

Chapter 19

MENTAL HEALTH ACT

(Assented to June 8, 2021)

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MENTAL HEALTH ACT

The Commissioner, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1 PURPOSE AND INTERPRETATION

Purpose

Purpose

1. The purpose of this Act is to improve the mental wellness of Nunavummiut and address Inuit-specific needs related to mental wellness by

- (a) improving mental health care and addictions services;
- (b) assisting with suicide intervention, prevention and postvention;
- (c) facilitating the involvement of *tikkuaqtaujuut* (selected representatives) and family;
- (d) facilitating the provision of necessary care to Nunavummiut with serious mental disorders in a way that
 - (i) is clinically safe and effective,
 - (ii) is culturally safe,
 - (iii) is compassionate and minimizes traumatization,
 - (iv) is the least restrictive possible,
 - (v) is centred on the best interests of individuals being provided care,
 - (vi) respects the rights of individuals being provided care,
 - (vii) supports the engagement of individuals being provided care in their treatment,
 - (viii) helps individuals being provided care to navigate the mental health care system,
 - (ix) reduces the need for Nunavummiut to be away from their home communities,
 - (x) supports early intervention,
 - (xi) encourages the use of voluntary services and programs that complement compulsory services, and
 - (xii) reduces re-hospitalizations;
- (e) facilitating tracking the needs related to mental health and addictions in Nunavut and the delivery of involuntary care; and
- (f) being flexible and adapting to Nunavut's evolving mental health care and addictions system.

Interpretation

Definitions

2. (1) In this Act,

"appropriate consent" means,

- (a) in the case of an individual who is an adult or mature minor,
 - (i) if the individual has the capacity to consent to the matter for which the consent is sought, the consent of the individual, or
 - (ii) otherwise, the consent of the *tikkuaqtaujuq* (selected representative) of the individual, or
- (b) in the case of an individual who is a non-mature minor and subject to subsection 3(9), the consent of a *tikkuaqtaujuq* (selected representative) of the individual; (*consentement adéquat*)

"Board" means the Mental Health Review Board established under section 64; (*Conseil*)

"certificate of incompetence" means a certificate of incompetence issued under section 60; (*certificat d'incapacité*)

"certificate of involuntary admission" means a certificate of involuntary admission issued under section 43; (*certificat d'admission non volontaire*)

"criteria for involuntary admission" means the criteria listed in section 35; (*critères relatifs aux admissions non volontaires*)

"community assisted treatment order" means a community assisted treatment order issued under section 44; (*ordre de traitement assisté par la communauté*)

"community support plan" means the community support plan referred to in section 45; (*plan de soutien communautaire*)

"coroner" has the same meaning as in the *Coroners Act*; (*coroner*)

"Director" means the Director of Mental Health and Addictions appointed under section 76; (*Directeur*)

"involuntary status" means the involuntary status described in section 34; (*placement non volontaire*)

"health facility" means, subject to subsection (2),

- (a) a health facility as defined in the *Hospital Insurance and Health and Social Services Administration Act*,
- (b) a health facility in Nunavut that is prescribed by regulation, or
- (c) if applicable, a hospital or other facility that is authorized by the laws of a province or another territory to provide for the reception, care,

observation, examination, assessment, treatment or custody of individuals who have a mental disorder; (*établissement de santé*)

"health professional" means, subject to the regulations,

- (a) a medical practitioner,
- (b) a nurse practitioner,
- (c) a registered nurse, or
- (d) a person of a class prescribed by regulation; (*professionnel de la santé*)

"mature minor" means a minor that has the capacity to make health care decisions; (*mineur mature*)

"mental disorder" means a substantial disorder of thought, perception, mood, orientation or memory that

- (a) significantly impairs an individual's
 - (i) judgment,
 - (ii) behaviour,
 - (iii) capacity to recognize reality,
 - (iv) ability to associate with others, or
 - (v) ability to meet ordinary demands of life, and
- (b) is amenable to treatment; (*trouble mental*)

"mental health information" means information in any format collected or maintained concerning the mental health of an individual, living or deceased, and includes any of the following information:

- (a) information about the mental health condition of the individual that is relevant to services provided under this Act,
- (b) information about health services provided to the individual that is relevant to services provided under this Act,
- (c) information about the individual's health care history that is relevant to services provided under this Act,
- (d) information that is collected in the course of, or incidental to, the provision of mental health services to the individual,
- (e) information in respect of the examination or testing of the individual by, or on referral from, a health professional,
- (f) an identifying number, symbol or other particular assigned to the individual in respect of health services or health information; (*renseignements sur la santé mentale*)

"mental health rights specialist" means a health professional designated as a mental health rights specialist under section 77; (*spécialiste des droits en santé mentale*)

"nurse practitioner" has the same meaning as in the *Nursing Act*; (*infirmière praticienne ou infirmier praticien*)

"personal mental health information" means mental health information related to a specific, identified individual or that could identify a specific individual; (*renseignements personnels sur la santé mentale*)

"psychiatrist" means a medical practitioner registered as a specialist in psychiatry in Part Two of the Medical Register established under the *Medical Profession Act*; (*psychiatre*)

"psychologist" means an individual registered in the Psychologists Register under the *Psychologists Act*; (*psychologue*)

"Public Trustee" means the Public Trustee appointed under the *Public Trustee Act*; (*curateur public*)

"region" means one of the following:

- (a) the Qikiqtaaluk region, excluding the Belcher Islands,
- (b) the Kivalliq region, including the Belcher Islands,
- (c) the Kitikmeot region; (*region*)

"registered nurse" means

- (a) a registered nurse as defined in the *Nursing Act*, or
- (b) a temporary certificate holder as defined in the *Nursing Act*; (*infirmière autorisée ou infirmier autorisé*)

"reportable event" means an event that must be reported to the Director under section 7; (*événement à déclaration obligatoire*)

"responsible medical practitioner" means

- (a) with respect to an individual subject to a certificate of involuntary admission, the medical practitioner who is responsible for the care of the individual at a health facility, or
- (b) with respect to an individual subject to a community assisted treatment order, the responsible medical practitioner indicated on the individual's community support plan; (*médecin responsable*)

"rights advocate" means a rights advocate appointed under section 71; (*défenseur des droits*)

"temporary leave certificate" means a temporary leave certificate issued under section 47; (*certificat de congé temporaire*)

"*tikkuaqtaujuq* (selected representative)" means the *tikkuaqtaujuq* (selected representative) determined in accordance with section 3; (*tikkuaqtaujuq (représentant choisi)*)

"urgent application" means an application that is heard by the Board in the manner provided for urgent applications in Part 7. (*demande urgente*)

Peace officers

(1.1) A reference in this Act to a peace officer does not include a reference to a peace officer other than a member of the Royal Canadian Mounted Police unless

- (a) in the opinion of the peace officer, exigent circumstances require immediate action and no member of the Royal Canadian Mounted Police is reasonably available to deal with the matter in question; or
- (b) the peace officer is assisting a member of the Royal Canadian Mounted Police.

Health facility expertise

(2) A reference to a health facility in this Act is a reference to a health facility that has such facilities and health professionals as are required to carry out the reception, care, observation, examination, assessment, treatment or custody that is required in the circumstances.

Capacity

(3) For the purposes of this Act, an individual is capable with respect to a matter if the individual is able to understand the information that is relevant to making a decision about the matter and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

No age set for mature minors

(3.1) For greater certainty, no minimum or maximum age is established for the purpose of determining whether a minor is mature or not.

Use of force

(4) A reference in this Act to the use of force

- (a) includes mechanical means and administration of medication as is reasonable having regard to the physical and mental condition of the individual on whom force is used; but
- (b) does not include the administration of medication
 - (i) by an individual who is not otherwise authorized by law to administer medication, or
 - (ii) contrary to this Act.

In writing

(5) Anything required under this Act to be provided to an individual in writing by a person or body carrying out functions under this Act

- (a) if the individual understands one or more Official Languages,
 - (i) must be provided in the Official Language requested by the individual, or, absent such a request, in any of the Official Languages the individual understands, and
 - (ii) in the case of an illiterate individual, must be accompanied by an oral explanation in the same language; or
- (b) if the individual does not understand an Official Language,

- (i) must be provided in the Official Language requested by the individual, or, absent such a request, in any of the Official Languages, and
- (ii) may be accompanied by a translation, either written or oral, in a language that the individual understands.

Same

(6) Anything required under this Act to be provided by an individual in writing to a person or body carrying out functions under this Act

- (a) may be provided in any Official Language; and
- (b) in the case of an illiterate individual,
 - (i) may be provided orally in any Official Language, and
 - (ii) shall be recorded by a rights advocate in a manner approved by the Director.

Verification of recording

(7) When a rights advocate records the words of an individual under subparagraph (6)(b)(ii), the rights advocate shall,

- (a) if the words are recorded as a sound recording,
 - (i) play back the recording to the individual, and
 - (ii) allow the individual to have their words re-recorded until the individual is satisfied that the recording accurately captures their words; and
- (b) if the words are recorded in writing,
 - (i) record the words in the Official Language they were provided in,
 - (ii) read back the recorded words to the individual, and
 - (iii) make any corrections to the written record that the individual requests until the individual is satisfied that the recording accurately captures their words.

Tikkuaqtaujuq (selected representative)

Adult's or mature minor's *tikkuaqtaujuq* (selected representative)

3. (1) The *tikkuaqtaujuq* (selected representative) of an adult or mature minor is
- (a) if they have a guardian named under the *Guardianship and Trusteeship Act*, the guardian;
 - (b) otherwise, if they designated an individual to act as *tikkuaqtaujuq* (selected representative) while capable of doing so, that individual; or
 - (c) otherwise, the member of their family or the friend that is
 - (i) most evidently and directly concerned with the oversight of their care and welfare, as determined in accordance with the regulations; and
 - (ii) able and willing to act in accordance with section 3.1.

Only one *tikkuaqtaujuq* (selected representative)

(2) For the purposes of this Act, an adult or mature minor may only have one *tikkuaqtaujuq* (selected representative) at any one time.

Inability to act

(2.1) If a *tikkuaqtaujuq* (selected representative) is absent, cannot be found, or is otherwise unable to act, the next eligible and available individual identified in accordance with subsection (1) acts as temporary *tikkuaqtaujuq* (selected representative) until the *tikkuaqtaujuq* (selected representative) is able to act again.

Identifying *tikkuaqtaujuq* (selected representative)

(3) If, under this Act, a health professional is required to identify the *tikkuaqtaujuq* (selected representative) of an adult or mature minor, the health professional shall, in accordance with subsection (1),

- (a) select the individual that, in the circumstances, appears to be the *tikkuaqtaujuq* (selected representative); and
- (b) if, following a selection under paragraph (a), the health professional identifies another individual who is more appropriate as the *tikkuaqtaujuq* (selected representative), select that individual as the *tikkuaqtaujuq* (selected representative).

