Response to *Treating People with Mental Illness Fairly: A Report on Mental Health Review Panels*

Final progress report to the Alberta Ombudsman, 2020/21

**Introduction**


Review panels are established under Alberta’s *Mental Health Act* (Act), a key piece of legislation that authorizes and provides processes for the involuntary detention and treatment of an individual as a formal patient and separate criteria and conditions for treatment of persons living in the community. Under the Act, applications can be made to a review panel to make decisions pertaining to admission, competence and administration of treatment for people who are subject to the Act.

Alberta Health and its stakeholders share the goal of improving mental health and addiction services for those who need help, and are taking a collaborative approach to identify and remove barriers to recovery for every Alberta family.

**Responses to Recommendations**

This final report provides an update on advances being undertaken across Alberta Health, review panels and AHS to improve administrative fairness and protection of rights for those living with serious mental illness in Alberta. Advances include operational improvements and commitments, as well as legislative changes made under the *Reform of Agencies, Boards and Commissions and Government Enterprises Act, 2019* (Bill 22) and *Mental Health Amendment Act, 2020* (Bill 17) that further strengthen protections and safeguards for patient rights, enhance notification requirements, give more authority to review panels, and facilitate access to review panel hearings.

**Recommendation 1: Alberta Health ensure that AHS and Covenant Health have a process to notify patients of all their review rights under the Act.**

People subject to the Act have many rights, including the right to have a review panel review certain decisions made about them. Section 14 requires that this right is explained to people when they become subject to two admission certificates or two renewal certificates and when a community treatment order is issued, amended or renewed. Section 27 requires that this right is also explained to people when they become subject to a Certificate of Incompetence to Make Treatment Decisions.

The Ombudsman found patients are not always being fully informed of their right to a review of their detention or mandatory treatment orders.

Alberta Health does not have a legislated role in ensuring AHS and Covenant Health meet notification requirements.

**Advances**

- Bill 17 strengthened section 14 of the Act to better clarify rights and require that patients are informed of many of their rights in a timely way. It also established an enhanced legislated role for the Mental Health Patient Advocate to provide oversight of this area and a duty to connect with every patient who asks for help to review key documents and ensure they receive complete information. This duty is further set out in section 45(1.1).
- Changes to the Act are reflected in new fact sheets that are distributed by AHS, the Mental Health Patient Advocate and review panels to further help ensure people are informed of their rights:
  - Mental Health Act: information for formal patients
  - Mental Health Act: information about mental health review panels
  - Mental Health Act: information for persons subject to a community treatment order
AHS has worked diligently to help ensure medical practitioners, law enforcement, community partners and other professionals are informed of processes and requirements set out in the Act and have the opportunity to incorporate changes made to the Act into their practice.

In collaboration with the Mental Health Patient Advocate, AHS delivered two sets of online educational training sessions:
- In October and November 2020, 14 sessions to 880 participants about the recent changes to the Act.
- In January and February 2021, 24 sessions to 1,356 participants about the Act in practice.

Recommendation 2: Where appropriate, review panels formalize a process for patients waiving the minimum seven-day notice of a review panel hearing.

Section 40 in the Act requires that the chair of a review panel provides at least seven days’ notice of most hearings. The exception to this is hearings about competence and treatment – those hearings must be held within seven days of an application.

There are some circumstances where a patient may wish to waive the seven-day notice, including, for example, if they wish for the review panel to consider their admission certificates and competence at the same hearing. For example, in 2020/21, 96 per cent of section 27 (competence) hearings and 41 per cent of section 29 (treatment) hearings were combined with an application to cancel an admission or renewal certificate. This was consistent throughout the year.

Advances
- Each of the review panels has established processes to help ensure patients acknowledge their right to waive the seven-day notice requirement. The Calgary/South panel consistently uses an Acknowledgement and Waiver form; others address this through correspondence.
- If a written acknowledgement and waiver is not available, the chair confirms with the patient at the outset of a relevant hearing if the patient is waiving the notice.

Recommendation 3: Review panels include a record of a waiver in the Reason for Decision document when the patients waive the minimum seven-day notice.

The Ombudsman found review panels lack a consistent approach to documenting patient waivers of the minimum seven-day notice of review panel hearings.

Advances
- Chairs have committed to include a record of waiver in the written reasons.

Recommendation 4: Review panels develop processes to ensure they hold all hearings within the 21-day deadline in the Mental Health Act, unless they grant an adjournment. Also recommend that the review panels explain in the Reasons for Decision document why they grant adjournments.

Section 40(4) of the Act requires that most hearings are held within 21 days after the receipt of an application. Subsection (5) provides that a chair may adjourn a hearing for any period up to 21 days (or longer if requested by the patient or person subject to the community treatment order).

The Ombudsman found review panels were not explaining why they were not holding hearings before the 21-day deadline and most written reasons did not identify whether adjournments had been requested or granted.

Advances
- Bill 22 amended section 37 of the Act to allow review panels to conduct hearings by video conference, enabling a method for patients to meet with review panels that can be more accessible and easier to coordinate.
- Launched in April 2020, an enhanced data system now allows Alberta Health to measure how often panels are holding hearings within the 21-day timeframe.
- In 2020/21, the median number of days to hear an application where a 21-day timeframe applies (those that do not include an application regarding competence or treatment) was 13 days from when the application was received by the review panel.
- More than 95 per cent of applicable hearings in 2020/21 were held within 21 days of the application being received.

