about the adult's capability, observations of the person while facility admission is being discussed and information provided by the adult, family, other caregivers, or health care providers. Ideally, the need to assess for incapability is triggered by something that occurs in the process of seeking consent; for example, when the adult from whom consent is being sought:

- does not appear to be able to absorb, retain, or use the information given in the consent process
- gives or refuses consent to admission without sufficient consideration of the consequences (the adult agrees or disagrees before being fully informed)
- is known to have impaired decision-making or has a known risk factor for impaired decision-making
- is making choices that are not consistent with longstanding values and beliefs
- is making decisions that pose a risk to self or others
- has been reported by family or health care providers to have significant cognitive difficulties

It is important to remember that a capable adult has the right to decide about their admission to a care facility and must not be assessed as incapable solely because others disagree with the adult's decision. This means that what a manager or family member may perceive as a poor decision is not sufficient to trigger an assessment of incapability.

It is also important to recognize when an incapability assessment should be postponed. This may be identified by a manager or an assessor. A delay is warranted when the manager or assessor is aware of transient factors that may influence an adult's capability, such as underlying or potentially reversible health conditions that may be affecting the adult's decisional capability.

3.8 MANAGER REQUEST FOR AN INCAPABILITY ASSESSMENT

3.8.1 Manager Coordinates the Incapability Assessment

As the person responsible for the admission process and for seeking and obtaining consent, the manager coordinates the incapability assessment. An incapability assessment for the purposes of admission to a care facility only occurs after the manager has made every reasonable attempt to obtain consent from the adult and has reason to believe the adult may be incapable of giving or refusing consent. A determination of incapability must be based on assessment that has been requested by the manager. An assessment conducted outside of this process cannot be the basis for a determination that an adult is incapable of giving or refusing consent. For example, if an adult's family member obtains an opinion from a health professional that their relative is incapable, prior to approaching a health authority about having their relative admitted into a care facility, the manager cannot avoid the procedure set out above or treat this opinion as an assessment made in accordance with the regulations.

3.8.2 Second Assessment

If an adult is assessed as being incapable of giving or refusing consent to care facility admission and the adult disagrees with this determination, the adult may request a second assessment be conducted by a different health professional. If the adult has requested a second assessment, the manager may not proceed with choosing a substitute and seeking substitute consent until a second assessment has occurred and unless the second assessment results in a determination that the adult is incapable.

The adult will only be considered incapable if the second assessment also confirms the determination that the adult is incapable of giving or refusing consent to care facility admission. If the second assessment results in an outcome different from the first assessment, namely that the adult is capable, then consent for care facility admission must be sought and obtained from the adult. There is no requirement to conduct a second assessment when someone disagrees with a determination that an adult is capable of giving or refusing consent for care facility admission.

The requirement to conduct a second assessment when an adult disagrees with a determination of incapability also applies to an assessment conducted for an adult already residing in a care facility. See 6 - Assessments to Determine Incapability to Consent to Continued Residence in a Care Facility, for more information about these assessments.

3.8.3 Who Conducts a Second Assessment

When a second assessment occurs, one of the two assessments needs to be conducted by a medical practitioner or nurse practitioner. If the initial assessment was conducted by a medical practitioner or nurse practitioner, the second assessment can be conducted by any assessor (a medical practitioner or prescribed health care provider – registered nurse, registered psychiatric nurse, social worker, occupational therapist or psychologist).

More information about conducting an assessment of incapability is found in 5 - Conducting Assessments to Determine Incapability to Consent to Facility Admission.

3.9 THE ADULT CONSENTS OR REFUSES CONSENT

Section 21(2) of the HCCCFAA states that “consent may be expressed orally or in writing or may be inferred from conduct.” This means that adults may say *yes* or *no*, sign a document indicating their decision, or indicate their consent through their behaviour. Inferring consent or refusal of consent from conduct and behaviour may be possible if the manager knows the adult well or if the adult is accompanied by a family member or friend who can confirm that the adult’s conduct indicates consent or refusal of consent.

Cooperation alone should not be interpreted as consent. If an adult does not have sufficient information about the facility to which they are to be admitted, consent cannot be implied by behaviour. There needs to be a reasonable basis for believing the adult’s cooperation is the result of informed consent.

Consent is often wrongly equated with an adult’s signature on a consent form. If an adult is rushed into signing a form, on the basis of too little information, the consent may not be valid, despite the signature. Similarly, if an adult has given verbal consent, the fact that they are physically unable to sign the form is not a barrier to admission. Managers should follow their organization’s operational policies and any relevant Ministry of Health policy in documenting the adult’s consent or refusal of consent.

In some cases, an adult may be reluctant to signing a consent form or otherwise taking part in a formal consent process, even though they agree with residing the care facility. This may be the type of situation where inferring consent is appropriate, as long as the manager is confident the behaviour indicates all of the elements of consent, including being voluntary, informed and given by a capable person.

It is expected that managers carefully document both the consent process and the adult’s or substitute’s decision. Appendix C includes a form that should be used to document consent to facility admission, even when consent is inferred, and the adult prefers not to sign a form.

3.10 EVIDENCE OF CONSENT GIVEN OR REFUSED

The HCCCFAA states that the manager of a care facility must not admit an adult to a care facility unless the adult or the adult’s substitute has given consent to the admission. If the facility manager has not been involved in seeking consent and/or assessing for incapability to consent to care facility admission (which may be the case when staff of a health authority have taken on those roles) then the facility manager must have evidence of the adult’s or substitute’s consent, and incapability assessment if applicable. In all instances, consent to facility admission must be properly documented.

When a manager has sought and obtained consent to care facility admission, the completed Consent To Care Facility Admission form provides evidence that consent was properly sought and received from either a capable adult or an incapable adult's substitute.

Section 77.1 of the Residential Care Regulation requires that a licensee must keep a record of⁶:

- the consent to admission for each person in care (from the person in care or their substitute);
- the substitute consent to continued residence if the person in care has expressed the desire to leave the facility (see 4 - Consent to Continued Residence in a Care Facility); and
- the assessment report for each person in care who's been assessed for incapability to consent to care admission.⁷

These requirements also apply to private hospitals and extended care hospitals governed by the *Hospital Act*.

3.11 EMERGENCY ADMISSIONS

According to section 24 of the HCCCFAA, an adult can only be admitted to a care facility without consent if:

- the adult is determined, through assessment, to be incapable of giving or refusing consent and immediate admission of the adult is necessary to preserve the adult's life, prevent serious mental or physical harm, or prevent serious harm to any person, or
- the adult is the subject of an emergency measure taken by a designated agency to protect the adult from abuse, neglect, or self-neglect under section 59 of the *Adult Guardianship Act*.

3.11.1 Emergency Admission to Prevent Harm

If the adult is not subject to section 59 of the *Adult Guardianship Act* and is being admitted to a care facility to preserve their life or prevent serious harm to the adult or another person, the adult must be assessed for incapability before an emergency admission can occur.

If an adult has been assessed and determined to be incapable, the adult can be admitted to a care facility without consent in an emergency. The manager must seek and obtain substitute consent within 72 hours of the admission, for the adult to continue residing in the care facility.

If an adult has not been determined to be incapable, they cannot be admitted into a care facility without consent, under this provision.

⁶ Requirements in the Residential Care Regulation apply to licensees, as opposed to "managers".

⁷ These records are only required for consent obtained, or assessments completed after November 4, 2019.

3.11.2 Emergency Admission under section 59 of the *Adult Guardianship Act*

If the emergency admission is to protect a vulnerable adult under section 59 of the *Adult Guardianship Act*, the manager may admit the adult without an incapability assessment and without obtaining consent.⁸ If, in the opinion of a person from the designated agency, the adult is “apparently incapable of giving or refusing consent” to the emergency measure being taken, the adult can be admitted without consent.

When an adult is admitted to a care facility in these circumstances, the manager must arrange for an assessment for incapability and seek and obtain substitute consent to facility admission within 72 hours. If an incapability assessment determines that the adult is capable of giving or refusing consent to care facility admission, the adult can only remain in the care facility if they consent to remaining in the care facility.

These provisions should not be used for administrative convenience (for example, on a weekend, when a manager may not be available to seek consent), only in emergencies.

3.12 SEEKING SUBSTITUTE CONSENT WHEN AN ADULT IS INCAPABLE

If an adult is found to be incapable of giving or refusing consent the law requires a substitute to make the decision on the adult’s behalf. The following information describes the process of seeking consent to facility admission for an adult who is found to be incapable of making that decision.

3.12.1 Informing the Adult

The assessor who has assessed the adult for incapability is required to inform the adult of the outcome of the assessment. Similarly, the manager seeking consent should inform the adult that someone else will be asked to make the decision about care facility admission, who that person is, and how the decision will be made.

3.12.2 Substitute Decision Makers

If an adult is assessed and found to be incapable of giving or refusing consent to facility admission, the manager seeking consent must identify the appropriate person to give or refuse consent on behalf of the adult. If the adult has a committee of person, appointed under the *Patients Property Act*, it means that they have already been found incapable by a court and the committee of person will be the substitute (and an incapability assessment is not required).

According to the HCCCFAA, if the adult does not have a committee of person, the manager seeking consent to facility admission must identify a substitute from the following list, in the order given, to give or refuse consent:

⁸ Only a Designated Agency under the *Adult Guardianship Act* can use section 59.

- the adult’s representative if they have the authority to consent to the facility admission through a section 9 representation agreement⁹
- the adult’s spouse
- the adult’s adult child, with all adult children ranked equally
- the adult’s parent
- the adult’s brother or sister
- the adult’s grandparent
- the adult’s grandchild
- anyone else related by birth or adoption to the adult
- a close friend of the adult
- a person immediately related to the adult by marriage

This person must also meet the following criteria to be eligible:

- not be the manager of the facility to which the adult is being admitted
- be at least 19 years of age
- have been in contact with adult in past 12 months
- have no dispute with adult
- be capable of giving or refusing consent
- be willing to comply with the duties set out in law (see 3.13.3 - The Duties of Substitutes, below)

This ranked order of substitutes and the qualifying criteria are similar to those required for substitute health care consent decisions, under Part 2 of the HCCCFAA.

If no person meets the above requirements or if there is a dispute about who is chosen, the manager must notify the Public Guardian and Trustee which has two roles:

- to choose a person to give or refuse consent, to facility admission or to continued residence in a facility, in circumstances where an adult has been assessed as incapable and there is a dispute about who is to be chosen as substitute.
- to choose a person to give or refuse consent, to facility admission or to continued residence in a facility, in circumstances where an adult has been assessed as incapable and there is no one on the list who is qualified and available to make the decision.

Under these circumstances the Public Guardian and Trustee can choose one of its own employees or another person to give or refuse substitute consent.