Right to designate

(4) In identifying a *tikkuaqtaujuq* (selected representative) of an individual, a health professional shall provide the individual with an opportunity to designate their *tikkuaqtaujuq* (selected representative) if the individual is capable of doing so.

Resolving dispute

(5) If there is a dispute regarding the identity of the *tikkuaqtaujuq* (selected representative) of an adult or mature minor, a health professional or any individual claiming to be the *tikkuaqtaujuq* (selected representative) may apply to the Board for a determination.

Status while awaiting new selection or Board determination

(6) For the purposes of this Act, the *tikkuaqtaujuq* (selected representative) of an adult or a mature minor is the individual that is selected by a health professional under subsection (3) until

- (a) a health professional selects another individual under that subsection; or
- (b) following an application to the Board under subsection (5), the Board determines who is the correct *tikkuaqtaujuq* (selected representative).

Minor's *tikkuaqtaujuq* (selected representatives)

(7) The *tikkuaqtaujuq* (selected representatives) of a non-mature minor are the minor's parents or other persons who are lawfully entitled to give consent to the minor's medical treatment.

Child and Family Services Act

(7.1) For greater certainty, if a person or body carrying out functions under this Act becomes aware that the *tikkuaqtaujuq* (selected representative) of a child as defined in the *Child and Family Services Act* is acting in a manner that puts the child in need of protection under subsection 7(3) of that Act, the person or body shall make a report under section 8 of that Act.

One *tikkuaqtaujuq* (selected representative) sufficient

(8) When a minor has more than one *tikkuaqtaujuq* (selected representative), the consent or decision of one *tikkuaqtaujuq* (selected representative) alone is sufficient for the purposes of this Act, unless another *tikkuaqtaujuq* (selected representative) expresses disagreement with that consent or decision.

Disagreement

(9) When there is disagreement amongst a minor's *tikkuaqtaujuuit* (selected representatives) respecting their consent or decisions under this Act, the following may apply to the Board for a decision respecting the consent or decision:

- (a) the *tikkuaqtaujuuit* (selected representatives), either individually or jointly;
- (b) the health professional who is seeking the consent or decision.

Role of *tikkuaqtaujuq* (selected representative)

(10) Subject to this Act, the role of a *tikkuaqtaujuq* (selected representative) of an individual is to

- (a) be consulted by health professionals during assessment and treatment of the individual;
- (b) be consulted and informed about the decisions made respecting the individual under this Act;
- (c) in the case of an individual who is an adult or a mature minor, provide consent when the individual does not have the capacity to consent to the matter for which the consent is sought; and
- (d) in the case of an individual who is a non-mature minor, provide consent.

Right to information

(11) When the *tikkuaqtaujuq* (selected representative) of an individual is requested to provide consent under this Act, they are entitled to receive all information concerning the individual and the proposed treatment that is necessary for informed consent.

Exclusion

(12) For the purposes of this Act, the phrase "person or body carrying out functions under this Act" does not include the *tikkuaqtaujuq* (selected representative).

Principles of providing or refusing consent

3.1. (1) A *tikkuaqtaujuq* (selected representative) providing or refusing consent for an individual under this Act shall do so in accordance with the following principles:

- (a) if the *tikkuaqtaujuq* (selected representative) knows of a wish applicable to the circumstances that the individual expressed while they were an adult or mature

- minor and had the capacity to consent, the *tikkuaqtaujuq* (selected representative) shall provide or refuse consent in accordance with the wish;
- (b) if the *tikkuaqtaujuq* (selected representative) does not know of such a wish that is applicable to the circumstances, or if it is impossible to comply with the wish, the *tikkuaqtaujuq* (selected representative) shall act in the individual's best interests as described in subsection (2).

Best interests

- (2) In deciding what an individual's best interests are, the *tikkuaqtaujuq* (selected representative) who provides or refuses consent on their behalf shall take into consideration,
- (a) the values and beliefs, including cultural values and beliefs, that the *tikkuaqtaujuq* (selected representative) knows the individual held while they had the capacity to consent and believes they would still act on if they had the capacity to consent;
- (b) any wishes expressed by the individual with respect to the treatment that are not required to be followed under paragraph (1)(a); and
- (c) the following factors:
- (i) whether the treatment is likely to,
- (A) improve the individual's condition or well-being,
- (B) prevent the individual's condition or well-being from deteriorating, or
- (C) reduce the extent to which, or the rate at which, the individual's condition or well-being is likely to deteriorate,
- (ii) whether the individual's condition or well-being is likely to improve, remain the same or deteriorate without the treatment,
- (iii) whether the benefit the individual expected to obtain from the treatment outweighs the risk of harm to them,
- (iv) whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed.

PART 2 GENERAL ACTIVITIES

General

4. (1) The Minister may provide the following mental health and addictions services:
- (a) clinical services, including examinations, diagnostic services, medication management and psychiatry;
- (b) therapy;
- (c) prevention;
- (d) substance use treatment;
- (e) advocacy on behalf on individuals receiving mental health and addictions services;
- (f) inpatient services;
- (g) land-based healing;
- (h) Inuit counselling;
- (i) support groups;

- (j) trauma treatment, including for historical and intergenerational trauma;
- (k) postvention services;
- (l) respite care and other supports for those experiencing mental health challenges;
- (m) programming for the development of healthy attachment, self-esteem, coping skills and relationships, including with family;
- (n) cultural programming to support mental wellness and healing;
- (n.1) mental health services in schools;
- (o) recovery services;
- (o.1) outreach services;
- (p) interprofessional consultation services;
- (q) public education and communications campaigns;
- (r) training;
- (s) any other services the Minister considers appropriate for
 - (i) preventing circumstances that lead to mental disorder or distress, or
 - (ii) promoting and restoring the mental health and wellness of people in Nunavut.

Research

- (2) The Minister may conduct research on
- (a) mental health and wellness;
 - (b) methods of providing mental health and wellness services, particularly their effectiveness; and
 - (c) Inuit-specific approaches to mental health, wellness and services related to mental health and wellness.

Agreements

(3) The Minister may enter into agreements with other persons for the provision of one or more services listed in subsection (1) or research referred to in subsection (2), and those agreements may provide that the Minister pay for the services or research.

Other providers or researchers

(4) Nothing in this section precludes any person from lawfully providing the services or conducting the research referred to in this section.

Mental health and addictions strategy

5. The Minister shall assess the needs of people in Nunavut with respect to mental health and addictions and design a strategy for meeting those needs.

Mental health monitoring

- 6.** The Director may establish programs for the on-going measurement of
- (a) the mental health and well-being of people in Nunavut; and
 - (b) the determinants of mental health.

PART 3
REPORTABLE EVENTS AND PROTECTION OF PRIVACY

Reporting events

Duty to report

7. (1) A health professional, coroner, peace officer or other person prescribed by regulation shall, in accordance with the regulations, make a report to the Director after they first become aware of the following reportable events during the course of their duties, unless they know that the reportable event has already been reported in accordance with this section:

- (a) a death that occurs as a result of apparent violence, accident, suicide or other apparent cause other than disease, sickness or old age;
- (b) a death that occurs as a result of apparent negligence, misconduct or malpractice;
- (c) a death that appears to have been caused by another individual;
- (d) a suicide attempt;
- (e) the occurrence of a condition or event prescribed by regulation.

Non-application – medical assistance in dying

(2) This section does not apply to a death that results from lawful medical assistance in dying.

Contents of report

8. (1) A report under section 7 must include

- (a) the name, profession and contact information of the individual making the report;
- (b) the name, sex, age, and location or last known location of the individual about whom the report is being made;
- (c) a description of the nature and type of the reportable event; and
- (d) any other information prescribed by regulation.

Additional information

(2) After receiving a report under section 7, the Director, or a person acting under the direction and on behalf of the Director, may request the person making the report, any person referred to in the report, or any person in charge of a health facility referred to in the report to provide any additional information possessed by or under the control of the person that the Director or person considers necessary with respect to

- (a) the individual about whom the report is being made;
- (b) their examination, diagnosis or treatment; or
- (c) the reportable event.

Duty to comply

(3) A person to whom a request for information is directed under subsection (2) shall comply with the request as soon as practicable.

Definition

- (4) In subsections (5) to (8), "contact information" of an individual refers to
- (a) their name;
 - (b) their civic address, and the civic address of any other place they are likely to be found during working hours;
 - (c) their phone number;
 - (d) their email address; and
 - (e) any other information that would be required to locate or contact the individual.

Collection of contact information

(5) After receiving a report of a death under subsection (1) the Director, or a person acting under the direction and on behalf of the Director, may collect the contact information of the following individuals:

- (a) individuals present at the death;
- (b) individuals who found the body;
- (c) first responders;
- (d) health professionals involved in the event;
- (e) parents, children and siblings of the deceased;
- (f) classmates or co-workers of the deceased;
- (g) individuals living together with the deceased;
- (h) any other individual who could be significantly affected by the event or need postvention services as a result of the event.

Disclosure of contact information

(6) Despite any law, rule or code of conduct respecting the confidentiality of information but subject to subsection (7), the following may disclose contact information referred to in subsection (5) to a person referred to in subsection (6.1):

- (a) coroners;
- (b) peace officers;
- (c) health professionals and psychologists;
- (d) employees at health facilities;
- (e) employees of the municipal corporation of the municipality where the death occurred;
- (f) the Director of Income Assistance and Income Assistance Officers appointed under the *Income Assistance Act*;
- (g) education staff as defined in the *Education Act*;
- (h) the Director of Child and Family Services, an assistant Director or a Child Protection Worker appointed under the *Child and Family Service Act*;
- (i) a person prescribed by regulation or a person that is part of a class of persons prescribed by regulation.

Authorized persons

- (6.1) A disclosure under subsection (6) may be made
- (a) to the Director, or a person acting under the direction and on behalf of the Director;

- (b) to a person accompanying the Director, or a person acting under the direction and on behalf of the Director, during the disclosure; or
- (c) on the direction of the Director, or a person acting under the direction and on behalf of the Director, to a person designated by them.

Exception

(7) A person referred to in subsection (6) may not disclose contact information under that subsection if

- (a) doing so would interfere with an investigation or inquest under the *Coroners Act*;
- (b) doing so would interfere with an investigation into an offence; or
- (c) the person has reasonable grounds to believe that disclosure is likely to result in harm to
 - (i) the individual whose contact information is being sought, or
 - (ii) the individual who would receive the contact information.

Reasons

(8) If a person referred to in subsection (6) refuses or fails to disclose contact information referred to in subsection (5) to a person referred to in subsection (6.1), the person shall provide reasons for the refusal or failure.