DAYS FROM APPLICATION TO HEARING
For applications received April 1, 2020 to March 31, 2021

- In their written reasons, chairs now record if a hearing was adjourned, including the reason for adjournment. This data is also captured by Alberta Health in its data system.

For more information on review panels and the hearing process, visit alberta.ca/mhreviewpanel

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Recommendation 5: Review panels issue the Reasons for Decision document well before the 14-day deadline to appeal—under Section 43(1) of the Mental Health Act—so patients have enough time to decide whether to appeal to court.

Section 43(1) of the Act provides the number of days within which the applicant or formal patient may appeal a review panel’s order or decision to the Court of Queen’s Bench. The number of days is from when an order or decision is received by the patient, not from the date of the hearing.

Section 41(4) of the Act provides that a review panel must give written reasons for its decision whenever it decides not to cancel admission certificates or renewal certificates or a community treatment order.

The Ombudsman found that although orders and decisions are usually issued immediately, written reasons (when required) are not always issued before the 14-day deadline to appeal, impairing the patient’s ability and decision to knowledgeably file an appeal.

Advances
- Bill 17 amended section 43(1) of the Act, extending the time from 14 days to 30 days within which a patient or applicant may appeal an order or decision to the Court.
- Alberta Health’s new data system records when the decision form is sent to the patient.
  - In 2020/21, 46 per cent of required written reasons were issued within one week of informing the patient of the decision in the prescribed form.
  - On average, in 2020/21, written reasons were provided in eight days; 90 per cent of written reasons were provided within 14 days, and 98 per cent were provided within 30 days.

Recommendation 6: Review panels develop a consistent process to notify patients of their right to a lawyer.

The Ombudsman found that patients do not always know they have a right to a lawyer, and found a lack of consistency in practices across facilities to notify patients of this right and to facilitate access to a lawyer.

Advances
- Bill 17 amended section 14(1) of the Act, adding requirements that the hospital care team informs formal patients of the right to legal counsel (clause (a)(iii)) and provides a written statement of their right to legal counsel (clause (b)(vi)) and the steps the patient can follow to obtain free legal services (clause (b)(vii)).
- The Mental Health Act Forms and Designation Regulation was amended on June 29, 2021, altering Form 12 (Application for Review Panel Hearing) to allow an applicant to easily request legal representation. The request is then coordinated between the chair and Legal Aid Alberta.
- Fact sheets (see response to Recommendation 1) include information on access to legal representation.
- Communications to patients from all three review panels include notification of the right to a lawyer. Further, if at the beginning of a hearing a patient is not represented, the patient is asked if a lawyer has been requested and is given an opportunity to request an adjournment to provide sufficient time to obtain legal representation (19 per cent of adjournments in 2020/21 were related to this reason).
- Updates to Alberta Health’s new data system made in April 2021 now record when legal counsel is present. In the first six months of 2021/22, legal counsel was in attendance for 81 per cent of hearings held in respect of a formal patient, in which the patient also attended. In three of these hearings, legal counsel was present as amicus curiae.
  - For persons subject to a community treatment order, legal counsel was present in 76 per cent of hearings held in these same six months on applications to cancel the order where the person also attended, and only 13 per cent of section 39(2) deemed reviews.

Recommendation 7: Review panels inform patients of their rights to medical records when they issue the Form 13 Notice of Hearing to Patients and

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Classification: Public
Recommendation 8: Alberta Health and the review panels develop a process to provide patients access to medical information so they can prepare for review panel hearing, unless patients should not receive certain information under section 11 of the Health Information Act

The Ombudsman found that information given to patients on their right to access medical records is inadequate, and the review panels do not ask patients if they are aware of this right.

Advances

- Bill 17 amended section 14 to require that facilities advise patients of their right to free and timely access to relevant medical records in advance of a hearing before a review panel or the Court of Queen's Bench. Subsection (6) requires that the facility provides these records as soon as practicable in advance of a hearing.
  - Changes to section 45(1.1)(b)(v) also assign a duty to the Patient Advocate to inform patients and others of the right to their medical records.
- Each of the three panels’ written correspondence with applicants and patients includes information about patient rights to medical records.
- Fact sheets (see response to Recommendation 1) include information on access to medical records.
- The Mental Health Review Panel Roster webpage (alberta.ca/mhreviewpanel) includes a link to AHS’s Health Information Access Request Form.

Recommendation 9: Review panels explain the reasons for dissenting opinions in the Reasons for Decision document

Section 35(3) of the Act provides that each member of the review panel is entitled to one vote, and a decision of a majority of the members is the decision of the review panel.

The Ombudsman found that sometimes there is a dissenting opinion; and when there is, review panels are not explaining the reasons for dissenting opinions in the Reasons for Decision document. The Ombudsman identified that the reasons for dissenting opinions could assist a person in their appeal.

Advances

- While dissenting opinions are rare, review panels have committed to note the reasons for dissenting opinions in all written reasons.