



Introduction

The Provincial Health Ethics Network (PHEN) of Alberta is a non-profit organization that provides resources on addressing ethical issues related to health. PHEN does not advocate for or take positions on particular ethical issues; its role is to facilitate thoughtful, informed and reasoned ethical decision-making from all perspectives.

PHEN coordinated two review sessions on September 4, 2007 with its members to examine the proposed legislation from an ethics perspective – one by teleconference, and one in-person meeting in Calgary. Attendees were clinicians - from medicine/psychiatry, social work, nursing, pastoral care, and others – with an expertise or interest in ethics. One submission was also received by email. A combined total of 22 individuals provided feedback.

This document provides a summary of the feedback received. It is not intended to be a position paper and does not express the organizational opinion of PHEN. While every effort has been made to accurately reflect the most salient concerns and suggestions raised, the information outlined below does not necessarily represent a consensus, particularly as participants in different discussions did not have the benefit of reflecting on each other's comments.

Summary

The amendment of this Act is seen to be a major overhaul with considerable ethical implications.

The primary ethical tension underlying the Act appears to be between respecting the autonomy and right to self-determination of individuals on the one hand, versus protecting them from harm and promoting their well-being, on the other. Both of the major changes proposed in the Act (regarding admission criteria and community treatment orders) weigh the principle of protecting against harm/protecting well-being more heavily than does the existing Act. On the whole, this shift was seen to be a good thing by most reviewers, but there are a number of important caveats identified below.

Preamble to Legislation

This Bill seeks to give mental health professionals additional and much-needed tools to help mental health patients that are refusing treatment. This brings Alberta closer to the mental health acts of other Provinces. By necessity, the increased latitude provided in the proposed changes to health professionals to intervene and act on their patients' behalf imposes limitations on liberties that could otherwise be exercised by some of the mentally ill. This creates additional obligations on the part of government, health service organizations and health professionals to provide careful patient assessment approaches, appropriate care, and effective appeal mechanisms.

One suggestion proposed by several attendees was to clearly acknowledge these additional responsibilities in a Preamble to the Act of the following or similar form: “the more individual rights that we remove from an individual, the higher is the ethical standard and duty to care to which we are held as health care providers”.

Such a Preamble, or something similar, might be a useful reminder of principles at stake, including the responsibility to be fair and ethical any time we impose limits on the rights of an individual, no matter how well-motivated we might be.

Criteria for Involuntary Admissions

Alberta’s Mental Health Act has been narrower or more restrictive in defining criteria for involuntary treatment than many other provinces. The new broader criteria rightfully allow intervention when the individual is in gradual but clear deterioration in health status, rather than waiting for a dramatic threat to self or others.

However, several concerns were raised in regards to these broadened criteria:

- The inclusion of ‘physical deterioration’ as a new criterion may open up the possibility of using the Mental Health Act to force treatment onto a broader group of individuals than intended by the Act. One suggestion would be to modify 6(d)(ii) and all other relevant sections to read:

*“likely to cause harm to the person or others or to suffer substantial mental or physical deterioration **caused by a mental disorder** or serious physical impairment **caused by a mental disorder, and...***”

At present, the Act does not ensure that the individual’s deterioration is due to the underlying mental disorder. There are a number of mental disorders which may not preclude competency to make certain decisions. Some cases of early-stage Alzheimer’s or depression may be examples.

- The inclusion of the clause ‘serious physical impairment’ in 6(d)(ii) and all relevant sections, is arguably redundant given the presence of the phrases ‘harm’ and ‘substantial mental or physical deterioration’. It is not clear what circumstances would be covered by the term ‘serious physical impairment’ that would not also be covered under either of the other two criteria.
- The Committee may wish to consider including the word ‘serious’ before ‘harm’ in 6(d)(ii) and all other relevant clauses, in order limit the kinds of cases in which the Act would be invoked. While this would create an additional onus on those invoking the Act to define the word ‘serious’, the benefits of including this qualifier may outweigh the drawbacks.

Community Treatment Orders (CTOs)

CTOs can make an important and positive difference in the case of individuals who refuse treatment or are not diligent in following through with treatment. However, several issues were raised in regard to the initiation of a CTO:

- Two physician signatures. Although some might question the need for two physicians to sign a CTO, as proposed under Bill 31, this seems defensible. What is of more concern is that renewals will require the cooperation of two physicians. In more remote areas of the province it may be difficult and sometimes perhaps impossible to have two independent medical assessments done.
- Defining treatment. CTOs are designed to aid treatment but treatment is not defined. It is important to limit the scope of treatment to that of resolving the condition that lead to mandatory treatment, namely mental illness. Treatment should not be seen in the broad sense to include long-term issues such as where a person lives or who they associate with.
- Ensuring that appropriate resources are available. As is quite evident, treatment resources in mental health are in short supply and those whom the law requires to be treated may gain precedence. CTOs may become the only practical way to access treatment or may cut short the treatment of the voluntary client due to shortages. This is certainly not the positive picture which the Act hopes to create. If treatment is legally sanctioned it puts added burden on the government to ensure that treatment is available. Making treatment mandatory also puts pressure on the authorities to reduce geographic inequities in pursuit of equity.
- Pre-conditions for CTO. Given the pre-conditions outlined in the proposed changes dealing with frequency and length of previous hospitalizations before a CTO can be invoked, the concern has been raised that few people will be able to qualify. Also, for young patients who experience their first psychotic break, it is clearly highly distressing to be in hospital, surrounded by patients in the most acute stages of their mental disorders and sometimes with treatment resistant conditions. However, Bill 31 would require that an individual first become a chronic psychiatric patient before being allowed to benefit from community-based treatment. The Committee may wish to consider whether these pre-conditions meet the appropriate balance between making community treatment viable and protecting the liberties of the individuals concerned.

Designated Physician

In the proposed new wording for 9.7(1), in the second to last line, the word ‘reviewing’ may need to be changed to ‘renewing’.

Privacy

There is concern that CTOs may increase the chances of patients having a “record” as they increasingly come into contact with police. The Act should ensure the privacy of mental health patients because mental health continues to be stigmatized in society.

Appeal Process

As the criteria for mandatory confinement and community treatment is broadened there is a reciprocal responsibility to ensure that checks and balances are effective. Those checks and balances are outlined in the Act but the appeal and advocacy process should be reviewed early in the life of the new Act to make sure society is effective in providing a voice for those who have temporarily lost their rights.

Evaluation of the Amended Act

The changes to the Mental Health act are substantial. There should be a planned review of the effectiveness of the Act including quantitative studies of the anticipated changes such as reductions in length of inpatient stays. In addition the response of user and advocacy groups should be built in.

Consultation

Given the significant changes proposed by the amendments, it is hoped that the process of guiding and overseeing these changes incorporates meaningful input not only from health administrators and clinicians, but from those who are likely to be most seriously affected by the changes, namely clients/consumers/patients of mental health services.

PHEN thanks the Committee for this opportunity to review these amendments, and for being open to receiving this feedback.

*Provincial Health Ethics Network
September 7, 2007*