According to section 22 (7) of the HCCCFAA, a manager seeking consent to facility admission is “not required to do more than make the effort that is reasonable in the circumstances” to locate a substitute and can rely on the information they are given to determine if someone is

⁹ A section 7 representative is not authorized to give or refuse consent to care facility admission, as this section of the *Representation Agreement Act* authorizes consent to care facility admission only for types of housing that are currently not included in the definition of a care facility in the HCCCFAA.

eligible to be a substitute. Managers should request a copy of a court order appointing a committee of person or a representation agreement appointing a representative with the authority to consent to facility admission to ensure that those individuals have the authority they claim to have.

It is important to be aware of the two different kinds of representation agreements and their different kinds of authority to provide consent to facility admission:

- A Section 9 representation agreement may allow a representative to “decide where the adult is to live and with whom, including whether the adult should live in a care facility.”
- A Section 7 representation agreement only allows a representative to make a facility admission decision if the facility is “a family care home, a group home for the mentally handicapped or a mental health boarding home”. These types of facilities are not part of the definition of *care facility* that has been brought into force.¹⁰ Therefore, a section 7 representation agreement does not give a representative authority to give or refuse consent to care facility admission on an adult’s behalf. A person who is a representative under section 7 of the *Representation Agreement Act*, however, may be chosen as substitute as a family member or friend if they are the highest ranked qualified person on the list in section 22 (2) of the HCCCFAA.

The HCCCFAA prohibits the manager from giving substitute consent on behalf of an adult who is being admitted to that manager's own care facility. In other words, a manager cannot seek and consent and give or refuse consent as a substitute. See HCCCFAA, section 22 (3).

SUMMARY: WHO GIVES OR REFUSES CONSENT TO FACILITY ADMISSION?	
1ST choice	capable adult, or if incapable:
2nd choice	committee of person (personal guardian)
3rd choice	section 9 representative with authority
4th choice	qualified family member or friend
5th choice	if none of the above, Public Guardian and Trustee
emergency	no consent required if adult incapable of giving refusing consent (but consent must be sought within 72 hours)

Except in the case of a committee of person or representative authorized to make both facility admission and health care decisions, the substitute selected to make a facility admission

¹⁰ *Representation Agreement Act*, section 7 (2) and section 9 (1) (b) (i).

decision will not necessarily be the same person selected in the future to make individual health care decisions. The substitute selected to make a care facility admission decision may not be the substitute for future decisions, for continued residence or admission to a different facility. Each time substitute consent is required, the manager must identify a substitute from the ranked list. It may be the case, for example, that a higher ranked person on the list was unavailable to make the care facility admission decision at the time, however they are available for a later decision, such as providing substitute consent for the adult to continue residing in the facility.

In BC, persons holding powers of attorney are authorized to make financial and legal decisions on behalf of incapable adults, not health, personal care, or facility admission decisions. Therefore, holding a power of attorney does not make a person a substitute for consent to care facility admission, although this person may be the substitute if they are the adult's relative, friend and highest ranked qualified person on the list of substitutes.

3.12.3 The Duties of Substitutes

The duties of substitutes are to consult with the adult and with the adult's spouse, friend or relative who offers to assist and to make a decision in the adult's best interests. In determining *best interests*, a substitute must consider:

- the adult's current wishes, pre-expressed wishes, and known beliefs and values
- whether the adult could benefit from admission to a care facility
- what other options may be available and appropriate or less restrictive to support the adult's care.

The duties of a substitute for consent to care facility admission are different from those of a temporary substitute decision maker for consent to health care in one important respect. The first duty of a temporary substitute decision maker for health care is to act on an adult's pre-expressed wishes. In contrast, *a substitute for consent to facility admission uses an adult's pre-expressed wishes as one factor to consider among others in determining the adult's best interests*. This means that even though an adult, when capable, voiced or documented the wish never to be admitted to a care facility, the substitute is not necessarily bound to follow this instruction exclusively or give it precedence over other considerations.

3.12.4 Information for Substitutes

In order to fulfil their duties, substitutes require access to information related to the adult for whom they are making decisions. Section 23 (4) of the HCCCFAA allows those who are making substitute decisions access to all information and documents to which the adult is entitled and that are necessary for the person to make an informed decision about the adult's admission to the care facility.¹¹ Such documents could include assessments, financial or other information.

¹¹ Section 23 (4) makes section 17 (6) – (8) of the HCCCFAA apply to substitutes for care facility admission consent.

This part of the legislation requires that those who have custody of such information to disclose it to the substitute or produce the information for inspection and copying, by the substitute, despite most claims of confidentiality or privilege.¹²

In addition, when seeking consent from a substitute, the manager must provide all of the information about the facility to the substitute that would otherwise be provided to an adult from whom consent to facility admission is being sought if the adult were capable (See 3.5 - Providing Information).

3.12.5 Requirements for Substitute Consent

It is important to remember that as a substitute is standing in for an adult who has been found incapable of making the decision, in order for the consent of a substitute to be valid it must meet the same standards; the consent must be voluntary, informed, specific, and made by a capable adult. Thus, managers have the same responsibility for providing specific information to the substitute and ensuring that the substitute is capable and is not pressured or coerced. Similarly, managers should document who makes the substitute facility admission decision, the process they undertook with the substitute, and have that person sign a document indicating consent or refusal of consent.

3.12.6 Protection from Abuse or Harm

Section 23(5) of the HCCCFAA requires a manager to notify a person designated to receive reports of suspected abuse within a health authority if they believe that a substitute is acting in a manner that may be abusive or harmful to the adult. In the meantime, the manager must take steps necessary to protect the adult including refusing to discharge a person in care from a care facility. These provisions are intended as a safeguard against a substitute who may not be acting in the adult's best interests which could include attempting to remove an adult from the care facility, and empower the manager to take steps to protect the adult, including preventing an unwarranted or unwise discharge until the situation can be further assessed. Facilities will need to have policies and procedures instructing staff how to respond to these situations.¹³

It is also relevant to note that licensees of facilities under the *Community Care and Assisted Living Act* must ensure that a person in care is not, while under the care or supervision of the licensee, subjected to financial abuse, emotional abuse, physical abuse, sexual abuse or neglect.¹⁴ The Residential Care Regulation also requires emotional, physical, financial or sexual abuse, or neglect to be reported to a medical health officer.¹⁵

¹² These provisions override any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and override any restriction in an enactment or the common law about the disclosure or confidentiality of information, other than a restriction in section 51 of the *Evidence Act*.

¹³ Concerns about how a representative, attorney or committee is fulfilling their duties can also be reported to the Public Guardian and Trustee.

¹⁴ Residential Care Regulation, section 52 (1).

¹⁵ Residential Care Regulation, Schedule D

4. SEEKING CONSENT TO CONTINUED RESIDENCE IN A CARE FACILITY

Section 25 of the HCCCFAA and section 50.1 of the Residential Care Regulation provide rules about leaving a care facility or continuing to reside there. These provisions are intended to ensure that a resident of a care facility has the right to express their wish to leave and that such a wish is acknowledged and acted on. The provisions also allow for situations in which an adult may have been found incapable of making a facility admission decision, been admitted with the consent of a substitute and then later recovered the ability to make the consent decision and is reconsidering continued residence in the facility.

The following are four different circumstances related to an adult who expresses the wish to leave a care facility.¹⁶

1. If a capable adult expresses a desire to leave the care facility or if the adult's substitute expresses a desire for the adult to leave, the adult can leave.
2. If a capable adult expresses a desire to leave the facility and the manager has reason to believe that the capability of the adult is in doubt (see 3.8 - When to Assess for Incapability), the manager must have the adult assessed for incapability within a reasonable time.
3. If an adult who was assessed as incapable of giving or refusing consent to care facility admission expresses a desire to leave the care facility, then the manager must obtain substitute consent to the continued residence of the person in the care facility within a reasonable time from the substitute, unless:
 - a) the person was admitted to the facility in the past 30 days; or
 - b) substitute consent for continued residence has been obtained in the past 90 days.
4. If the manager has reason to believe the adult in #3 above, who had been assessed as incapable in the past, may now be capable of giving or refusing consent, the manager must have the adult assessed within a reasonable time. They can then proceed with # 1 or # 3 above, according to the outcome of the assessment.¹⁷

As described in scenario # 2 above, if a manager has reason to believe that an adult who expresses the desire to leave the facility may be incapable, they must have the adult assessed within a *reasonable time*. The legislation does not define *reasonable time*. While this allows some flexibility, it is expected that the assessment or the obtaining of substitute consent will follow promptly after the adult has expressed the desire to leave. Any delay must be due to sound reason, such as the logistics of arranging for an incapability assessment, or the practicality of locating and communicating with the adult's substitute. Delaying for several days due to inconvenience, or because the adult's expression does not seem to be serious or in the adult's best interests, is not consistent with the intent of the legislation.

¹⁶ The requirements in scenario 3 and 4 are from section 50.1 of the Residential Care Regulation, which also apply to private hospitals and extended care hospitals governed by the *Hospital Act*.

¹⁷ According to the Residential Care Regulation, the requirement to assess for incapability does not apply if the adult has a committee of person, however, #3, obtaining substitute consent, applies if an adult has a committee of person.

Likewise, in scenario #3 above, if an incapable adult expresses the desire to leave, substitute consent for continued residence must be obtained within a *reasonable time*. The limitations that apply to obtaining substitute consent for continued residence – not required within 30 days of admission, or if substitute consent for continued residence has been obtained in the past 90 days – are intended to minimize the burden of this requirement, while still recognizing the adult’s right to express the desire to leave.

If appropriate, a manager can still choose to seek substitute consent for continued residence within 30 days of admission, or if substitute consent has been obtained within the last 90 days. The manager may choose to do so, if they believe the adult’s expressing the desire to leave is the result of a change that has occurred in their condition or circumstances.

5. CONDUCTING ASSESSMENTS TO DETERMINE INCAPABILITY TO CONSENT TO FACILITY ADMISSION

Although this Guide presents two related activities separately for organizational clarity – seeking consent to facility admission and assessing for incapability to make that decision – the two are in fact part of a single process.

If in the process of providing care facility information to an adult, the manager has reason to doubt the adult’s understanding (see 3.8 – When to Assess for Incapability), the manager may begin assessing for incapability if the manager meets the requirements for being an assessor. The assessment may not occur precisely at the same time or on the same day that consent has been sought and the adult’s capability called into question but should be closely connected to the consent process. A determination of whether or not an adult is incapable must be based on the adult’s ability to understand particular information about a care facility and appreciate what giving consent to being admitted to the facility means.

The assessment takes place as part of the admission process and at the request of the manager. An assessment conducted outside of this process and not requested by the manager cannot be relied upon for the purpose of determining an adult is incapable of giving or refusing consent.

The *manager* is the person seeking consent to facility admission from an adult or an adult’s substitute. As discussed, this person could be a health authority employee responsible for access to publicly-subsidized facilities or a care facility staff person who is responsible for admissions. While the manager role is flexible, the role of the assessor is not. The legislation requires that an assessor be either a physician or a member of a class of prescribed health care providers identified in the Health Care Consent Regulation (registered nurse, nurse practitioner, registered psychiatric nurse, social worker, occupational therapist or psychologist).