Access to Information and Protection of Privacy Act

(9) For greater certainty, this section, including subsection (6), is subject to the *Access to Information and Protection of Privacy Act*.

Mental health records

Keeping records

9. (1) The Director shall establish and maintain records, in such written or electronic form as the Director considers appropriate, of

- (a) all reportable events, including all information obtained under sections 7 and 8; and
- (b) any other mental health information collected by or in the possession of the Director that the Director considers appropriate.

Registers and databases

(2) The Director may organize the information referred to in subsection (1) into such separate registers or databases as the Director considers appropriate.

Public Health Act registers and databases

(3) The information reported or collected under this Part must be kept in registers and databases that are separate from the registers and databases containing information reported or collected under the *Public Health Act*.

Protection of privacy

Prohibition

10. (1) No person shall collect, access, use or disclose mental health information collected under this Part in a manner that is contrary to this Act.

Authorized persons

(2) The following persons have authority to access, use or disclose mental health information collected under this Part:

- (a) the Director;
- (b) a person acting under the direction and on behalf of the Director;
- (c) a person specifically authorized in this Act;
- (d) a person acting under the authority of an agreement made under section 84, to the extent provided for in the agreement.

Authorized purposes

(3) Mental health information collected under this Part may only be accessed, used or disclosed for one or more of the following purposes:

- (a) any purpose for which it may be collected under subsection 11(1);
- (b) any purpose authorized under section 13;
- (c) any purpose authorized under the *Access to Information and Protection of Privacy Act*;
- (d) the purposes of an agreement made under section 84.

Personal mental health information

(4) Personal mental health information collected under this Part may only be

- (a) accessed or used to the extent that it is necessary for the purposes authorized under subsection (3); and
- (b) disclosed to the extent that is necessary for the purposes authorized under paragraphs (3)(b) to (d).

Security arrangements

(5) For greater certainty, section 42 of the *Access to Information and Protection of Privacy Act* applies to personal mental health information.

Collection of mental health information

11. (1) The Director, or a person acting under the direction and on behalf of the Director, may collect mental health information for one or more of the following purposes:

- (a) for mental health promotion;
- (b) for mental health monitoring, the compilation of statistical information and to assess and address mental health needs of people in Nunavut;
- (c) for mental health program development, management, delivery, monitoring and evaluation and the development of mental health policies or services;
- (d) to conduct or facilitate research into mental health issues;

- (e) for the administration and enforcement of this Act, the regulations, or orders or certificates made under this Act;
- (f) any other purpose expressly authorized under this Act.

Personal mental health information

(2) A person referred to in subsection (1) may not collect personal mental health information except to the extent it is necessary for the purposes authorized under that subsection.

Accuracy of information

(3) The Director shall

- (a) take all reasonable steps to ensure that mental health information is collected from a reliable source and is accurate and complete before that information is used or disclosed; and
- (b) advise, if practicable, the recipient of any known inaccuracies or errors in that information before that information is used or disclosed.

Disclosure of aggregate or anonymous health information

12. Subject to section 13, mental health information collected under this Part shall only be disclosed in the form of

- (a) aggregate mental health information that relates only to groups of individuals in the form of statistical information or aggregated, general or anonymous data; or
- (b) anonymous mental health information that relates to an unidentifiable individual.

Disclosure of personal mental health information

13. (1) The Director, or a person acting under the direction and on behalf of the Director, may disclose personal mental health information collected under this Part if

- (a) the individual consents in accordance with the *Access to Information and Protection of Privacy Act*;
- (a.1) the disclosure is required under section 26 of the *Representative for Children and Youth Act*; or
- (b) the Director or person is of the opinion, on reasonable grounds, that the disclosure is necessary
 - (i) to provide health services to, examine, treat or facilitate the care of the individual,
 - (ii) to identify an individual who may pose a risk to the public or an individual, or
 - (iii) for the administration and enforcement of this Act, the regulations or orders or certificates made or issued under this Act.

Disclosure of contact information

(2) The Director, or a person acting under the direction and on behalf of the Director, may disclose contact information collected under subsection 8(5) and information about a death collected under this Part for the purpose of

- (a) identifying individuals who may need postvention services; and
- (b) providing postvention services.

Use and disclosure of information

(3) A person to whom contact information or personal mental health information is disclosed under this subsection, subsection (2) or subsection 8(6) may use or disclose it for the purposes listed in subsection (2).

Prohibition

(4) A person shall not use or disclose the contact information or personal mental health information that they know, or ought to know, was provided to them due to a disclosure under subsection (2) or subsection 8(6)

- (a) for purposes other than those listed in subsection (2); or
- (b) if they know, or ought to know, that the use or disclosure would cause serious harm to any individual.

Authorized disclosures

Transfer of record

14. (1) When an individual is transferred from one health facility to another under this Act, the referring health professional or the person responsible for the originating health facility shall, as soon as possible, forward to the receiving health facility a copy of the record of the diagnostic, treatment and other services provided to the individual.

Interjurisdictional transfer

(2) A person forwarding a copy of a record under subsection (1) to a health facility outside Nunavut shall only do so in accordance with an agreement made under section 83.

Exception

(3) This section does not apply if health professionals at the receiving health facility have access to the record referred to in subsection (1).

Discharge treatment plans

(4) When an individual is referred to services in the community under section 58, the referring health professional shall forward a copy of the individual's relevant discharge plans to the persons responsible for those services.

Certificate of incompetence

15. (1) A medical practitioner who issues a certificate of incompetence with respect to an individual, or the responsible medical practitioner of the individual, may disclose to the Public Trustee personal mental health information that, in the opinion of the medical practitioner, is relevant to the role of the Public Trustee with respect to the certificate of incompetence.

Guardianship and Trusteeship Act

(2) A medical practitioner may disclose

- (a) to the Public Guardian personal mental health information that is necessary for a report referred to in subsection 2(2) of the *Guardianship and Trusteeship Act* in support of an application under section 2 of that Act; and
- (b) to the Public Trustee personal mental health information that is necessary for a report referred to in subsection 2(2) of the *Guardianship and Trusteeship Act* in support of an application under section 27 of that Act.

Opinion regarding harm

16. (1) If two medical practitioners are of the opinion that disclosure of information in a health record, or on a specified part of a health record, of an individual who is or has been in involuntary status under this Act or voluntarily admitted under section 33, is likely to result in a risk of serious harm to the health or safety of the individual or another individual, the medical practitioners may add a written notice of that opinion to the health record.

Exception to authorized disclosure

(2) Despite any enactment, including the *Access to Information and Protection of Privacy Act*, a person who is authorized under an enactment to disclose information in a record referred to in subsection (1) shall take into consideration a notice referred to in that subsection when deciding whether or not to disclose the record or part.

Exception to required disclosure

(3) Despite any enactment, including the *Access to Information and Protection of Privacy Act* but subject to subsections (4) and (5), a person who is required under an enactment or a subpoena, order, direction, notice or similar requirement to disclose information referred to in subsection (1)

- (a) may refuse to disclose the information that is subject to a notice referred to in subsection (1); and
- (b) shall, when deciding whether or not to refuse disclosure under paragraph (a), take the notice into consideration.

Court order

(4) On application, a court before which the disclosure is at issue, or the Nunavut Court of Justice, may order disclosure of the information the disclosure of which has been refused under paragraph (3)(a), and subsection (3) does not apply to that order.

Representative for Children and Youth

(5) Subsection (3) does not apply to disclosures under the *Representative for Children and Youth Act*.

Application for removal

(6) An individual may apply to the Board for the removal of a written notice added to their health record under this section.

Removal

(7) Following an application under subsection (6), the Board shall remove the written notice if the information in the health record is no longer, or never was, likely to result in a serious risk to the health and safety of the individual or another individual.

PART 4 SUICIDE ATTEMPT NOTIFICATION

Notification following suicide attempt

17. (1) Subject to this section, a health professional who has examined an individual and has reasonable grounds to believe that the individual has attempted suicide shall

- (a) advise the individual of the importance of involving close family and friends following a suicide attempt;
- (b) in the case of an adult or mature minor,
 - (i) advise the individual that their *tikkuaqtaujuq* (selected representative) will be identified and notified unless the Board determines that doing so is not in the best interest of the individual, and
 - (ii) advise the individual that both the individual and the health professional have a right to apply to the Board if they believe it is not in the best interest of the individual for the *tikkuaqtaujuq* (selected representative) to be identified and notified;
- (c) in the case of a non-mature minor, advise the individual that their *tikkuaqtaujuq* (selected representative) will be identified and notified;
- (d) identify the *tikkuaqtaujuq* (selected representative) of the individual;
- (e) notify the *tikkuaqtaujuq* (selected representative) of the suicide attempt;
- (f) advise the *tikkuaqtaujuq* (selected representative) of the importance of involving close family and friends following a suicide attempt; and
- (g) make reasonable efforts, in accordance with the regulations, to provide the *tikkuaqtaujuq* (selected representative) with information on how close family and friends can support the individual.

Application to Board for exemption

(2) A health professional or an individual that is an adult or mature minor may make an urgent application to the Board for an exemption from any or all of the requirements under subsection (1) on the grounds that they are not in the best interest of the individual.

Time to make application

(3) If an individual notifies the health professional of their intent to make an application to the Board under subsection (2) respecting a requirement under subsection (1), the requirement does not apply

- (a) for 24 hours after the notification, to give the individual an opportunity to make an application; and
- (b) if the individual makes an application, in accordance with subsection (4).

Verification

(3.1) As soon as practicable after the 24-hour period referred to in paragraph (3)(a), the health professional shall verify with the chairperson of the Board whether or not an application has been made.

Non-application of requirements

- (4) A requirement under subsection (1) does not apply
- (a) while the Board is seized of an application under subsection (2) respecting the requirement; or
 - (b) if the Board determines that the requirement is not in the best interest of the individual.

Same

(5) A requirement under paragraphs (1)(d) to (g) does not apply while the Board is seized of an application under subsection (2) respecting any of the requirements under paragraphs (1)(a) to (c).

PART 5 GENERAL RIGHTS AND OBLIGATIONS

Patient rights

General rights

18. (1) For greater certainty, except as otherwise provided by this Act, an individual receiving or having received mental health services has all the rights and privileges enjoyed by others, including any rights under international human rights conventions to which Canada is party.

Right to consent to or refuse treatment

(2) For greater certainty, except as otherwise provided by this Act and subject to laws respecting consent to medical treatment, an individual has the right to consent to or refuse psychiatric and other mental health treatment under this Act.

Right to confidentiality

(3) Except as otherwise provided by this Act or the *Access to Information and Protection of Privacy Act*, an individual has the right to the confidentiality of information respecting their mental health.