The individual who seeks consent to facility admission can be the same person who assesses for incapability to give or refuse consent to facility admission because an adult’s ability to understand and appreciate the information provided when consent is sought is one of the criteria for determining incapability. The same person can perform both roles when the manager is a physician or a health care provider named in the Health Care Consent Regulation authorized to conduct incapability assessments as part of a single seamless process.

5.1 DECISIONAL CAPABILITY

The terms *capability*, *capacity*, and *competence* are often used interchangeably and mean roughly the same thing. Since the HCCCFAA uses the words *capability* and *incapability*, this document uses those terms.

Capability is the ability to understand the decisions we make. A capable person can understand and appreciate the issues or problems they face, the choices they have, and the likely consequences of their choices. Capability does not depend on the outcome of our choices. It is

not that capable people make good choices and incapable people make bad choices. All of us make decisions based on our values and beliefs; society values an individual's right to make their own decisions, regardless of whether others think the best decision that leads to the best outcome has been made.

Capability should not be confused with an assessor's view of the reasonableness of an adult's decision. Even if an adult's decisions are perceived by others as bad decisions, an adult has the right to decide as long as they understand and appreciate what their decision means. Unusual or eccentric choices are not a valid reason for doubting a person's decisional capability.

Our understanding of capability has evolved over time from looking at capability as a static and global condition to the current understanding of capability as domain-specific and decision-specific. A person may be capable of making decisions in one area or *domain* but not another. For example, a person may be capable of making health and personal care decisions, but not financial ones as finances require a particular kind of decision-making capability; this is called *domain-specific capability*. Similarly, a person may be capable of making a simple health care decision – to be immunized for influenza, for example – but may not be able to make a more complex decision with more risks and less certain outcomes. This is called *decision-specific capability*.

Deciding where we live is a specific domain of decision making while having the capability to consent or refuse consent to facility admission is what we call decision-specific capability.

An adult's capability may also fluctuate; an adult may be able to understand, appreciate, and make a particular decision one day even if they had not been able to do so the day before. Where capability is fluctuating, seeking consent should be delayed until a point when the adult has the capability to make the decision. People close to the adult may be able to assist in choosing an appropriate time to discuss the decision.

To be capable of making decisions, an adult must be adequately informed. People who have not been properly informed may not fully understand their situations, choices, or the likely consequences of those choices. Moreover, adults who have not been properly informed may be assessed as incapable while in fact they are capable but uninformed.

We do not override an adult's right to make their own decisions – their autonomy – unless it is clear that they are unable to understand the context in which a decision is being made, the options available, and the likely consequences of their decision. When a manager suspects an adult may not understand or appreciate the information offered, it is reasonable to assess for incapability.

5.2 UNDERSTANDING AND APPRECIATION: THE LEGAL TEST OF INCAPABILITY

Part 3 of the HCCCFAA sets out the specific legal test for incapability to consent or refuse consent to care facility admission. The fact that there is a separate section of legislation for facility admission and a specific test means that adults require a particular kind of decision-

specific capability to consent to facility admission.

Legal Test: Those involved in seeking consent and assessing for incapability need to be aware of the specific legal test for incapability to give or refuse consent to facility admission. Part 3 of the HCCCFAA states a determination of an adult's incapability must be based on:

- an assessment made in accordance with the regulations and
- whether or not the adult demonstrates that they understand the information given about being admitted into a care facility, including the care and services at the proposed facility and the circumstances under which the adult may leave

Please see Section 3.7 - Understanding and Appreciation, for examples of questions a manager or assessor may ask to explore an adult's understanding of the admissions decision, as well as a description of what these concepts mean.

5.3 WHO CAN CONDUCT AN INCAPABILITY ASSESSMENT?

An incapability assessment can be conducted by a physician or a prescribed health care provider (if they are a registrants of their respective professional colleges):

- a registered nurse,
- a nurse practitioner,
- a registered psychiatric nurse,
- a social worker,
- an occupational therapist, or
- a psychologist

5.3.1 Assessments in Private-Pay Care Facilities

Part 3 of the HCCCFAA applies to both care facilities that are subsidized by a health authority and those that are not publicly-subsidized, where the adult, or someone on behalf of the adult, pays for the entire cost of care and accommodation. An adult may be admitted to a care facility that is entirely private-pay or to a private-pay bed in a facility that also has publicly-subsidized beds. There are some additional rules for assessments in these situations, to ensure that the assessment is conducted independently and free from any real or perceived conflict.

If a private-pay admission is being considered, and it is necessary to assess the adult for incapability to give or refuse consent to admission, the assessment needs to be conducted by an assessor who is independent from the facility. In other words, for an admission that is not publicly-subsidized, if an assessment is needed, the assessment needs to be completed by an assessor who is neither employed nor contracted by the care facility where the admission is being considered.

This requirement also applies to assessments for continued accommodation and second assessments, where the accommodation or admission is not publicly-subsidized.

5.4 INCAPABILITY ASSESSMENT

The following section outlines the actions taken by an assessor when conducting an incapability assessment for consent to facility admission. An incapability assessment includes:

- letting the adult know why they are being assessed;
- reviewing the adult’s medical information;
- assessing the adult’s decision-specific ability to understand and appreciate information;
- collecting and reviewing collateral information;
- interviewing the adult (and others as appropriate); and,
- letting the adult (and others, as appropriate) know the results.

5.4.1 The Purpose of the Assessment

The purpose of an incapability assessment under Part 3 of the HCCCFAA is to determine if the adult is incapable of consenting or refusing consent to a facility admission or to continued residence in a facility. The term *incapability assessment* rather than *capability assessment* is used because it is presumed that the adult is capable until the contrary has been demonstrated.

5.4.2 Review of Medical Information Required

Assessors are required to review the adult’s relevant medical information before the adult is assessed for incapability and consider whether there are any underlying, or potentially reversible, health conditions that are affecting the adult’s decisional capability. The medical information should be based on an examination made by a physician or nurse practitioner and include relevant diagnoses and prognoses of conditions that may affect the adult’s ability to make decisions about admission to, or continued residence in, a care facility.

Changes in the mental status of adults can be caused by hypoxia, dehydration, infection, medication, metabolic disturbances, acute neurologic or psychiatric processes, and other medical problems. The medical information required is focused on conditions that may influence decisional capability and may be either reversible (e.g., medications, drug interactions, episodic/untreated mental illness, delirium, drug or alcohol use) or not (e.g., later stage dementia).

If the condition is possibly reversible, steps should be taken to ensure the condition is addressed before proceeding. If for some reason the adult requires admission to a care facility before the condition can be addressed, and a substitute’s consent is sought and obtained, the care facility manager should seek consent from the adult as soon as their capability to consent has returned.

A medical diagnosis alone is not grounds for finding that an adult is incapable of making a decision. For example, an adult in the early stages of Alzheimer’s disease may or may not be capable of giving or refusing consent to facility admission.

5.4.3 Preparing for the Assessment

Planning for an assessment involves careful preparation so that an assessor knows in advance what they intend to do and how they intend to do it. Planning for an assessment includes the following activities (and documentation of them), all of which are aimed at allowing the assessor to approach the assessment with as much information as possible about the adult:

- review of legal requirements for the assessment
- review of trigger(s) for the assessment
- determination of when and how the adult will be informed of the assessment and the reasons for it
- determination, in consultation with the adult, of whether others will be present and if so, who and why
- determination of the location, date, time and duration of the assessment interview(s)
- review of collateral information from family, friends, caregivers, other health care providers
- review of medical information
- review of results of the interRAI assessments if the adult has been assessed for access to, or is residing in, a publicly-subsidized residential care facility
- identification of assessment instrument(s) to be used, if any.

Assessors are required to tell adults about why they are being assessed and the consequences for the adult if they are found to be incapable (that is, that a substitute will be asked to give or refuse consent to their admission to the care facility on their behalf). In practice, this means that assessors:

- inform the adult that their capability is in question and that the assessor is going to review the adult's understanding and appreciation of the decision and the consequences of that decision.
- explain to the adult that if the assessor finds that the adult fully understands the information they have received, is able to apply it to their own situation, and is able to demonstrate an understanding of the likely consequences of that decision, then the adult will make the decision; however, if the assessor finds that an adult is unable to do this, then the assessor will explain to the adult that the decision will be made by someone else, likely a family member.

5.4.4 The Role of Cognitive Tests

There are many tools available to test cognition and capability. However, there is no evidence that scores from standard tests of cognitive ability are a reliable indicator of capability or incapability, partly because they are language-based and influenced by education, culture, and language. Most measures of cognitive status do not evaluate cognitive functions such as judgment and reasoning which are central to decisional capability. Nevertheless, decisional tools and aids such as the Montreal Cognitive Assessment (MOCA), Aid to Capacity Evaluation

(ACE), Assessment of Capacity for Everyday Decision-Making (ACED) and MacArthur Competence Assessment Tool – Treatment (Mac-CAT-T) may provide useful information.

These tests can be used as screening tools to help inform an incapability assessment but should not be used in isolation. A comprehensive assessment of the adult based on the facility admission decision should always be undertaken.¹⁸

5.4.5 The Assessment Interview

There is no single approach to or tool for assessing for incapability to consent to facility admission. However, assessors need a common, reliable, and valid process that will allow for some variation in resources and staffing but will assure the public there is consistency and quality in incapability assessments for consent to facility admission.

The process for assessing an adult's incapability to consent or refuse consent to facility admission is organized around the following three objectives of assessment:

- The adult is able to **understand** the information needed to make the facility admission decision and the options presented.
- The adult is able to **reason** with the information provided and their values.
- The adult is able to identify and **appreciate** the consequences of giving or refusing consent to facility admission.

After information has been provided to the adult about the proposed facility and the details associated with the decision about admission, the assessor engages the adult in conversation, the goal of which is to determine the adult's ability to understand the information, apply reason to it, and appreciate the consequences of the decision. At this point, the primary task of the assessor is to encourage the adult to talk about the decision and thus allow for a window into the individual's thought processes. The following are questions that could be used to guide that discussion (Also see 3.7 - Understanding and Appreciation).

1. Determining understanding

- What is your understanding of your condition, problems, and needs?
- Have you been able to care for yourself lately as well as you would like to? What has happened? What has changed?
- Do you have concerns about living in [name of the facility/facilities]?
- Do you understand the information I provided about [name of facility/facilities], the services provided there, and the circumstances under which you will be able to leave if you choose to live there?
- Do you have any questions about living in [facility/facilities name]?

2. Determining the ability to reason with information and values

¹⁸ More information about incapability assessment and screening tools is also available at http://www.trustee.bc.ca/documents/STA/Incapacity_Assessments_Review_Assessment_Screening_Tools.pdf.

- What things are most important to you in deciding whether to move into a facility?
- What are you thinking about as you consider your decision?

3. Determining appreciation

- Can you tell me about yourself and your problems/condition/needs and how moving to [name of facility] might/might not help you?
- Why do you think that it has been suggested that you live in [name of the facility]?
- What will happen to you and others if you move into/don't move into [name of the facility] (e.g., impact on family, friends, dependents)?

Important activities throughout the interview are probing and verifying. This means that the assessor should probe the adult's responses by asking more questions that follow from the original ones to determine:

- the adult's understanding and appreciation of the perceived advantages and disadvantages of one option over another, and
- whether or not the adult can anticipate consequences, both in terms of likelihood and severity.

5.4.6 Involvement of a Support Person for Adult Being Assessed

When determining whether an adult is incapable of giving or refusing consent to admission to, or continued residence in a care facility, an assessor:

- must communicate with the adult in a manner appropriate to the adult's skills and abilities, and
- may allow the adult's spouse, or any relatives or friends, who accompany the adult and offer their assistance, to help the adult to understand or to demonstrate an understanding of the matters discussed.¹⁹

The regulation specifies that others may be present if they are necessary or helpful to the assessment process or if the adult requests their presence. The presence of others may be crucial in instances where an adult has a communication impairment that is not associated with cognition and requires assistance with speaking, reading, or writing (e.g., the adult has suffered a stroke and is unable to speak).

Conversely, an assessor may exclude others, even if requested by the adult, if the assessor believes they could be disruptive or otherwise unhelpful to the assessment process. The provisions relating to the presence of other people are aimed at providing maximum support and assistance to an adult with a view to enhancing the adult's decisional capability, on the one hand, and protecting the adult from the unwanted presence of others, on the other. Assessors should use their discretion when involving others with these principles foremost in their minds.

¹⁹ HCCCFA, section 26 (3).

5.4.7 Gathering Information

Assessors can talk with and collect collateral information relevant to the assessment from others in addition to the adult. Those people may include health or social service providers, family members, and friends who know the adult well and may be able to provide insights into the adult's personality, behaviour, circumstances and level of functioning relative to this type of a decision. Assessors may consult with other persons both during an incapability assessment in which an adult participates, and in the course of an assessment based entirely or primarily on observation and information gathered from sources other than the adult. (see 5.6 - Conducting an Assessment without the Adult).

5.4.8 Making the Decision: The Role of Judgment

Deciding whether an adult is capable or incapable of giving or refusing consent to facility admission is a significant decision and one that cannot be made based solely on test scores or other quantifiable evidence. When the time comes to make the decision, assessors should be aware of the important role their professional judgment plays in deciding whether an adult is incapable of making a facility admission decision.

If assessors are unable to reach a justifiable determination for incapability, they should continue to assume decisional capability or consult with another assessor for assistance.

5.4.9 Liability

The HCCCFAA assumes managers and assessors will act in an adult's best interests and in good faith. Section 33 of the HCCCFAA provides that managers and assessors are not liable for what they do, or do not do, if they are acting in good faith and using reasonable care.

5.5 CONDUCTING AN ASSESSMENT WITHOUT THE ADULT

In exceptional circumstances, an assessment or part of an assessment may be conducted without the full participation of the adult, or without the adult being present. Such assessments are based on observational and information gathered from other sources if:

- the adult refuses in full or in part, to participate in the assessment, cannot reasonably be accessed or is not reasonably able to participate in the assessment, and
- the assessor reasonably believes that the assessment would be completed accurately using the information available.

If an adult refuses to participate in the assessment, the adult should be informed that the assessment will proceed based on input from other sources only. The assessor should encourage the adult to participate at any stage while the assessment is underway.

5.6 DOCUMENTATION AND NOTIFICATION

Assessors need to ensure the process and results of an incapability assessment are well documented with factual details of what the person said or did in response to certain questions. This information might be helpful, at a later date, if the adult expresses the desire to leave the care facility, and a manager or assessor wishes to consider the reasons for a previous determination about incapability.

The regulation specifies how an assessment must be documented and who must be informed of its outcome, including that:

- the adult who has been assessed is advised of the outcome of the assessment (i.e., capable or incapable); and
- copies of the assessment report and the attached details are:
 - offered to the adult;
 - offered to the person responsible for giving substitute consent on behalf of the adult (if there is one);
 - provided to the manager who requested the assessment; and
 - provided to the manager of the facility where the adult is admitted, if other than the manager who requested the assessment.

When the assessor tells the adult and any support person who is accompanying the adult the result of the assessment for incapability, the assessor should explain the reasons for the determination and answer questions using language the person will understand. It is also important to inform the adult and family that the determination for incapability is applicable only to the facility admission decision and for all other decisions the adult will be continue to be considered capable unless determined otherwise.

Assessors may use discretion in informing adults and their substitutes about the outcome of the assessment for incapability. An assessor need not provide this information if the assessor has reason to believe that it may result in serious physical or mental harm to the adult or significant damage or loss to the adult's property.

Note: A determination of incapability to consent or refuse consent to facility admission must not be used as the basis for assuming incapability to make other kinds of decisions such as those about health care and finances.

5.6.1 Second Assessments

If an adult is assessed as being incapable of giving or refusing consent to care facility admission and the adult disagrees with this determination, the adult may request a second assessment be conducted by a different health professional. If the adult has requested a second assessment, the manager should not proceed with choosing a substitute and seeking substitute consent until a second assessment has occurred.

The adult will only be considered incapable if the second assessment also results in a determination that the adult is incapable of giving or refusing consent to care facility admission. If the second assessment determines that the adult is capable, then consent for care facility admission must be sought and obtained from the adult. There is no requirement to conduct a second assessment when someone disagrees with a determination that an adult is capable of giving or refusing consent for care facility admission. As the person responsible for the admission process, the manager is responsible for coordinating the second assessment.

The requirement to conduct a second assessment when an adult disagrees with a determination of incapability also applies to an assessment conducted for an adult already residing in a care facility. See 6 – Assessments to Determine Incapability to Consent to Continued Residence in a Care Facility, for more information about these assessments.

5.6.2 Health Authority Record Keeping

During the process of seeking and obtaining consent for care facility admission, including conducting incapability assessments, health authorities collect personal information from a variety of sources to fulfill their duties under the HCCCFAA. The type of information collected may be personal health information including medical, psychiatric or psychological history, diagnosis, prognosis, condition, or treatment, and personal information, such as the adult's social supports and information pertaining to decision-making capability as it relates specifically to consent to care facility admission. According to section 33.1 of the HCCCFAA, assessors are authorized to collect personal information about an adult from any persons, not just the adult.

The collection, use and disclosure of information during the consent process are governed by the provisions of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), the *Personal Information Protection Act*, and the HCCCFAA.

Managers and assessors may be employees of a health authority and will be familiar with FOIPPA, their obligations under that legislation and their employer's internal policies related to collection, use and disclosure of information. Assessors who are not employed by a health authority will be guided by their professional codes of conduct and any other relevant privacy legislation including the *Personal Information Protection Act*.

CAUTION: This is not legal advice. If questions arise about the application of any of these sections it is recommended that you consult with your privacy program and/or obtain legal advice.

5.6.3 Relationship of FOIPPA to other Acts

FOIPPA is the overarching provincial legislation that governs how public bodies collect, use and disclose personal information. Other provincial acts, such as the HCCCFAA, also establish rules around collection use and disclosure of information specific to the functions outlined in those

acts. The rules in FOIPPA prevail over all other acts (unless expressly stated otherwise in another act) which means that any rules around collection, use and disclosure of information are read in conjunction with FOIPPA (section 79).

5.6.4 Health Records

In the process of determining the adult's capability to consent or refuse consent to care facility admission, personal information will be collected. Any information collected in the process that is not pertinent to consent to care facility admission should not be included in the adult's health record. The only forms that are part of the health record are the following which are included in Appendix C of the guidelines:

- Consent to Care Facility Admission or Continued Residence in a Care Facility
- Incapability Assessment Report under the authority of Part 3 the *Health Care (Consent) and Care Facility (Admission) Act*

Any other forms should be included in a separate administrative health record file used by health authorities to keep track of documentation specifically related to consent to care facility admission.

5.6.5 Maintaining Records

Health authorities may wish to maintain in a central location:

- A list of its qualified assessors, including managers
- A list of residents that includes:
 - Whether the resident had an incapability assessment and the outcome of that assessment
 - The names and contact information of the resident's substitute
 - The outcome of the admission decision (i.e., consent or refusal of consent)

Health authorities will note on the patient record if an adult has a committee of person or representative.

6. ASSESSMENTS TO DETERMINE INCAPABILITY TO CONSENT TO CONTINUED RESIDENCE IN A CARE FACILITY

Part 3 of the HCCCFAA and applicable regulations require managers to assess an adult's capability to consent to continued residence in a care facility if

- the adult has expressed a desire to leave the care facility, and
- the adult's capability is in doubt.

This opportunity for assessment for incapability is particularly important for adults whose health and cognitive functioning may have improved since admission to a care facility. If there is evidence to suggest that an adult's capability has changed, and the adult is expressing the desire to leave the care facility, then the manager must seek an assessment of the adult. This applies to an adult who was previously determined to be incapable and now may be capable, or an adult who has not been previously determined to be incapable, who may now be incapable. In both cases the triggers for the assessment is the adult expressing the desire to leave and the evidence suggesting that the adult's capability has changed.

While the process of determining incapability will follow the processes outlined above and be based on the same enquiry into the adult's ability to understand the information, reason with it, and appreciate consequences, there will be a difference in two major areas. First, the information that an adult has about the facility where they have been living will be much more extensive than prior to moving in as it is based on direct experience. Secondly, the living options originally available to the adult may have changed since the adult was admitted to the care facility as the adult may no longer have a home to which to return.

7. RESOLVING CONFLICTS: COURT DIRECTIONS AND ORDERS

Most conflicts can be resolved through discussion and other informal means. Some, however, may require a formal resolution process. Section 33.4 of the HCCCFAA includes a court process and specifies who can bring applications before the court and what the court may order.

According to this section of the HCCCFAA, an adult who is assessed as incapable of giving or refusing consent to admission to a care facility, an adult's representative or personal guardian (committee of person), or a person chosen to give or refuse consent to facility admission on behalf of an incapable adult, may apply to the court for:

- an order for the adult to be assessed for incapability;
- directions about who should be chosen to provide substitute consent to a facility admission or interpretation of health care instruction or wishes expressed by an adult when capable;
- confirmation, reversal or variance of a decision by an adult's representative, personal guardian (committee of person), or person chosen to provide substitute consent to admission;
- any decision a person chosen to provide substitute consent under the HCCCFAA could make.

It is expected that an adult who is assessed as incapable of giving or refusing consent to admission to a care facility will have access to less formal complaints processes. For example, if they are being considered for admission to a care facility subsidized by a health authority, the adult can make a complaint to the health authority's Patient Care Quality Office and ultimately the Patient Care Quality Review Board.