Right to inclusiveness

19. A person or body carrying out functions under this Act with respect to an individual shall do so

- (a) recognizing the importance to the individual of their ties to those they consider to be family;

- (b) recognizing the contribution those ties make to the individual's wellbeing; and
- (c) respecting the individual's cultural and ethnic identity, language, and religious or ethical beliefs.

Language rights

20. (1) A person or body carrying out functions under this Act with respect to an individual shall

- (a) determine the Official Language or Official Languages that the individual prefers to communicate in;
- (b) request the Minister to provide interpretation services if the person or body cannot effectively communicate in an Official Language that the individual prefers; and
- (c) take every reasonable measure to ensure the quality of services is not compromised as a result of the individual's preference.

Minister's duty – language rights

(2) The Minister shall ensure that interpretation services are available to fulfil requests under paragraph (1)(b).

Right to *tikkuaqtaujuq* (selected representative)

21. A person or body carrying out functions under this Act with respect to an individual shall ensure that the individual is able to communicate with their *tikkuaqtaujuq* (selected representative), unless doing so is, in the opinion of the person or body, against the best interests of the individual.

Right to support person

22. (1) An individual undergoing an initial assessment or a psychiatric assessment has the right to be accompanied, either in person or remotely, during the assessment by a support person chosen by the individual or their *tikkuaqtaujuq* (selected representative).

Information and assistance

(2) The health professional conducting the assessment shall inform the individual of their right to be accompanied during the assessment by a support person.

Exception

(3) This section does not apply if the health professional conducting the assessment determines that it is not practicable and safe for a support person to be present during the assessment.

Right to information about treatment

23. (1) A health professional offering mental health treatment to an individual shall, before the treatment is administered,

- (a) explain to them the expected effects of the treatment, including any expected benefits and likely side effects; or
- (b) ensure that such an explanation has been given by another health professional.

Exception – harm

(2) Subsection (1) does not apply if

- (a) the individual does not have the capacity to consent to the treatment;
- (b) providing the explanation to the individual would, in the opinion of the health professional, harm the individual or hinder their treatment; and
- (c) the explanation has been given to the individual's *tikkuaqtaujuq* (selected representative) prior to administering the treatment.

Exception – emergency

(3) Subsection (1) does not apply with respect to emergency treatment administered in accordance with subsection 56(3).

Involuntary status

24. (1) Despite any other provision of this Act, a person or body carrying out functions under this Act shall not place or maintain an individual in involuntary status by reason only of

- (a) that individual's political, religious or cultural beliefs;
- (b) that individual's sexual orientation or gender identity;
- (c) that individual's criminal or delinquent behaviour;
- (d) alcohol or other drug addiction or use; or
- (e) an intellectual or learning disability.

Voluntary status possible

(2) Despite any other provision of this Act, a person or body carrying out functions under this Act shall not place an individual in involuntary status if the individual consents, and is capable of consenting, to undergo any assessment, treatment, transport or admission considered necessary by the person or body carrying out functions under this Act.

Least restrictive means

25. (1) A person or body carrying out functions under this Act with respect to an individual shall do so in a manner that is no more restrictive on individual rights than is necessary in the circumstances.

Expeditiousness

(2) A person or body carrying out functions under this Act with respect to an individual shall do so as expeditiously as is reasonable and practicable in the circumstances, despite any longer time frame allowed under this Act.

Specific consent or approval

26. (1) Despite any provision of this Act, the following treatments require consent or a Board determination under subsection (2):

- (a) psychosurgery or other irreversible forms of treatment;
- (b) electroconvulsive therapy.

Consent or approval

(2) Subject to subsection (4), the treatments referred to in subsection (1) may only be performed on an individual if

- (a) the individual
 - (i) consents to the treatment, and
 - (ii) has the capacity to consent to the treatment; or
- (b) the *tikkuaqtaujuq* (selected representative) of the individual consents to the treatment and the Board, following an application, decides that
 - (i) the individual does not have the capacity to consent to the treatment,
 - (ii) it is unlikely that the individual will regain the capacity to consent without the treatment, and
 - (iii) it is likely that the treatment will improve the mental condition of the individual.

Ban on certain experimental treatments

(3) No person shall administer experimental treatment involving a significant risk of physical or psychological harm to an individual who is

- (a) in involuntary status; or
- (b) not able to consent to the treatment.

Stay during appeal period and pending appeal

(4) The following decisions are stayed during the appeal period referred to in section 86 of the *Judicature Act* and pending appeal under section 70:

- (a) a decision by the Board that an individual has the capacity to consent to treatment referred to in subsection (1) or (3);
- (b) a decision by the Board under paragraph (2)(b).

Right to return

27. (1) An individual transported under the authority of this Act has the right, in accordance with the regulations and the policies of the Government of Nunavut, to be returned to the place where they were originally apprehended, or to another appropriate place, when

- (a) they exit involuntary status; or
- (b) having been transported outside Nunavut under the authority of this Act,
 - (i) they are discharged from a health facility outside Nunavut, and
 - (ii) arrangements have not been made for them to continue involuntary status in Nunavut.

Right to remain pending return

(2) An individual who is awaiting transport under paragraph (1)(a) has the right to remain in the health facility where they were located upon exiting involuntary status until the departure of the transport, but the right to remain ceases if they refuse the transport.

Minister ensures right

(3) The Minister shall ensure that transportation arrangements are made in accordance with the right in subsection (1).

Freedom to leave

(4) For greater certainty, an individual has no obligation to avail themselves to the rights provided under this section.

Right to commence proceedings

28. An individual in involuntary status who is capable of managing their estate and legally entitled to do so may

- (a) commence an action or proceedings in respect of the estate in their own name; or
- (b) name a representative to commence an action or proceeding in respect of the estate on their behalf.

Consultation and information

Information and consultation – voluntary status

29. (1) Subject to section 17, a health professional carrying out functions under this Act with respect to an individual who is not in involuntary status shall, as soon as practicable,

- (a) advise the individual of the importance of involving close family and friends in mental health care and addictions treatment;
- (b) advise the individual of the health professional's intention to identify and consult the individual's *tikkuaqtaujuq* (selected representative); and
- (c) unless the individual objects,
 - (i) identify the *tikkuaqtaujuq* (selected representative) of the individual,
 - (ii) advise the *tikkuaqtaujuq* (selected representative) of the importance of involving close family and friends in mental health care and addictions treatment, and
 - (iii) consult the *tikkuaqtaujuq* (selected representative).

Information and consultation – involuntary status

(2) A health professional carrying out functions under this Act with respect to an individual who is in involuntary status shall, as soon as practicable,

- (a) advise the individual of the importance of involving close family and friends in mental health care and addictions treatment;
- (b) in the case of an adult or mature minor,
 - (i) advise the individual that their *tikkuaqtaujuq* (selected representative) will be identified, informed and consulted unless

- the Board determines that doing so is not in the best interest of the individual, and
- (ii) advise the individual that both the individual and the health professional have a right to apply to the Board if they believe it is not in the best interest of the individual for the *tikkuaqtaujuq* (selected representative) to be identified, informed or consulted;
 - (c) in the case of a non-mature minor, advise the individual that their *tikkuaqtaujuq* (selected representative) will be identified and notified;
 - (d) identify the *tikkuaqtaujuq* (selected representative) of the individual;
 - (e) to the extent reasonably practicable, consult the *tikkuaqtaujuq* (selected representative) prior to
 - (i) making a decision to issue or not issue, or to renew or not renew, an order or certificate under Part 6 with respect to the individual, and
 - (ii) developing a discharge plan under section 58 for the individual;
 - (f) advise the *tikkuaqtaujuq* (selected representative) of the importance of involving close family and friends in mental health care and addictions treatment;
 - (f.1) subject to subsection (3), provide a copy of a certificate of involuntary admission or community assisted support order respecting the individual, including renewals, to the individual;
 - (g) provide the following to the *tikkuaqtaujuq* (selected representative):
 - (i) a notice that the individual has been brought to the health professional by a peace officer under the authority of subsection 39(1),
 - (ii) a copy of an order respecting the individual issued under subsection 37(1), 40(1) or 41(4),
 - (iii) subject to subsection (3), a copy a certificate of involuntary admission or a community assisted support order respecting the individual including renewals,
 - (iv) a notice that the individual has exited involuntary status,
 - (v) any information that is necessary to effectively consult with them.

Redaction

(3) Prior to providing a certificate or order referred to in paragraph (2)(f.1) or subparagraph (2)(g)(iii), a health professional may redact it to remove any facts that were relied upon by a medical practitioner to form the opinion that

- (a) the individual who is subject to the certificate or order met the criteria for involuntary admission; or
- (b) if applicable, it was appropriate to issue a community assisted treatment order instead of a certificate of involuntary admission.

Information gathering – involuntary status

(4) A health professional carrying out functions under this Act with respect to an individual who is in involuntary status may

- (a) collect any relevant information respecting the individual from any person the health professional has reason to believe has information relevant to the assessment or treatment of the individual; and
- (b) disclose information about the individual to a person referred to in paragraph (a), but only to the extent that doing so is necessary to collect the relevant information.

Application to Board – exemption

(5) A health professional or an individual that is an adult or mature minor may make an urgent application to the Board for an exemption from any or all of the requirements under subsection (2) on the grounds that they are not in the best interest of the individual.

Application to Board – redaction

(6) A *tikkuaqtaujuq* (selected representative) may make an urgent application to the Board to receive an unredacted copy of the certificate or order referred to in subparagraph (2)(g)(iii), on the grounds that they require it to perform their functions under this Act.

Time to make application

(7) If an individual notifies the health professional of their intent to make an application to the Board under subsection (5) respecting a requirement under subsection (2), the requirement does not apply

- (a) for 24 hours after the notification, to give the individual an opportunity to make an application; and
- (b) if the individual makes an application, in accordance with subsection (8).

Verification

(7.1) As soon as practicable after the 24-hour period referred to in paragraph (7)(a), the health professional shall verify with the chairperson of the Board whether or not an application has been made.

Non-application of requirements

(8) A requirement under subsection (2) does not apply

- (a) while the Board is seized of an application under subsection (5) respecting the requirement; or
- (b) if the Board determines that the requirement is not in the best interest of the individual.

Same

(9) A requirement under paragraphs (2)(d) to (g) does not apply while the Board is seized of an application under subsection (5) respecting any of the requirements under paragraphs (2)(a) to (c).

Custody

Rights of individual taken into custody

- 30.** (1) An individual who is apprehended under this Act has the right, on apprehension,
- (a) to be informed promptly of the reasons for the apprehension;
 - (b) to retain and instruct a lawyer without delay and to be informed of that right and of the means of accessing a lawyer;
 - (c) to communicate with their *tikkuaqtaujuq* (selected representative); and
 - (d) to communicate with an individual of their choice in the event of any delay in transporting the individual to a health facility.