8. CONCLUSION

These practice guidelines offer an overview of what BC legislation requires with respect to consent to facility admission and assessing adults for incapability to make facility admission decisions. The process described here is based on Part 3 of the HCCCFAA and incorporates evidence from research literature and best practices. It is also expected that managers and assessors take the online course, [Consent to Care Facility Admission in British Columbia: A Course for Managers and Assessors](#) to prepare for meeting the Part 3 HCCCFAA requirements. Successful completion of the course and adherence to these practice guidelines may be required for some health professionals acting as assessors, according to their respective professional college.

APPENDIX A:

A CLOSER LOOK AT THE LEGISLATION - QUESTIONS AND ANSWERS

The following summary of the legislative requirements governing consent to facility admission is arranged according to topic-specific questions, followed by citations from Part 3 of the *Health Care (Consent) and Care Facility (Admission) Act* (the Act), the Health Care Consent Regulation, and the Residential Care Regulation and brief explanations of each. Unless indicated, the citations are from the Act. This section-by-section look at Part 3 of the Act and regulations is intended to assist in locating the specific source for the rules governing consent to facility admission. Some sections of the legislation are quoted more than once as their provisions apply to more than one topic of discussion.

This section-by-section look at Part 3 of the Act and regulations is intended to assist in locating the specific source for the rules governing consent to facility admission.

WHAT IS A CARE FACILITY?

"care facility" means

- (a) a community care facility that
 - (i) is licensed or designated under the *Community Care and Assisted Living Act*, and
 - (ii) provides residential care to adults,
- (c) a private hospital licensed under Part 2 of the *Hospital Act*,
- (d) an institution designated as a hospital under the *Hospital Act* for the treatment of persons referred to in paragraph (b) or (c) of the definition of "hospital" in that Act, or
- (e) any other facility, or class of facility, designated by regulation as a care facility, but does not include a service provider under the *Community Living Authority Act* that has not been designated under paragraph (e);

According to the *Health Care (Consent) and Care Facility (Admission) Act*, a care facility is:

- a community care facility for adults that is licensed or designated under the *Community Care and Assisted Living Act* (excluding those registered as assisted living residences under the Act)
- a private hospital licensed under the *Hospital Act*
- a rehabilitation hospital or facility or an extended care unit of a hospital designated under the *Hospital Act*

The *Community Care and Assisted Living Act's* Residential Care Regulation defines the kinds of care provided in licensed community care facilities as:

- hospice, being residential care and short-term palliative services for persons in care at the end of their lives;

- mental health, being residential care for persons who are in care primarily due to a mental disorder;
- substance use, being residential care for persons who are in care primarily due to substance dependence;
- long-term care, being residential care for persons with chronic or progressive conditions, primarily due to the aging process;
- community living, being residential care for persons with developmental disabilities; (see below)
- acquired injury, being residential care for persons whose physical, intellectual and cognitive abilities are limited primarily due to an injury, including persons suffering from brain injuries or injuries sustained in accidents.

However, the definition of *care facility* in the HCCCFAA explicitly excludes service providers under the *Community Living Authority Act* – that is, group homes or other residential facilities operated by Community Living BC service providers or regulated by that legislation.

The Act **does not** apply to admission to designated facilities under the *Mental Health Act* or to acute care hospitals.

WHO IS RESPONSIBLE FOR FACILITY ADMISSION AND FOR SEEKING CONSENT TO FACILITY ADMISSION?

- 20 (3) A manager must not admit an adult to a care facility unless**
- (a) the adult consents to admission under section 21,**
 - (b) substitute consent is given under section 22, or**
 - (c) the adult is admitted on an emergency basis under section 24.**

A facility *manager* is defined by legislation as the person responsible for either *the operation of or admissions to a care facility* or both (S.1 “Definitions”). The manager must not admit an adult to a care facility unless consent to admission (from the adult or a substitute) has been sought and received²⁰. The facility manager or manager of admissions is also responsible for the process of seeking consent. In the publicly-funded system, the manager is a health authority employee who is responsible for arranging access to care facilities.

WHO CAN APPLY FOR ADMISSION TO A CARE FACILITY?

- 20 (1) An adult or a person acting on the adult's behalf may apply for the adult's admission to a care facility by submitting an application to**
- (a) the manager of the care facility, or**
 - (b) a board designated under the *Health Authorities Act*.**

²⁰ Except in emergency situations; see below.

(2) A person may apply on an adult's behalf only if the person has reason to believe that

- (a) the adult requires the type of care available in a care facility, and**
- (b) the adult is incapable of giving or refusing consent to admission.**

(3) A manager must not admit an adult to a care facility unless

- (a) the adult consents to admission under section 21,**
- (b) substitute consent is given under section 22, or**
- (c) the adult is admitted on an emergency basis under section 24.**

The Act requires an adult or someone acting on an adult's behalf to apply for admission to the manager of the care facility or to a health authority. Typically, applications for publicly-funded facility care are made through health authority programs whose staff assess adults for service and financial eligibility.

An application for admission may be made on behalf of another person if there is reason to believe that the person needs facility care and is not capable of giving or refusing consent to admission. A manager must not admit an adult to a care facility without consent or substitute consent unless it is an emergency (see next section).

WHAT IS AN EMERGENCY?

24 (1) A manager may admit an adult to a care facility without the consent of the adult or a person authorized under section 22 to give or refuse substitute consent if

- (a) the adult is determined under section 26 to be incapable of giving or refusing consent and immediate admission of the adult is necessary to**
 - (i) preserve the adult's life,**
 - (ii) prevent serious physical or mental harm to the adult, or**
 - (iii) prevent serious physical harm to any person, or**
- (b) the adult is the subject of an emergency measure taken under section 59 of the *Adult Guardianship Act*.**

(2) If an admission is made under subsection (1), the manager must, within 72 hours of the admission, obtain substitute consent in accordance with section 22 for continued admission.

Consent to facility admission by an adult or the adult's substitute is not required if the adult is found to be incapable of providing consent (see below) and admission is required to save the adult's life, protect the adult from serious mental or physical harm, or protect others from physical harm.

If the admission is an emergency measure to protect the adult from abuse or neglect (which includes self-neglect) under Part 3 of the *Adult Guardianship Act* then neither an assessment nor consent to facility admission by an adult or the adult's substitute is required.

If an adult is admitted to a care facility in an emergency and without consent, the manager

must seek consent to admission within 72 hours (and have an incapability assessment completed, if one has not occurred in case of an emergency measure under the *Adult Guardianship Act*).

WHAT CONSTITUTES CONSENT TO FACILITY ADMISSION?

- 21 (1) An adult consents to admission to a care facility if**
- (a) the consent is given voluntarily,**
 - (b) the consent is not obtained by fraud or misrepresentation,**
 - (c) the adult is capable of making a decision about whether to give or refuse consent to admission,**
 - (d) the adult has the information a reasonable person would require to understand that the adult will be admitted to a care facility and to make a decision, including information about**
 - (i) the care the adult will receive in the care facility,**
 - (ii) the services that will be available to the adult, and**
 - (iii) the circumstances under which the adult may leave the care facility,****and**
 - (e) the adult has an opportunity to ask questions and receive answers about admission.**
- (2) Consent may be expressed orally or in writing or may be inferred from conduct.**

The requirements for consent to facility admission are very much like those for health care consent. The adult must be capable of making the decision, make the decision voluntarily without external coercion or pressure, and must not be misled about the nature and substance of the decision. The adult must be provided with information about the facility in order to make an informed decision (see below) and be given an opportunity to ask questions and receive answers about the proposed admission. Consent may be expressed orally, in writing or inferred by conduct. Documenting consent with the adult's signature is best practice.

WHAT INFORMATION IS REQUIRED TO BE GIVEN WHEN SEEKING CONSENT TO FACILITY ADMISSION?

- 21 (1)**
- (d) the adult has the information a reasonable person would require to understand that the adult will be admitted to a care facility and to make a decision, including information about**
 - (i) the care the adult will receive in the care facility,**
 - (ii) the services that will be available to the adult, and**
 - (iii) the circumstances under which the adult may leave the care facility**
- (3) When seeking an adult's consent, the manager**

- (a) must communicate with the adult in a manner appropriate to the adult's skills and abilities, and**
- (b) may allow the adult's spouse, or any relatives or friends, who accompany the adult and offer their assistance, to help the adult to understand or to demonstrate an understanding of the matters mentioned in subsection (1) (d).**

In order for an adult or a substitute to provide consent, they must be given information about the substance of the decision they are being asked to make. The legislation says that adults should have “the information a reasonable person would require” to make a decision to live in a care facility and to understand that giving consent will mean they will be admitted to live in the proposed care facility. The Act goes on to describe the basic kind of information that should be conveyed to the adult, such as the care and services available in the proposed facility and the circumstances under which the adult can leave the care facility once they have been admitted.

The Act specifies that those providing information to the adult must communicate in a manner appropriate to the adult's skills and abilities and that the spouse, relatives, or friends of the adult may help the adult to understand or to demonstrate an understanding of the above matters.

HOW ARE CAPABILITY AND INCAPABILITY DETERMINED?

- 3 (1) Until the contrary is demonstrated, every adult is presumed to be capable of**
 - (b) giving or refusing consent to admission to, or continued residence in, a care facility.**
- (2) An adult's way of communicating with others is not, by itself grounds for deciding that he or she is incapable of understanding anything referred to in subsection (1).**

The Act establishes in law what is called the *presumption of capability*. This means that an adult is presumed to be capable of making decisions about admission to and continued residence in a care facility unless incapability to make these decisions is demonstrated.

- 26 (2) A determination [of incapability to consent or refuse consent to facility admission] must be based on**
 - (a) an assessment made in accordance with the regulations, and**
 - (b) whether or not the adult demonstrates that he or she understands the information given by the manager under section 21 (1) (d).**

The Act states that a determination of incapability must be based on both an assessment consistent with the requirements of the Regulation and the adult's demonstrated understanding of the information given about the decision and the proposed facility (see above). Capability and incapability and their determination are complex matters and are discussed at length in these Guidelines.

WHO DETERMINES IF AN ADULT IS INCAPABLE?

- 26 (1) Only a medical practitioner or a prescribed health care provider may determine whether an adult is incapable of giving or refusing consent to admission to, or continued residence in, a care facility.**

Health Care Consent Regulation

- 16 The classes of health care providers who are prescribed as assessors for the purposes of the Act are as follows:**
- (a) registrants of the British Columbia College of Nursing Professionals who are subject to either
 - (i) the Nurses (registered) and Nurse Practitioners Regulations, or**
 - (ii) the Nurses (Registered Psychiatric) Regulation;****
 - (b) registrants of the British Columbia College of Social Workers**
 - (c) registrants of the College of Occupational Therapists of British Columbia**
 - (d) registrants of the College of Psychologists of British Columbia.**

The Health Care Consent Regulation defines an *assessor* as medical practitioner or health care provider prescribed by regulation for the purpose of performing an assessment under section 26 of the Act. In addition to physicians, the following health care providers, if registered with their professional colleges, are permitted to assess an adult for incapability to make facility admission decisions:

- registered nurses, including nurse practitioners
- psychiatric nurses
- social workers
- occupational therapists
- psychologists

UNDER WHAT CIRCUMSTANCES MUST AN ADULT BE ASSESSED?

- 22 (1) A manager may admit an adult to a care facility without the adult's consent if consent is given by**
- (a) a personal guardian who has authority to consent to the admission and is capable of giving or refusing consent, or**
 - (b) a person listed in subsection (2) of this section, if the manager has made every reasonable effort to obtain consent from the adult but the adult is determined under section 26 to be incapable of giving or refusing consent.**

If an adult seems to be incapable of giving or refusing consent to care facility admission after the manager has attempted to seek consent, the manager must have the adult assessed for incapability. The legislation makes the connection between the adult's ability to work with the information provided by the manager about the specific decision at hand (whether or not to be admitted to a care facility) and any indications during the process of seeking consent that may raise a question about the adult's decisional capability. If an adult has a personal guardian

(committee of person appointed under the *Patients Property Act*) an assessment is not required.

WHAT INFORMATION MUST BE GIVEN BEFORE AN ASSESSMENT?

Health Care Consent Regulation

- 17 Before conducting an assessment in respect of an adult, an assessor must ensure that the adult has been advised that**
- (a) the adult is being assessed to determine whether the adult is incapable of giving or refusing consent to admission to, or continued residence in, a care facility, and**
 - (b) if the adult is found to be incapable of making decisions about the adult's admission to, or continued residence in, a care facility, a substitute decision maker may make those decisions on the adult's behalf.**

The Health Care Consent Regulation requires the assessor to ensure that the adult is told why an assessment is being conducted and the consequences if the adult is found to be incapable (that is, that a substitute decision maker will be asked to make the decision regarding the adult's admission to the care facility).

ASSESSMENT MAY OCCUR WITHOUT THE ADULT

Health Care Consent Regulation

- 20 An assessment, or part of an assessment, may be conducted without the adult being present, and based on observational information and information gathered from other sources if**
- (a) the adult**
 - (i) refuses, in full or in part, to participate in the assessment, or**
 - (ii) cannot reasonably be accessed or is not reasonably able to participate in the assessment and,**
 - (b) the assessor reasonably believes that the assessment would be completed accurately using the information available.**

The Health Care Consent Regulation allows an assessment to be conducted even if an adult refuses to be assessed or cannot reasonably be assessed or is not reasonably able to participate in the assessment. In these circumstances, the assessor may observe the adult and gather information from other sources. This approach may only be used if the assessor believes it is possible to make an accurate assessment based on observations and information gathered from elsewhere.

OTHERS MAY BE PRESENT

Health Care Consent Regulation

18 (1) An assessor may permit a person other than the adult being assessed to be present during all or part of an assessment if

- (a) requested by the adult, or**
- (b) necessary or advisable for the purposes of communicating with the adult or conducting the assessment.**

(2) An assessor may prohibit a person from being present during all or part of the assessment if, in the opinion of the assessor, the presence of the person would disrupt or in any way adversely affect the assessment process.

(3) Subsection (2) applies even if the adult requests the person be present.

The Health Care Consent Regulation allows others to be present if they are necessary or helpful to the assessment process or if the adult requests their presence. Conversely, an assessor may exclude others during the assessment, even if requested by the adult, if the assessor believes they could be disruptive or otherwise unhelpful to the assessment process.

MEDICAL INFORMATION REQUIRED

Health Care Consent Regulation

19 An assessor must, before completing an assessment in respect of an adult, review all available relevant medical diagnoses and prognoses about the adult with respect to any underlying, or potentially reversible, health conditions that may affect the ability of that adult to make decisions about that adult's admission to, or continued residence in, a care facility.

The Health Care Consent Regulation requires an assessor to review an adult's medical information to ensure that there are no underlying or reversible health conditions that may affect the adult's decisional capability. This provision recognizes that an adult's incapability to give or refuse consent may be affected by a temporary health condition that could be treated thus restoring the adult's capability.

CONSULTATION WITH OTHERS

Health Care Consent Regulation

21 (1) Without limiting section 20, an assessor may consult with and collect information from other persons if the assessor has reason to believe that

- (a) it is necessary or advisable for the purposes of the assessment, and**
- (b) the person consulted with has information relevant to the assessment.**

(2) Without limiting subsection (1), an assessor may consult with and collect information from the following

- (a) a person who has provided social or health care services to the adult**

(b) the adult's spouse, near relatives and close friends,

The assessor can communicate with, and collect relevant information from, individuals other than the adult being assessed. Those people may include, but are not limited to, health or social service providers, family members, and friends, people who know the adult well and may be able to provide insight into the adult's character and behaviour.

ON COMPLETING AN ASSESSMENT**Health Care Consent Regulation**

22 (1) On completing an assessment, an assessor must, subject to subsection (2), do all of the following:

- (a) complete an assessment report detailing the assessment, including**
 - (i) the factors that were considered in making the determination of the adult's capability or incapability,**
 - (ii) the conclusions that were reached on the basis of all those factors, and**
 - (i) a summary of the information, if any, gathered under section 20 or 21;**
- (b) advise the adult who is the subject of the assessment regarding the assessor's determination of the adult's capability or incapability;**
- (c) provide a copy of the assessment report to**
 - (i) the manager who requested the assessment, and**
 - (ii) the manager of the care facility to which the adult is admitted, if different from the manager who requested the assessment**
- (d) offer to provide, and provide if requested, a copy of the assessment report to**
 - (i) the adult, and**
 - (ii) the person responsible for giving substitute consent on behalf of the adult under section 22 of the Act, if the adult is determined to be incapable.**

(2) An assessor need not comply with the requirements of subsection (1) (b) or (d) if the assessor has reason to believe that it may result in

- (a) serious physical or mental harm to the adult, or**
- (b) significant damage or loss to the adult's property.**

This section of the Health Care Consent Regulation specifies how the results of an assessment must be documented, who must receive or be offered the documentation and who must be informed of its outcome. The Regulation requires that the following information be documented in a report:

- the result of the assessment (adult found capable or incapable)
- the factors that were considered in arriving at that result
- the conclusions that were reached based on those factors, and
- a summary of the observational and other information gathered from other sources.

The Health Care Consent Regulation requires the assessor to inform the adult who has been

assessed of the outcome of the assessment (capable or incapable).

Copies of the assessment report must be provided to the manager who requested the assessment and to the manager of the care facility to which the adult may be admitted if that manager is different from the one who requested the assessment. Copies of the assessment report must be offered and provided (if requested) to the adult who was assessed and to the person responsible for giving substitute consent on behalf of the person who was assessed, if the adult has been determined to be incapable of giving or refusing consent to care facility admission.

WHO GIVES OR REFUSES CONSENT TO FACILITY ADMISSION ON BEHALF OF AN INCAPABLE ADULT?

- 22 (1) A manager may admit an adult to a care facility without the adult's consent if consent is given by**
- (a) a personal guardian who has authority to consent to the admission and is capable of giving or refusing consent, or**
 - (b) a person listed in subsection (2) of this section, if the manager has made every reasonable effort to obtain consent from the adult but the adult is determined under section 26 to be incapable of giving or refusing consent.**
- (2) Subject to subsection (3), substitute consent to an adult's admission to a care facility may be given or refused by the first, in listed order, of the following who is available and qualifies under subsection (4):**
- (a) the adult's representative, if the representative has authority to consent to the admission;**
 - (b) the adult's spouse;**
 - (c) the adult's child;**
 - (d) the adult's parent;**
 - (e) the adult's brother or sister;**
 - (f) the adult's grandparent;**
 - (g) the adult's grandchild;**
 - (h) anyone else related by birth or adoption to the adult;**
 - (i) a close friend of the adult;**
 - (j) a person immediately related to the adult by marriage.**
- (3) A manager who is a person listed in subsection (2) in respect of an adult is not eligible to give substitute consent to the adult's admission to the manager's own care facility on the adult's behalf.**
- (4) To qualify to give or refuse substitute consent to an adult's admission to a care facility, a person must**
- (a) be at least 19 years of age,**
 - (b) have been in contact with the adult during the preceding 12 months,**
 - (c) have no dispute with the adult,**
 - (d) be capable of giving or refusing substitute consent, and**
 - (e) be willing to comply with the duties set out in section 23.**
- (5) If no one listed in subsection (2) is available or qualifies under subsection (4), or if there is a dispute about who is to be chosen,**

- (a) the manager must notify the Public Guardian and Trustee, and**
- (b) the Public Guardian and Trustee must choose a person, including a person employed in the office of the Public Guardian and Trustee, to give or refuse substitute consent.**

(6) Section 21 applies to the giving or refusing of consent by a person authorized to give or refuse substitute consent under this section.

(7) A manager is not required to do more than make the effort that is reasonable in the circumstances to comply with this section.

If the adult has a personal guardian (committee of person appointed under the *Patients Property Act*), the manager will seek consent from that person. No assessment is required if an adult has a committee of person.

If the assessor has determined the adult is incapable of giving or refusing consent to facility admission, the assessor must notify the adult of the finding of incapability (see above). The manager must identify a qualified person who will be able to give or refuse substitute consent on behalf of the adult. This person will be either the adult's representative, if authorized to provide consent to care facility admission, or the next highest ranked person from the list in the Act.²¹

This person must also meet certain criteria to be qualified to make a care facility admission decision on behalf of an adult who is found incapable of doing so. The substitute must be a capable adult, not the manager of the facility to which the adult may be admitted, have been in contact with adult in past 12 months, have no dispute with adult, and be willing to comply with the duties set out in law (see next section).

If no one meets the above requirements or if there is a dispute about who is to be substitute, the manager must contact the Public Guardian and Trustee, which must choose a person (who could be one of their own employees) to give or refuse consent on the adult's behalf.

HOW DOES A SUBSTITUTE DECISION MAKER MAKE DECISIONS FOR AN INCAPABLE PERSON?

23 (1) In this section, "substitute" means a person authorized under section 22 to give or refuse consent to an adult's admission to a care facility.

(2) Before giving or refusing consent to an adult's admission to a care facility, a substitute must

- (a) consult, or make a reasonable effort to consult, with the adult and with any spouse, friend or relative of the adult who asks to assist, and**
- (b) make a decision in the adult's best interests.**

²¹ A representative authorized under section 7 of the *Representation Agreement Act* does not have the authority to consent to give or refuse consent to care facility admission. A representative authorized under section 9 of the *Representation Agreement Act* has this authority if it is part of the representation agreement.

The duties of a substitute decision maker include consulting with the adult and with the adult's spouse, any friend or relative who offers to assist. The substitute also must make a decision in adult's best interests.

WHAT ARE *BEST INTERESTS*?

- 23 (3) In determining the adult's best interests, the substitute must consider**
- (a) the adult's current wishes and any pre-expressed wishes, values and beliefs,**
 - (b) whether the adult could benefit from admission to a care facility, and**
 - (c) whether a course of action other than admission to a care facility, or a less restrictive type of care facility, is available and appropriate in the circumstances.**

When making a care facility admission decision on behalf of an adult, a substitute must consider the adult's current and pre-expressed wishes, and their values and beliefs. An adult's pre-expressed wishes could information communicated verbally or more formal written instructions concerning where the adult would like to live. The substitute must also consider whether the adult will benefit from being admitted into a care facility and whether any less restrictive setting is available and appropriate.