Instructing lawyer in private

- (2) The right in paragraph (1)(b) includes a right to instruct the lawyer in private.

Visitation and communications

Communications

- 31.** (1) Subject to this section, every individual for whom a certificate of involuntary admission has been issued may, at any reasonable time and in accordance with the regulations, communicate by letter, telephone or other means approved by the Director.

Visitation

(2) Every individual who for whom a certificate of involuntary admission has been issued may

- (a) during visitation hours established for the health facility, receive visitors;
- (b) at any reasonable time, receive, for a private visit,
 - (i) the lawyer of the individual,
 - (ii) the *tikkuaqtaujuq* (selected representative) of the individual,
 - (iii) a rights advocate,
 - (iv) a Inuit cultural advisor who is appointed for a panel of the Board that is seized of a matter concerning the individual,
 - (v) in the case of a child or youth as defined in the *Representative for Children and Youth Act*, the Representative for Children and Youth or their lawful delegate under that Act,
 - (vi) the Commissioner,
 - (vii) a member of the Legislative Assembly or the Parliament of Canada,
 - (viii) a peace officer, in the course of their duties,
 - (ix) a person providing religious or spiritual counselling,
 - (x) a recognized community Elder, or
 - (xi) a representative from a non-governmental organization or a community agency as defined in the regulations.

Establishing visitation hours and providing means of communications

(3) A person responsible for a health facility to which individuals subject to certificates of involuntary admission are admitted shall, in accordance with the regulations,

- (a) establish reasonable visitation hours for the health facility; and
- (b) provide those individuals with access to
 - (i) a telephone or other means of telecommunications, and
 - (ii) materials and resources to write and send letters and other written communications generally approved by the Director.

Restriction

(4) Subject to subsection (5), the responsible medical practitioner or the person responsible for the health facility may restrict the right of an individual to communicate or receive visits under this section if

- (a) the restriction is, in the opinion of the medical practitioner or person, necessary
 - (i) to prevent harm to the individual or another individual present in the health facility, or
 - (ii) to protect the safety, security or operation of the health facility;
- (b) a court order restricts or prohibits the communication or contact; or
- (c) the other individual has indicated they do not wish to communicate with the individual.

Nature of restriction

(5) A restriction under subsection (4)

- (a) may not include monitoring communications;
- (b) may not include withholding letters from any person listed in subparagraphs (2)(b)(i) to (vii); but
- (c) may include requiring the individual to open any letter or package in the presence of an employee of the health facility.

Notification

(6) Upon imposing a restriction under subsection (4), the responsible medical practitioner or person responsible for a health facility shall

- (a) notify the individual or their *tikkuaqtaujuq* (selected representative) of the restriction as soon as possible; and
- (b) in the case of a restriction related to the lawyer of the individual, also notify the lawyer of the restrictions as soon as possible.

Review of restriction

(7) An individual or their *tikkuaqtaujuq* (selected representative) may apply to the Board for a review of a restriction of an individual's right to communicate or receive visits under this section.

Rights information

Rights information

32. (1) A health professional conducting an initial assessment or a psychiatric assessment, or issuing a certificate of involuntary admission or a community assisted treatment order, shall

ensure the rights information prescribed by regulation is provided to the following in a manner they understand:

- (a) if they are capable of understanding the rights information, the individual being assessed or admitted;
- (b) if applicable, their *tikkuaqtaujuq* (selected representative).

Repeated rights information

(2) If the individual being assessed or admitted was not capable of understanding the rights information under subsection (1), or had a limited capacity to understand it, the health professional shall provide the rights information again when the individual is capable of understanding it.

PART 6 ADMISSION AND COMMUNITY TREATMENT

Voluntary admission

Criteria for voluntary admission

33. (1) A medical practitioner may admit an individual to a health facility as a voluntary patient if

- (a) the medical practitioner has examined the individual and assessed their mental condition;
- (b) the medical practitioner is of the opinion that the individual would benefit from admission and treatment at the health facility;
- (c) the individual consents to the admission and treatment; and
- (d) the medical practitioner is of the opinion the individual is capable to consent to the admission and treatment.

Request for discharge from voluntary admission

(2) If an individual admitted to a health facility under this section requests to be discharged from the health facility, a health professional at the health facility shall

- (a) discharge the individual if, in the opinion of the health professional, the individual is suitable for discharge;
- (b) with the consent of the individual, conduct or arrange for a psychiatric assessment of the individual; or
- (c) issue an order for the psychiatric assessment of the individual in accordance with section 40.

Involuntary status

Involuntary status – entry

34. (1) For the purposes of this Act, an individual enters involuntary status when

- (a) an order respecting the individual is issued under subsection 37(1), 40(1), or 41(4);

- (b) a certificate of involuntary admission or a community assisted treatment order respecting the individual is issued; or
- (c) a peace officer exercises authority under subsection 39(1) with respect to the individual.

Involuntary status – exit

- (2) For the purposes of this Act, an individual exits involuntary status after
- (a) a decision is made by a health professional that an order under subsection 40(1) will not be issued with respect to the individual;
 - (b) a decision is made by a medical practitioner that neither a certificate of involuntary admission nor a community assisted treatment order will be issued with respect to the individual;
 - (c) the individual is discharged under section 43 or 44; or
 - (d) the certificate, order or authority referred to in subsection (1) expires without being renewed.

Temporary leave certificate

(3) For greater certainty, the issuance of a temporary leave certificate under section 47 does not affect involuntary status.

Criteria for involuntary admission

Criteria

- 35.** For the purposes of this Part, an individual meets the criteria for involuntary admission if
- (a) they have a mental disorder; and
 - (b) because of the mental disorder, they
 - (i) are likely to cause serious harm to themselves or to another individual, or
 - (ii) are likely to suffer substantial mental or physical deterioration, or serious physical impairment.

Initial Assessment

Conducting initial assessment

- 36.** A health professional shall conduct an initial assessment of an individual if
- (a) they have reasonable grounds to believe that the individual meets the criteria for involuntary admission;
 - (b) an order for initial assessment has been issued for the individual under section 37; or
 - (c) a peace officer transports the individual to them under section 39.

Order for initial assessment

- 37.** (1) A health professional or psychologist may issue a written order for the initial assessment of an individual if
- (a) they have personally seen the individual;

- (b) they have reasonable grounds to believe that the individual meets the criteria for involuntary admission; and
- (c) attempts at arranging a voluntary initial assessment have failed and they have reasonable grounds to believe that an order is necessary to ensure that the initial assessment can be conducted or that emergency treatment can be administered.

Exception

(2) A mental health rights specialist may issue an order under subsection (1) even if they have not personally seen the individual.

Authority of order

(3) An order under subsection (1) authorizes

- (a) subject to section 53, apprehension of the individual by a peace officer and, if applicable, transport of the individual to a health professional;
- (b) initial assessment of the individual; and
- (c) taking and retaining custody of the individual and using necessary force for the purposes of paragraphs (a) and (b).

Duration of order

(4) An order under subsection (1) expires

- (a) if the individual subject to the order has not been brought to or otherwise seen by a health professional, 7 days after the order was issued; or
- (b) if the individual subject to the order has been brought to or otherwise seen by a health professional, on the earliest of
 - (i) a decision being made that an order under subsection 40(1) will not be issued,
 - (ii) an order under subsection 40(1) being issued, and
 - (iii) 48 hours after initial contact between the individual and the health professional.

Community member request

38. (1) If an individual requests a health professional to conduct an initial assessment of another individual, the health professional shall take the following steps:

- (a) document the request and any information provided;
- (b) request additional information, if any, that is needed to make a determination;
- (c) assess the credibility of the information provided;
- (d) take one of the following actions:
 - (i) if no further action is required, provide a report under subsection (5),
 - (ii) conduct a voluntary initial assessment of the individual or arrange for another health professional to do so,
 - (iii) refer the matter to a mental health rights specialist,

- (iv) personally see the individual, with or without the assistance of a peace officer, or arrange for another health professional to do so,
- (v) refer the matter to a peace officer.

Follow up

(2) If a health professional personally sees an individual pursuant to subparagraph (1)(d)(iv) the health professional shall

- (a) if no further action is required, provide a report under subsection (5);
- (b) arrange for a voluntary initial assessment of the individual;
- (c) make an order for initial assessment under section 37; or
- (d) refer the matter to a peace officer.

Mental health rights specialist

(3) If a matter is referred to a mental health rights specialist under subsection (1),

- (a) the health professional making the referral shall provide the mental health rights specialist with all the information they have respecting the matter; and
- (b) the mental health rights specialist shall
 - (i) request additional information, if any, that is needed to make a determination,
 - (ii) assess the credibility of the information provided,
 - (iii) determine whether there are reasonable grounds to believe that the individual meets the criteria for involuntary admission, and
 - (iv) take one of the following actions:
 - (A) if no further action is required, provide a report under subsection (5),
 - (B) arrange for a voluntary initial assessment of the individual,
 - (C) make an order for initial assessment under section 37,
 - (D) refer the matter to a peace officer.

Request to mental health rights specialist

(4) If a request under subsection (1) is made to a mental health rights specialist, the mental health rights specialist may perform the duties under paragraph (3)(b) themselves instead of referring the matter to another mental health rights specialist.

Report

(5) If a health professional determines that no further action is required under this section, the health professional shall provide written reasons to the Director, in accordance with the regulations, of why further action is not required.

Peace officer's authority

39. (1) When a peace officer has reasonable grounds to believe that an individual that the peace officer encounters in the course of their duties meets the criteria for involuntary admission, the peace officer, or another peace officer, may

- (a) apprehend the individual and transport them to a health professional for an initial assessment; and
- (b) take and retain custody of the individual and use necessary force for the purposes of paragraph (a) and subsection (2).

Further authority

(2) When a peace officer exercises powers under subsection (1), a health professional is authorized to conduct an initial assessment of the individual.

Duration of authority

- (3) The authority under subsections (1) and (2) persists until the earlier of
- (a) a decision being made by a health professional that an order under subsection 40(1) will not be issued;
 - (b) an order under subsection 40(1) being issued; and
 - (c) 48 hours after initial contact between the individual and the health professional.

Psychiatric assessment

Order for psychiatric assessment

40. (1) A health professional who has conducted the initial assessment of an individual shall, in writing, order the individual to undergo a psychiatric assessment if the health professional is of the opinion that the individual

- (a) is likely to meet the criteria for involuntary admission; and
- (b) should undergo a psychiatric assessment to determine whether they should be admitted to a health facility as an involuntary patient.

Timing

(2) An order under subsection (1) may not be issued later than 24 hours after the completion of the initial assessment.