Note: Considering the adult's pre-expressed wishes is only one factor for the substitute to consider among the others. Unlike the duties of a temporary substitute decision maker for health care consent, pre-expressed wishes do not take precedence over other factors to be considered by the substitute who is making a care facility admission decision on behalf of an incapable adult.

WHAT ACCESS TO INFORMATION DO SUBSTITUTE DECISION MAKERS HAVE?

- 23 (4) Section 17 (6) to (8) applies to a substitute as if the person were a substitute decision maker under that section.**
- 17 (6) A person chosen under section 16 has the right to all information and documents to which the adult is entitled and that are necessary for the substitute decision maker to make an informed decision under subsection (1) of this section.**
- (7) A person who has custody or control of any information or document referred to in subsection (6) must, at the substitute decision maker's request, disclose that information to the substitute decision maker or produce that document for inspection and copying by the substitute decision maker.**
- (8) Subsections (6) and (7) override**
- (a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege, and**

(b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, other than a restriction in section 51 of the *Evidence Act*.

A substitute from whom consent to facility admission is sought, on behalf of an incapable adult, has access to all of the information necessary to make an informed decision, the same information to which the adult is entitled.

The only information to which substitutes do not have access is: 1) information that is privileged between a lawyer and client, and 2) information collected as part of a hospital's quality of care review which is subject to Section 51 of the *Evidence Act* and thus not shareable.

WHAT HAPPENS IF A SUBSTITUTE DECISION MAKER IS ACTING IN AN ABUSIVE OR HARMFUL MANNER?

- 23 (5) Despite any other provision in this Part, if the manager has reason to believe that a person authorized under section 22 to act as a substitute is acting in a manner that may be abusive or harmful to the adult, the manager must**
- (a) immediately notify any person designated by name or by class for this purpose by a regional health board designated under the *Health Authorities Act*, and**
 - (b) until instructed otherwise by the designated person, take any steps that, in the opinion of the manager, are reasonably necessary to protect the adult, including refusing to discharge a person in care from a care facility.**

If a manager believes that an adult's substitute decision maker is abusing or acting in a way that may be harmful to the adult, the manager must report this to an individual designated by the health authority to receive this information. Health authorities are thus required to designate someone by name or class for the purpose of receiving and responding to such reports.

In circumstances where abuse or harm are suspected, the manager is required to provide appropriate protection to the adult including not discharging the adult from care until instructed otherwise by the individual identified by the health authority to respond to these reports.

WHAT HAPPENS IF AN ADULT WANTS TO LEAVE A CARE FACILITY?

- 3 Until the contrary is demonstrated, every adult is presumed to be capable of**
- (b) giving or refusing consent to admission, or continued residence in, a care facility.**
- 25 (1) A manager must not prevent or obstruct a person in care from leaving a care facility in either of the following circumstances:**
- (a) the person in care is capable and expresses a desire to leave the care facility;**

(b) the person in care is incapable and the person authorized to act as a substitute for the person in care expresses a desire for the person in care to leave the care facility.

(2) [not in force]

(3) If the manager has reason to believe that the capability of a person in care is in doubt for the purposes of subsection (1) or (2), the manager must within a reasonable time have the person in care assessed in accordance with section 26.

(4) Despite subsection (3), an assessment of the capability of a person in care is not necessary if

(a) the person in care has a guardian, or

(b) [not in force]

A manager cannot prevent an adult residing in a care facility, who has not been determined to be incapable of giving or refusing consent to care facility admission, from leaving the care facility. If the manager believes that the adult may be incapable of making this decision, the manager is required to have the adult assessed within a reasonable time. If the adult is assessed as incapable of making the decision, the manager must obtain substitute consent to the adult's continued residency.

If the substitute decides that an adult who has been assessed as incapable of giving or refusing consent to facility admission will leave the facility, a manager cannot prevent the adult from leaving the care facility. (See above regarding what happens if the substitute is acting in an abusive or harmful manner.) If the manager believes that the adult may now be capable of making this decision, the manager is required to have the adult assessed within a reasonable time. If the adult is assessed as capable, the adult can then decide whether or not to continue to reside in the care facility.

An incapability assessment related to continued residence and requests to leave a care facility is not required if the adult has a personal guardian (a committee of person appointed under the *Patients Property Act*).

Residential Care Regulation

50.1 (1) In this section:

"assessed" means assessed, for incapability in accordance with section 26 of the *Health Care (Consent) and Care Facility (Admission) Act*,

"incapable person in care" means a person in care who has been assessed as incapable or for whom a personal guardian has been appointed;

"personal guardian" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

"substitute consent" means substitute consent given in accordance with section 22 of the *Health Care (Consent) and Care Facility (Admission) Act*.

(2) If an incapable person in care expresses a desire to leave a community care facility, the licensee must, within a reasonable time of the expression, act as follows:

(a) have the person in care assessed if

- (i) the licensee has reason to believe that the person in care may be capable of giving or refusing consent to continued accommodation in the community care facility, and
- (ii) the person in care does not have a personal guardian;
- (b) obtain substitute consent to the continued accommodation of the person in care in the community care facility if
 - (i) paragraph (a) does not apply, or
 - (ii) the person in care is assessed as incapable.

(3) Subsection (2) does not apply to a program described in section 2(1) as Child and Youth Residential or a type of care described in section 2 (2) (d) as Community Living,

- (4) Subsection (2) (b) does not apply
 - (a) if the incapable person in care was admitted to the community care facility within 30 days before expressing the desire to leave, or
 - (b) if substitute consent to the continued accommodation of the person in care in the community care facility has been obtained within the last 90 days.

Note: Subsections 50.1 (1), (2) and (4) of the Residential Care Regulation apply to private hospitals, rehabilitation hospitals or facilities, and extended care units in hospitals, in addition to community care facilities (through the Patients' Bill of Rights Regulation).

An adult who was previously determined to be incapable of giving or refusing consent to care facility admission may express the desire to leave a care facility. If this occurs and the manager has reason to believe that the adult is now capable of making this decision, the manager must have the adult assessed. If they are found to be capable, the adult can decide whether to remain at the care facility. If the adult has a personal guardian (a court-appointed committee of person appointed under the *Patients Property Act*), an assessment is not required and the adult continues to be considered incapable.

If the adult is incapable (based on a recent or previous assessment), the manager is required to obtain consent from the adult's substitute for the adult to continue living at the care facility.

There are exceptions to this requirement – substitute consent is not required if:

- the adult was admitted to the care facility within the last 30 days; or,
- consent for the adult to continue residing in the facility was obtained from the substitute within the last 90 days.

WHAT ADMISSION AND ASSESSMENT RECORDS MUST BE KEPT?

Residential Care Regulation

Records respecting admission

77.1 (1) Subject to subsections (2) to (4), a licensee must keep, for each person in care, a record showing the following information:

- (a) the date of admission to the community care facility;
- (b) in the case of an adult, the consent for that person in care to be admitted or to continue to be accommodated in the community care facility given in accordance with section 21 or 22 of the *Health Care (Consent) and Care Facility*

(Admission) Act or section 50.1 of this regulation, as applicable

(c) each assessment report, if any, provided under section 22 (l) (c) of the Health Care Consent Regulation.

(2) Subsection (1)(b) and (c) does not apply to a person in care who is in a program described in section 2(1) as Child and Youth Residential or is receiving a type of care described in section 2 (2)(d) as Community Living.

(3) Subsection (1)(b) applies only in respect of a consent or continued consent given on or after November 4, 2019.

(4) Subsection (1) (c) applies only in respect of an assessment report provided on or after November 4, 2019.

Note: Subsections 77.1 (1) (b) and (c), (3) and (4) also apply to private hospitals, rehabilitation hospitals or facilities, and extended care units in hospitals through the Patients' Bill of Rights Regulation.

The *Community Care and Assisted Living Act's* Residential Care Regulation requires that licensees (individuals who are licensed to operate care facilities in BC) keep records of:

- the date an adult was admitted to the care facility
- consent to admission given by the adult or by the adult's substitute
- report of an incapability assessment conducted to determine the adult's incapability to consent

The requirements for a record of consent and the incapability assessment report do not apply to licensees of facilities to which Part 3 of the *Health Care (Consent) and Care Facility (Admission) Act* does not apply (Child and Youth Residential and Community Living facilities).

APPENDIX B:**QUESTIONS THAT MAY BE ASKED PRIOR TO FACILITY ADMISSION*****Care and Services***

- How many residents does the facility accommodate?
- What is the ratio of staff to residents? What is the least number of staff on duty at night or on the weekend?
- What types of medical care are provided?
- Will residents be able to stay at the facility if their care needs increase?
- Are rehabilitation services such as physiotherapy available?
- Will facility staff help with daily care of teeth or dentures?
- Does a dental hygienist, dentist or denturist visit residents? If so, who arranges and pays for these services?
- Does a podiatrist (foot doctor or foot care nurse) visit?
- Is there a nutritionist or dietician on site?
- Are residents and families involved in developing a care plan?
- How long will the adult be staying (for temporary or short-term stays)?
- Who will help you if you cannot bath/shower or toilet yourself?
- Why types of incontinence supplies are available? Is there a charge?

Visiting

- Will friends and family be welcome at any time?
- Is there a private area where residents can meet with family and friends?
- Can guests be invited to a meal? If so, how much will it cost and how is it arranged?
- Are there visiting hours? What are they?

Mental Health and or Substance Use Treatment Services

- What is the average length of stay?
- What is the treatment model and philosophy of care?
- Can you provide an overview of the treatment process?
- Is the treatment program based on best practices?
- Is this program abstinence-based?
- What are the outcomes of people who have completed the program?
- What are the professional backgrounds of the staff?
- Is there peer support available?
- Is my case manager involved in the treatment process?
- Are there any risks I should be aware of?
- What happens if I decide to withdraw from the treatment program?
- Who is looking after my home while I'm attending this treatment program?
- What are the costs to stay here and what is included?
- What are the rules about smoking?

Ownership/Management

- Who owns the facility?
- Who operates the program?
- How long has the facility been in operation? When was it built?
- Who manages the facility and what experience do they have?
- What is the level of staff turnover?
- Are there other levels of care on the same site? (HCC facilities only)
- Is there a residents' committee/council?
- Is there a family committee/council?
- Is the facility on the market or about to change manager?
- Has the facility's license ever been suspended or cancelled?

Activities

- Is there an activities coordinator on staff?
- How many hours per week does the activities coordinator work?
- What is the frequency and type of activities offered?
- What is the frequency and type of outings offered?
- Is there an additional cost for outings?
- Does the facility have a library?
- Does the facility have a computer with Internet access for residents' use?
- Do residents have a role in planning activities?
- Are safe indoor and outdoor walking areas provided?

Meals

- Is there a choice of food?
- Can residents request different food?
- What times are the meals? Is there a choice of mealtimes?
- When is the main meal of the day?
- Are the meals cooked on site or delivered?
- Are special/culturally appropriate diets available?
- Is fresh fruit available throughout the day?
- Can family/friends bring in and serve meals for residents?
- Is there a central dining room? Is it within reasonable walking distance from bedrooms?
- Can residents eat in their bedrooms?
- Are residents given packaged meals if away for scheduled meal times?

Other Services

- Does a hairdresser/barber visit?
- Does the facility do residents' hand-washing?
- What items of personal clothing may be sent to the laundry?
- Is there an extra charge for laundry?
- What happens about items lost in the laundry?
- Is transport available for appointments and activities? Does it carry wheelchairs?
- Are there chaplains/religious leaders who visit the facility? Who and when?
- Is there regular religious worship in the facility?
- Is there a phone that is private and accessible?

Bedrooms

- Is a private room available?
- If residents in a shared room are not compatible, is there a procedure for moving rooms?
- Is there a way to have privacy if a room is shared?
- How much storage and closet space will you have?
- Is there a cupboard or drawer you can lock?
- Can residents bring their own furniture? How much?
- Can residents bring and use their own bedding?
- Can people go into a resident's room without permission?
- Can residents have private phones installed in their bedrooms?
- Can residents have computers in their bedrooms?
- Is there room for a wheelchair or walker in the bedroom and washroom area if needed?
- Can bedroom doors be locked?
- Is there a charge if you move to another room?
- Is food allowed in the bedroom? Is alcohol allowed in the bedroom?

Showers/Bathrooms

- Can residents shower or bathe when they choose?
- How close are toilets to the bedrooms?
- Is there a private or communal bath?
- How will privacy be assured during bathing?
- Is there any special equipment available, such as lift equipment or wheelchair showers?

Grounds and Building

- Is it a small or a large facility? Small facilities offer a more homely, personal environment, whereas a larger residence will have more residents and thus more opportunity for social interaction and more organized activities.
- How many lounges are there?
- Is there a pleasant, sheltered outdoor area to sit?
- Is there a garden?
- What policies and plans are in place to handle the care and safety of residents in the event of an emergency such as an earthquake, fire, or snowstorm?
- Is there a sprinkler system?
- When was the most recent fire drill?

Other Rules

- How are my religious practices respected within the facility?
- What happens if a resident wants to move to another facility?
- What happens if a resident wants to leave?
- Is there a sign in/out system for outings?
- Does the facility have a key-padded security system?
- Can residents drink alcohol? Smoke cigarettes? Use cannabis?
- Can residents have pets? Is there a facility pet (resident cat or dog or birds)?
- How are residents transported to appointments, activities, religious services, etc.?

- What religious or cultural holidays are celebrated?
- What languages are spoken? If staff do not speak a resident's language how will the staff communicate with the resident?
- Can a copy of the latest licensing inspection report be shared?
- Is the facility accredited? If so, is an accreditation report available to review?

APPENDIX C: FORMS

Consent to Care Facility Admission

Incapability Assessment Report



This form is to be completed by the manager giving due consideration to Part 3 of the Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA) and the Practice Guidelines for Seeking Consent to Care Facility Admission (Ministry of Health). Information is being collected under the authority of the HCCCFAA. A manager is defined by the HCCCFAA as an individual who is responsible for either or both of: (a) the operation of a care facility, or (b) admissions to a care facility.

INFORMATION OF ADULT TO BE ADMITTED

Form with fields: Last Name of Adult to be Admitted, First Name of Adult to be Admitted, Second Name(s), Personal Health Number (PHN), Birthdate (YYYY / MM / DD)

Consent provided by (choose one)
[] the adult to be admitted
[] the substitute (adult determined to be incapable through assessment)

PROPOSED ADMISSION

It is proposed that the adult be admitted to the following facility:
Name of Care Facility, Address of Care Facility

CONSENT OF ADULT OR SUBSTITUTE DECISION MAKER

Adult or substitute providing consent to mark the appropriate boxes:
[] I have been given information about this care facility...
[] I have been given the opportunity to ask questions...
I understand:
[] The care options available...
[] I have the right to give or refuse consent...
[] I can revoke consent...
[] If care and accommodation is offered...
Additional Comments:

Consent to the above-named care facility was:
[] provided in writing
[] inferred from conduct - describe:
[] provided orally

ADULT TO BE ADMITTED - WRITTEN CONSENT

[] I CONSENT to being admitted to the above-named care facility.
Signature of Adult to be Admitted, Print Name of Adult to be Admitted, Date Signed (YYYY / MM / DD)

OR: SUBSTITUTE DECISION MAKER - WRITTEN CONSENT

[] On behalf of the above-name adult, I CONSENT to the adult being admitted to the above-named care facility.
Signature of Substitute Decision Maker, Relationship to Adult, Print Substitute's Full Name, Date Signed (YYYY / MM / DD)

OR: MANAGER - CONSENT PROVIDED ORALLY OR INFERRED FROM CONDUCT

[] The above-named adult (or substitute decision maker on behalf of the adult) has CONSENTED to being admitted to the above-named care facility.
Signature of Manager, Date Signed (YYYY / MM / DD), Print Name of Manager, Organization/Health Authority, Name of Substitute Decision Maker, Relationship to Adult



This form is to be used to document the assessment of incapability to give or refuse consent to care facility admission, or continued residence, giving due consideration to Part 3 of the Health Care (Consent) and Care Facility (Admission) Act, Health Care Consent Regulation and the Practice Guidelines for Seeking Consent to Care Facility Admission (Ministry of Health). Information is being collected under the authority of the Health Care (Consent) and Care Facility (Admission) Act. This form is to be completed by the assessor, defined as a medical practitioner, registered nurse, nurse practitioner, registered psychiatric nurse, social worker, occupational therapist, or psychologist (registered by their respective professional college).

INFORMATION OF ADULT ASSESSED

Last Name of Adult Assessed	First Name of Adult Assessed	Second Name(s)
Personal Health Number (PHN)	Birthdate (YYYY / MM / DD)	

CONFIRMATION OF CAPABILITY OR DETERMINATION OF INCAPABILITY

Name of Assessor	Date Assessment Complete (YYYY / MM / DD)	
Professional Designation	Registration Number	Regulating College

By checking this box, I, the above-named Assessor, confirm that I have assessed whether the above-named Adult is incapable of giving or refusing consent to care facility admission or continued residence in a care facility. I confirm that I have assessed this adult according to the requirements of the *Health Care (Consent) and Care Facility (Admission) Act* and Health Care Consent Regulation.

My assessment is that the above-named adult is (check appropriate box and cross out unnecessary wording):

capable of giving or refusing consent to care facility admission to, or continued residence

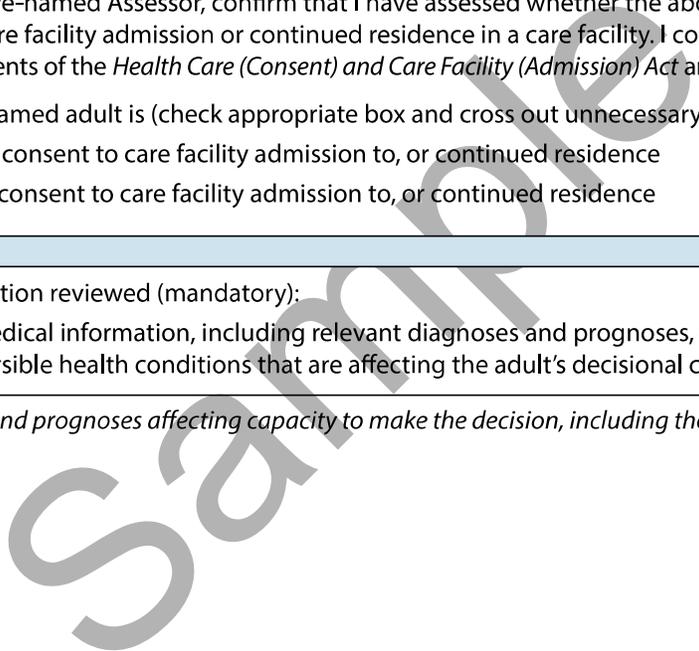
incapable of giving/refusing consent to care facility admission to, or continued residence

MEDICAL INFORMATION

Confirmation that medical information reviewed (mandatory):

I have reviewed the client's medical information, including relevant diagnoses and prognoses, to ensure that there are no underlying or potentially reversible health conditions that are affecting the adult's decisional capability.

Please describe relevant diagnoses and prognoses affecting capacity to make the decision, including the source of this information:



FACTORS CONSIDERED IN MAKING DETERMINATION

Check the factors found to be true about the adult (and add information in text box below, as needed)

1. Understanding

The adult:

- did not understand own condition, problems, and needs
- did not understand events leading to assessment
- had concerns about living in a facility but was unable to identify them
- did not understand the information provided about the facility, the services provided there, and the circumstances under which they can leave
- did not ask questions about the above
- other (specify below)

2. Ability to reason with information and values

The adult:

- was not able to identify factors/issues/considerations relevant to the decision to move into or remaining living in the care facility
- other (specify below)

3. Appreciation

The adult:

- did not understand why they were being considered for admission to a care facility or why they were residing in a care facility
- was not able to make the connection between giving or refusing consent to facility admission or continued residence in a care facility and being admitted to or remaining in the care facility
- did not recognize the impact of the decision on self and others (family, friends, dependents)
- other (specify below)

Other information considered in making a determination of incapability, or confirmation of capability:

OTHER SOURCES OF INFORMATION

Other sources of information in addition to interaction with the adult (or if other sources relied upon because the adult was unable or unwilling to participate in assessment)

ADDITIONAL INFORMATION

Other information necessary to capture about the assessment, including any unique circumstances surrounding the assessment, assistance provided with communication, translation, adaptive devices, assistance provided by the adult's family or friends.

REQUIREMENTS FOR INCAPABILITY ASSESSMENT REPORT

On completing an assessment, an assessor must do all of the following:

- complete an assessment report that includes the following information:
 - (i) the factors that were considered in making a determination of the adult's capability or incapability
 - (ii) the conclusions that were reached on the basis of all those factors, and
 - (iii) a summary of any information gathered from other sources.
- advise the adult who is the subject of the assessment of the assessor's determination of the adult's capability or incapability;
- offer to provide a copy of the assessment report to:
 - the adult, and
 - the person responsible for giving substitute consent on behalf of the adult if the adult is determined to be incapable.
- provide a copy of the assessment report to:
 - the manager who requested the assessment, and
 - the manager of the facility to which the adult is admitted, if other than the manager who requested the assessment.

An assessor is not required to share the outcome of the assessment with the adult, or provide a copy of the assessment report to the adult or the person responsible for giving substitute consent on behalf of the adult, if the assessor has reason to believe that it may result in serious physical or mental harm to the adult or significant damage or loss to the adult's property.