Authority of order

- (3) An order under subsection (1) authorizes,
- (a) if arranged under section 53, apprehension of the individual by a peace officer and transport of the individual to a health facility with a medical practitioner available and able to conduct a psychiatric assessment of the individual;
 - (b) a psychiatric assessment of the individual; and
 - (c) taking and retaining custody of the individual and using necessary force for the purposes of paragraphs (a) and (b).

Duration of order

- (4) An order under subsection (1) expires
- (a) if the individual subject to the order has not been brought to or otherwise seen by a medical practitioner, 24 hours after the order was issued; or
 - (b) if the individual subject to the order has been brought to or otherwise seen by a medical practitioner, on the earliest of
 - (i) a decision being made that neither a certificate of involuntary admission nor a community assisted treatment order will be issued,
 - (ii) a certificate of involuntary admission or a community assisted treatment order being issued, and
 - (iii) 72 hours after initial contact between the individual and the medical practitioner.

Rescinding order

(5) If an individual subject to an order under subsection (1) has not yet been brought to or otherwise seen by a medical practitioner, a health professional may rescind the order if they are of the opinion that the individual no longer meets the criteria under paragraph (1)(a) or (b).

Application for psychiatric assessment

41. (1) Any individual may apply to a judge or justice to order an individual to undergo a psychiatric assessment.

Content of application

- (2) An application under subsection (1) may be oral or in writing, and must include
- (a) the grounds for the application, distinguishing those facts that the applicant has observed from those reported by others; and
 - (b) an affidavit or oral declaration made under oath or affirmation.

Without notice

(3) An application under subsection (1) may be made and determined without notice to the individual who is the subject of the application.

Order for psychiatric assessment

(4) Following an application under subsection (1), a judge or justice may order an individual to undergo a psychiatric assessment if they have reasonable grounds to believe that the individual meets the criteria for involuntary admission.

Authority of order

- (5) An order under subsection (4) authorizes, unless otherwise specified in the order,
- (a) if arranged under section 53, transport of the individual to a health facility with a medical practitioner available and able to conduct a psychiatric assessment of the individual;
 - (b) a psychiatric assessment of the individual; and
 - (c) taking and retaining custody of the individual and using necessary force for the purposes of paragraphs (a) and (b).

Duration of order

- (6) An order under subsection (4) expires
- (a) if the individual subject to the order has not been brought to or otherwise seen by a medical practitioner, 7 days after the order was issued; or
 - (b) if the individual subject to the order has been brought to or otherwise seen by a medical practitioner, on the earliest of
 - (i) a decision being made that neither a certificate of involuntary admission nor a community assisted treatment order will be issued,
 - (ii) a certificate of involuntary admission or a community assisted treatment order being issued, and
 - (iii) 72 hours after initial contact between the individual and the medical practitioner.

Reasons for decision

(7) If, following an application under subsection (1), a judge or justice does not order the individual to undergo a psychiatric assessment, the Clerk of the Nunavut Court of Justice shall send a copy or transcript of the decision to the Director.

Conduct of psychiatric assessment

42. A psychiatric assessment of an individual ordered under section 40 or 41 may be conducted by a medical practitioner

- (a) in person; or
- (b) by remote means that allow for the medical practitioner to
 - (i) hear and be heard by the individual, and
 - (ii) visually observe the individual.

Involuntary admission

Certificate of involuntary admission

43. (1) If, following a psychiatric assessment, a medical practitioner determines that an individual meets the criteria for involuntary admission, the medical practitioner shall

- (a) issue a certificate of involuntary admission for the individual; or
- (b) if applicable, issue a community assisted treatment order for the individual under section 44.

Content of certificate

- (2) A certificate of involuntary admission under paragraph (1)(a) must include
- (a) the name of the individual who is subject to the certificate;
 - (b) the name and address of the medical practitioner who issued the certificate;
 - (c) the date and time when the medical practitioner examined the individual who is subject to the certificate;
 - (d) the facts on which the medical practitioner relied to form the opinion that the individual who is subject to the certificate met the criteria for involuntary admission, distinguishing those facts observed by the medical practitioner from those communicated to them by others;

- (e) the name and address of the health facility or other place where the individual who is subject to the certificate was examined;
- (f) whether the individual was examined in person or by remote means;
- (g) the name and address of the health facility where the individual who is subject to the certificate is to be involuntarily admitted; and
- (h) the date and time of expiration of the certificate, which is 30 days after the individual who is subject to the certificate was examined by the medical practitioner.

Authority of certificate

- (3) A certificate of involuntary admission under paragraph (1)(a) authorizes
- (a) if arranged under section 53, transport of the individual to the health facility named in the certificate;
 - (b) care for and observation, examination, assessment and treatment of the individual for the duration of the certificate, including any renewal under subsection (4); and
 - (c) taking and retaining custody of the individual and using necessary force for the purposes of paragraphs (a) and (b).

Renewal of involuntary admission

- (4) A certificate of involuntary admission under paragraph (1)(a) can be renewed
- (a) for a first renewal, by a psychiatrist who did not issue the original certificate; and
 - (b) for subsequent renewals, by two medical practitioners, at least one of whom must be a psychiatrist.

Content of renewal certificate

- (5) The renewal of a certificate of involuntary admission under subsection (4) must include
- (a) the information referred to in paragraphs (2)(a) to (g); and
 - (b) the date and time of expiration of the certificate, which can be no more than
 - (i) 30 days, in the case of a first renewal,
 - (ii) 60 days, in the case of a second renewal, or
 - (ii) 90 days, in the case of subsequent renewals.

Referral to chairperson of Board

(6) After every other renewal of a certificate, starting with the fourth renewal, the medical practitioners who renew the certificate shall send a copy of the certificate to the chairperson of the Board.

Conversion to community assisted treatment order

(7) If the responsible medical practitioner of the individual subject to the certificate determines that the criteria in subsection 44(1) are met, the medical practitioner may issue a community assisted treatment order for the individual under section 44.

Cancellation of certificate – conversion to community assisted treatment order

- (8) An individual's certificate under this section is cancelled upon
- (a) the issuance of a community assisted treatment order for the individual under section 44; or
 - (b) the responsible medical practitioner
 - (i) determining that the individual may resume being subject to a community assisted treatment order that was suspended under paragraph 46(5)(a), and
 - (ii) lifting the suspension under paragraph 46(5)(a).

Cancellation of certificate – discharge

(9) If the responsible medical practitioner of an individual subject to a certificate determines that the individual no longer meets the criteria for involuntary admission, the medical practitioner shall

- (a) cancel the certificate; and
- (b) discharge the individual from involuntary status.

Expiration of certificate – discharge

(10) If a certificate under this section expires and is not renewed, the responsible medical practitioner of the individual subject to the certificate shall discharge the individual from involuntary status.

Second opinion – request

(11) If, upon being informed of their discharge under subsection (9) or (10), an individual requests a second opinion from a psychiatrist of their choice, the medical practitioner shall

- (a) if the psychiatrist agrees to the consultation, arrange for the individual to obtain a second opinion respecting their discharge from the psychiatrist; and
- (b) not discharge the individual pending a second opinion under paragraph (a).

Second opinion – cancellation of discharge

(12) If the psychiatrist consulted under subsection (11) is of the opinion that the individual should not be discharged, the psychiatrist may

- (a) revoke the cancellation of the certificate under paragraph (9)(a); or
- (b) despite paragraph (4)(b), renew the certificate in accordance with this section.

Community assisted treatment orders

Issuing community assisted treatment order

44. (1) If, following a psychiatric assessment, a medical practitioner determines that an individual meets the criteria for involuntary admission, the medical practitioner may issue a community assisted treatment order instead of a certificate of involuntary admission if

- (a) the individual has in the past been involuntarily admitted to a health facility under the laws of Nunavut, a province or another territory;

- (b) the medical practitioner has sufficient information to determine what treatment, care and supervision the individual requires;
- (b.1) if the medical practitioner is not a psychiatrist, they have consulted with a psychiatrist respecting the issuance of the community assisted treatment order;
- (c) the medical practitioner, or a health professional at the request of the medical practitioner, has consulted with health professionals in the community or other place where the individual resides, or intends to reside, to determine the availability of adequate treatment, care and supervision in the community or other place;
- (d) the medical practitioner, or a health professional at the request of the medical practitioner, has
 - (i) consulted with every person who will be named in the community support plan,
 - (ii) explained to them their role in implementing the community support plan, and
 - (iii) obtained an assurance from them that they will do what is required of them under the community support plan;
- (e) the medical practitioner has
 - (i) obtained signed appropriate consent for the issuance of the community assisted treatment order, or
 - (ii) absent appropriate consent, applied for and obtained authorization from the Board to issue the community assisted treatment order;and
- (f) the medical practitioner is of the opinion that
 - (i) the treatment, care and supervision of the individual can be provided while they reside outside a health facility,
 - (ii) there are sufficient resources in the community or other place where the individual resides, or intends to reside, for their treatment, care and supervision, and
 - (iii) in the circumstances, the individual is likely to be able to comply with the treatment, care and supervision requirements of the community assisted treatment order.

Return from other jurisdiction

(2) Despite subsection (1), if an individual who was transferred under this Act to another jurisdiction for involuntary admission returns to Nunavut and a medical practitioner has determined that the individual continues to meet the criteria for involuntary admission, the medical practitioner may issue a community assisted treatment order under subsection (1) without conducting a psychiatric assessment.

Content of community assisted treatment order

- (3) A community assisted treatment order under subsection (1) must include
- (a) the name of the individual who is subject to the order;
 - (b) the name and address of the medical practitioner who issued the order;

- (c) the date and time when the medical practitioner examined the individual who is subject to the order;
- (d) the facts on which the medical practitioner relied to form the opinion that the individual who is subject to the order met the criteria for involuntary admission, distinguishing those facts observed by the medical practitioner from those communicated to them by others;
- (e) the facts on which the medical practitioner relied to form the opinion that it was appropriate to issue a community assisted treatment order instead of a certificate of involuntary admission;
- (f) the name and address of the health facility or other place where the individual who is subject to the order was examined;
- (g) whether the individual was examined in person or by remote means;
- (h) a statement that the order will be revoked if the individual subject to the order ceases to meet the criteria under paragraph (1)(f);
- (i) a copy of the community support plan prepared in accordance with section 45; and
- (j) the date and time of expiration of the order, which is six months after the individual who is subject to the order was examined by the medical practitioner.

Renewal of community assisted treatment order

- (4) A community assisted treatment order under subsection (1) can be renewed
- (a) for a first renewal, by a psychiatrist who did not issue the original order; and
 - (b) for subsequent renewals, by two medical practitioners, at least one of whom must be a psychiatrist.

Content of renewal order

- (5) The renewal of a community assisted treatment order under subsection (4) must include
- (a) the information referred to in paragraphs (3)(a) to (i); and
 - (b) the date and time of expiration of the order, which can be no more than one year after the date of renewal.

Referral to chairperson of Board

(6) After every renewal of a community assisted treatment order, starting with the second renewal, the medical practitioners who renew the order shall send a copy of the order to the chairperson of the Board.

Cancellation of order – discharge

- (7) If the medical practitioner referred to in paragraph 44(1)(c) determines that the individual subject to the order no longer meets the criteria for involuntary admission, the medical practitioner shall
- (a) cancel the order; and
 - (b) discharge the individual from involuntary status.

Expiration of order – discharge

(8) If an order under this section expires and is not renewed, the responsible medical practitioner of the individual subject to the order shall discharge the individual from involuntary status.

Second opinion – request

(9) If, upon being informed of their discharge under subsection (7) or (8), an individual requests a second opinion from a psychiatrist of their choice, the medical practitioner shall

- (a) if the psychiatrist agrees to the consultation, arrange for the individual to obtain a second opinion respecting their discharge from the psychiatrist; and
- (b) not discharge the individual pending a second opinion under paragraph (a).

Second opinion – cancellation of discharge

(10) If the psychiatrist consulted under subsection (9) is of the opinion that the individual should not be discharged, the psychiatrist may

- (a) revoke the cancellation of the order under paragraph (7)(a); or
- (b) despite paragraph (4)(b), renew the order in accordance with this section.

Community support plan

45. (1) A community support plan must be included with each community assisted treatment order, and includes

- (a) a mandatory component that includes
 - (i) the obligations of the individual subject to the order with respect to treatment, care and supervision,
 - (ii) the name and roles of a support person who has agreed to
 - (A) monitor the individual subject to the order,
 - (B) assist the individual subject to the order to comply with the order, including the obligations under subparagraph (i), and
 - (C) report to the responsible medical practitioner, and
 - (iii) the names or titles and respective obligations of health professionals and other individuals with respect to
 - (A) treatment, care, and supervision, and
 - (B) reporting to the responsible medical practitioner;
- (b) a voluntary component that includes other services and support available to the individual subject to the order in the community or other place where they reside, or intend to reside, such as
 - (i) family support,
 - (ii) counselling, including Inuit counselling,
 - (iii) other Inuit approaches to healing,
 - (iv) cultural supports, and
 - (v) any other services or support that may help the individual subject to the order; and

- (c) the name and obligations of the responsible medical practitioner, who is responsible for the general supervision and management of the community support plan.

Designation of health professional or public officer

(2) A health professional or public officer named in a community support plan may designate another health professional or public officer to fulfil their obligations under a community support plan, either temporarily or permanently, by

- (a) obtaining the consent of the other health professional or public officer;
- (b) providing notice to the individual subject to the order and their *tikkuaqtaujuq* (selected representative); and
- (c) providing notice to
 - (i) the responsible medical practitioner, and
 - (ii) the health professionals referred to in paragraph (1)(a)(iii).

Request to designate other person

(3) A person other than a health professional or public officer named in a community support plan may request the responsible medical practitioner to designate another person to fulfil their obligations under a community support plan.

Designation of other person

(4) Following a request under subsection (3), the responsible medical practitioner shall designate another person to fulfil to obligations of the requestor if the medical practitioner has

- (a) explained to the other person their role in implementing the community support plan; and
- (b) obtained an assurance from them that they will do what is required of them under the community support plan.

Notice to individual subject to order

(5) Following a designation under subsection (4), the medical practitioner shall provide notice of the designation to the individual subject to the order and their *tikkuaqtaujuq* (selected representative).

Notice to others

(6) Following receipt of a notice under paragraph (2)(c)(i) or a designation under subsection (4), the responsible medical practitioner shall provide notice of the designation to every individual named in the community support plan that has a need to know the identity of the designated person.

Obligation of health professionals and public officers

(7) Health professionals and public officers named in the mandatory component of a community support plan or designated under subsection (2) shall

- (a) make best efforts to implement the plan in accordance with the obligations assigned to them under the mandatory component; and
- (b) report any failure of the individual subject to the order to comply with the mandatory component to the responsible medical practitioner.

General obligation

(8) A person, other than a health professional or public officer, named in the mandatory component of a community support plan or designated under subsection (4) shall report any failure to comply with the mandatory component to the responsible medical practitioner.

Amendment of community support plan

(9) The responsible medical practitioner may amend a community support plan by following the applicable steps required under paragraphs 44(1)(c) to (f) with respect to any element of the community support plan that will be amended.

Failure to comply with community assisted treatment order

46. (1) If an individual subject to community assisted treatment order fails to comply with the mandatory component of their community support plan, a health professional named in the plan shall

- (a) contact the individual;
- (b) inform the individual of the failure to comply and the possible consequences of the failure, including the possibility of involuntary admission;
- (c) determine, to the extent they are able to, what measures could be taken to reduce the likelihood of repeated non-compliance; and
- (d) report the determination, or the reasons a determination cannot be made, to the responsible medical practitioner.

Deterioration

(2) If a health professional is of the opinion that the criteria under subsection 44(1) do not continue to be met due to the deterioration of the mental state of an individual subject to a community assisted treatment order, they shall make a written report of their opinion to the responsible medical practitioner.

Change to circumstances

(3) If a health professional who becomes aware of a change in circumstance that substantially alters or renders inapplicable any mandatory component of a community support plan, the health professional shall make a written report of the circumstances to the responsible medical practitioner.

Involuntary admission

(4) Following receipt of a report under this section, the responsible medical practitioner shall determine whether the criteria under subsection 44(1) continue to be met and

- (a) if they continue to be met, determine whether an amendment to the community support plan is required; or
- (b) if they do not continue to be met, issue a certificate of involuntary admission for the individual under section 43.

Cancellation or suspension

(5) On issuing a certificate of involuntary admission pursuant to paragraph (4)(b), the responsible medical practitioner shall

- (a) if they reasonably believe that the criteria under subsection 44(1) will be met as a result of the involuntary admission, suspend the community assisted treatment order; or
- (b) in any other case, cancel the community assisted treatment order.

Involuntary status – leave and absences

Providing temporary leave – involuntarily admitted individual

47. (1) The responsible medical practitioner of an individual subject to a certificate of involuntary admission may, with appropriate consent, issue a temporary leave certificate authorizing the individual to be released from a health facility for a period not exceeding 30 days, subject to any conditions that the medical practitioner considers appropriate.

Providing temporary leave – community assisted treatment order

(2) The responsible medical practitioner of an individual subject to a community assisted treatment order may, with appropriate consent, issue a temporary leave certificate authorizing the individual to leave the community for a period not exceeding 30 days, subject to any conditions that the medical practitioner considers appropriate.

Supports must be available

(3) A certificate may only be issued under this section if the medical practitioner issuing it has verified that the appropriate supports exist in the destination community to meet the conditions of the leave.

No leave in face of opposition

(4) No temporary leave certificate may be issued under this section to an individual who opposes the leave, regardless of the mental state of the individual.

Content of temporary leave certificate

48. (1) A temporary leave certificate must include

- (a) its dates and times of validity; and
- (b) the conditions to which it is subject.

Notice of certificate

(2) A medical practitioner who issues a temporary leave certificate shall provide written notice of the certificate to

- (a) the individual subject to the certificate;
- (b) the *tikkuaqtaujuq* (selected representative) of the individual subject to the certificate;
- (c) the health professional, or the person in charge of the health facility, who will provide support in the destination community;

- (d) if applicable, other persons who will provide support in the destination community; and
- (e) any other person the medical practitioner has reason to believe should be notified.

Leave cancellation

49. (1) A medical practitioner who is authorized to issue a temporary leave certificate with respect to an individual may cancel the individual's temporary leave certificate prior to its expiry if

- (a) the mental condition of the individual is such that harm may be caused to the individual or another individual if the certificate is not cancelled;
- (b) the individual fails to comply with the conditions of the certificate; or
- (c) the necessary supports to meet the conditions of the temporary leave certificate no longer exist in the community where the individual is located.

Notice

(2) A medical practitioner who cancels a temporary leave certificate shall provide written notice of the cancellation to the persons to whom a notice of the certificate was provided under subsection 48(2).

Return from temporary leave

50. An individual subject to a temporary leave certificate shall return to the health facility or community from which they are on leave

- (a) on the expiration of the certificate; or
- (b) immediately following notification of a cancellation of the certificate under subsection 49(2).

Statement of absence

51. (1) The person responsible for a health facility or the responsible medical practitioner of an individual subject to a certificate of involuntary admission may issue a written statement that the individual is absent from the health facility without leave if

- (a) the individual is absent from the health facility without a temporary leave certificate;
- (b) the individual was absent from the health facility with a temporary leave certificate but failed to return in accordance with section 50; or
- (c) the individual was subject to a community assisted treatment order and has been issued a certificate of involuntary admission, but has not reported to the health facility in accordance with the certificate of involuntary admission.

Peace officers authority

(2) A statement issued under subsection (1) with respect to an individual authorizes, for a period of 30 days from issuance,

- (a) subject to section 53, apprehension of the individual by a peace officer and, if applicable, transport of the individual to the health facility; and
- (b) taking and retaining custody of the individual and using necessary force for the purposes of paragraph (a).

Failure to return – community assisted treatment order

(3) The failure of an individual subject to a community assisted treatment order to return from temporary leave in accordance with section 50 is deemed to be a failure to comply with the mandatory component of their community support plan.

General provisions for Part 6

Renewals of orders

52. (1) If an order under subsection 37(1), 40(1) or 41(4) expires or is about to expire, the person who made the order, or another person who has the authority to make the order, may renew the order if

- (a) due to extenuating circumstances, including inclement weather or transport delays, the assessment required by the order could not be completed; and
- (b) the individual subject to the order continues to be in a condition that authorizes the issuance of the order.

Expiry

(2) An order renewed under subsection (1) expires in the same manner and time as the original order, but calculated from the time of the renewal.

Transport to assessment or health facility

53. (1) If a health professional determines that an individual in involuntary status who is to undergo an initial assessment or a psychiatric assessment or is to be admitted or transferred to a health facility under this Act requires transportation to the place where they will undergo the assessment or the health facility, the health professional shall

- (a) assess the risks associated with the transportation;
- (b) arrange for the least restrictive means of transportation, taking into consideration the risks associated with the transportation;
- (c) arrange for an escort, other than a peace officer, to accompany the individual during transport and while being held, unless doing so would create an unreasonable risk of the individual harming themselves or others;
- (d) if reasonably necessary to prevent the individual from harming themselves or others,
 - (i) arrange for peace officers to accompany the individual during transport and while being held, and

- (ii) arrange for places where the individual can safely be held while awaiting transport or assessment;
- (e) if the transportation arrangements include holding the individual while awaiting transport or assessment, arrange for the individual to be allowed to receive a support person of the individual's choosing at the holding place, unless doing so is unsafe or impracticable;
- (f) ensure, prior to transport, that
 - (i) the expenditure for the transport has been certified by an expenditure officer under the *Financial Administration Act*,
 - (ii) the payment for the transport is covered by a general agreement or contract for services that does not require certification of each individual expenditure by an expenditure officer under the *Financial Administration Act*, or
 - (iii) the transport will not be paid for by the Government of Nunavut;and
- (g) in the case of transport out of Nunavut, ensure that section 55 has been complied with.

Powers and duties

- (2) An individual who transports another individual under subsection (1)
 - (a) shall transport the individual by the least restrictive means of transportation, taking into consideration the risks associated with the transportation;
 - (b) shall, as soon as practicable, transport the individual to the health facility or other location;
 - (c) may take reasonable measures, including the use of force, for the transport of the individual; and
 - (d) shall remain with the individual, or arrange for a peace officer to do so, until a health professional
 - (i) accepts custody of the individual being transported, or
 - (ii) informs the peace officer that the individual will not be placed in involuntary status.

Police holding cells

(3) A health professional may not arrange for an individual to be held in police holding cells or correctional facility, unless no other safe holding place exists in the circumstances.

Same

- (4) If a health professional arranges for an individual to be held in police holding cells or a correctional facility, the health professional shall visit the individual, or arrange another health professional to visit them,
 - (a) every four hours; or
 - (b) at such intervals as the health professional determines is sufficient to monitor the status of the individual

Same

(5) While an individual is held in a police holding cell or a correctional facility under this section, the peace officer or other person having authority over the police holding cell or correctional facility shall make all reasonable efforts to allow for the support person referred to in paragraph 53(1)(e) to visit the individual, unless

- (a) the peace officer or other person has reasonable grounds to believe that doing so is unsafe; or
- (b) doing so is impracticable in the circumstances.

Peace officers arranging transport

(6) A peace officer shall arrange transport in accordance with subsections (1) to (5)

- (a) when transport is necessary in exercising their powers under section 39 or subsection 51(2); or
- (b) when transport is necessary in executing an order or certificate issued under this Part and transport has not been arranged by a health professional.

Definitions

54. (1) In this section,

"dwelling" means a dwelling-house as defined in section 2 of the *Criminal Code*; (*habitation*)

"warrant" includes a telewarrant issued on information submitted by telephone or other means of telecommunication in the manner provided for in section 487.1 of the *Criminal Code*, with any modifications that the circumstances require. (*mandat*)

Support person

(1.1) When a peace officer intends to apprehend an individual under this Act, or has reasonable grounds to believe that they will apprehend an individual under this Act, the peace officer shall, unless it is impracticable to do so in the circumstances,

- (a) identify a person who is able and willing to safely provide support to the individual during the apprehension; and
- (b) request that person to accompany the peace officer during the apprehension when, and to the extent that, it is safe to do so.

Identification of support person

(1.2) In identifying a person who is able and willing to safely provide the support under subsection (1.1), the peace officer shall, to the extent it is practicable to do so in the circumstances, give preference to selecting a person in the following order:

- (a) if known, a person that the individual to be apprehended wishes to provide the support;
- (b) if known, the *tikkuaqtaujuq* (selected representative) of the individual to be apprehended;
- (c) any other person with an existing supportive relationship with the individual to be apprehended, including a family member, a health professional or another person working in mental health care;

- (d) any other person that, in the opinion of the peace officer, would be able and willing to safely provide support to the individual during the apprehension.

Duty of peace officers on apprehension

- (2) Subject to subsection (3), a peace officer who apprehends an individual under this Act
 - (a) may take reasonable measures, including entering premises and using force, for the apprehension and transport of the individual;
 - (b) shall ensure that the individual's rights under section 30 are respected;
 - (c) shall, as soon as practicable and in accordance with section 53, transport the individual, or arrange for another peace officer to transport the individual, to a health facility or other location to which the peace officer is authorized to transport the individual; and
 - (d) shall remain with the individual, or arrange for another peace officer to do so, until a health professional
 - (i) accepts custody of the individual being transported; or
 - (ii) informs the peace officer that the individual will not be placed in involuntary status.

Contact with health professional

(3) A peace officer who apprehends an individual under this Act shall contact a health professional to discuss the condition and circumstances of the individual if there is any delay between the apprehension of the individual and their transport to a health facility or other location to which the peace officer is authorized to transport the individual.

Requirement for warrant

- (4) A peace officer shall not enter a dwelling to apprehend an individual under this Act unless
- (a) the occupant or person in charge of the dwelling consents;
 - (b) the entry is authorized by a warrant; or
 - (c) the peace officer has reasonable grounds to believe that
 - (i) the individual to be apprehended is or will be present in the dwelling, and
 - (ii) by reason of exigent circumstances it would be impracticable to obtain a warrant.

Exigent circumstances

(5) For the purposes of subparagraph (4)(c)(ii), exigent circumstances include circumstances in which the peace officer has reasonable grounds to suspect that entry into the dwelling is necessary to prevent imminent bodily harm or death to any individual.

Issuance of warrant

(6) A judge or justice may issue a warrant authorizing a peace officer to enter a dwelling described in the warrant for the purposes of apprehending an individual identified or identifiable by the warrant if the judge or justice is satisfied by information on oath or affirmation that

- (a) the peace officer is authorized under this Act to apprehend the individual; and
- (b) the individual to be apprehended is or will be present in the dwelling.

Terms and conditions

(7) A judge or justice who issues a warrant under subsection (6) may include in the warrant any terms and conditions that they consider advisable to ensure that the entry into the dwelling is reasonable in the circumstances.

Issuance with order

(8) For greater certainty, a warrant under this section may be issued in proceedings for an order under section 41.

Expiration of authority

(9) Unless an earlier expiration is specified in the warrant, a warrant issued under subsection (6) expires at the end of the seventh day after the warrant is issued.

Prior announcement

(10) A peace officer who enters a dwelling in the circumstances described in paragraphs (4)(b) or (c) may not enter the dwelling without prior announcement unless they have, immediately before entering the dwelling, reasonable grounds to suspect that prior announcement of the entry would expose them or any other individual to imminent bodily harm or death.

Health facilities outside Nunavut

55. (1) An order or certificate under this Act may not require an individual to travel outside Nunavut unless

- (a) the individual is to travel to a health facility in Canada;
- (b) a suitable health professional or health facility does not exist in the region where the individual is located;
- (c) the person in charge of the health facility and the applicable authorities in the other jurisdiction have consented to receiving the individual; and
- (d) a health professional has determined that the individual is likely to meet the criteria for involuntary admission under the laws of the other jurisdiction.

Additional requirement – psychiatric assessment

(2) In addition to the requirements under subsection (1), an order for psychiatric assessment may not require an individual to travel to a health professional or health facility outside Nunavut if it is practicable to assess the individual by remote means in the region where the individual is located.

Exception – initial assessment

(3) An order under subsection 37(1) may not require an individual to travel to a health professional or a health facility outside Nunavut.

Treatment by prescription

56. (1) For greater certainty, a health professional other than a medical practitioner or nurse practitioner shall not administer treatment, including emergency treatment under subsection (3), without a prescription from a medical practitioner or nurse practitioner.

Consent for treatment

(2) Subject to subsection (3), prior to administering treatment, a health professional shall obtain appropriate consent.

Emergency treatment

(3) Despite any other provision of this section, a health professional may, without consent, administer emergency treatment on an individual in involuntary status if the health professional determines that

- (a) the individual does not have the capacity to consent;
- (b) the delay in determining the identity of the *tikkuaqtaujuq* (selected representative) or obtaining their consent is likely to result in serious harm to someone;
- (c) the treatment is necessary to preserve the life or mental or physical health of the individual; and
- (d) the treatment cannot reasonably be delayed through an alternative means of detention.

Necessary use of force

(4) A health professional administering emergency treatment in accordance with subsection (3), or a person assisting the health professional, may use necessary force for the purposes of administering the treatment.

No liability

(5) Administering treatment as consented to or authorized under this section does not constitute a trespass to or an assault on the person of the individual being assessed or treated merely by reason that their consent was not obtained.

Duty to document

57. A person who takes any of the following actions under this Act has a duty to document the action in accordance with the regulations:

- (a) use of force;
- (b) administration of emergency treatment under section 56;
- (c) determining that visiting an individual under subsection 53(4) less frequently than every four hours is sufficient to monitor the status of the individual.

Referral to services in the community

58. A health professional shall ensure an individual is referred to those services available in the community that the health professional has reason to believe would assist in improving the mental wellness of the individual if

- (a) the health professional discharges an individual under paragraph 33(2)(a);
- (b) the health professional conducted an initial assessment or a psychiatric assessment of the individual but did not issue an order or a certificate under this Act; or
- (c) the health professional discharges the individual under subsection 43(9) or (10) or 44(7) or (8).

Validity of an order or certificate

59. An order or certificate issued under this Part is not invalid by reason only of an irregularity, informality or insufficiency in it.

Estates

Examination as to capacity

60. (1) A medical practitioner who issues a certificate or order with respect to an individual under section 43 or 44 shall also examine the individual to determine whether the individual is capable to manage their estate.

Certificate of incompetence

(2) If, following an examination under subsection (1), the medical practitioner is of the opinion that the individual is not capable to manage their estate, the medical practitioner shall

- (a) make reasonable efforts to determine whether
 - (i) the individual's estate is governed by a trusteeship order under the *Guardianship and Trusteeship Act*, or
 - (ii) the individual has a springing power of attorney under section 3 of the *Powers of Attorney Act* that comes into force on the mental incapacity of the individual;
- (b) issue a certificate of incompetence that includes any information the medical practitioner has about the matters referred to in paragraph (a);
- (c) transmit the certificate to the Public Trustee; and
- (d) if the medical practitioner is of the opinion that the Public Trustee should immediately assume management of an estate, notify the Public Trustee by any reasonable means of the issuance of the certificate.

Extraterritorial certificate of incompetence

(3) A person authorized to practice medicine in a province or another territory who involuntarily admits a resident of Nunavut under the mental health laws of that province or other territory may, if the medical practitioner is of the opinion that the individual is not capable to manage their estate,

- (a) issue a certificate of incompetence;

- (b) transmit the certificate to the Public Trustee; and
- (c) notify the Public Trustee by any reasonable means of the issuance of the certificate.

Trusteeship by Public Trustee

61. (1) The Public Trustee shall act as trustee of the estate of an individual who is named in a certificate of incompetence and shall assume management of that estate.

Powers of Public Trustee

(2) When the Public Trustee is acting as trustee of an estate under subsection (1), the Public Trustee has the same powers and duties as if the Public Trustee had been

- (a) appointed trustee under the *Guardianship and Trusteeship Act*; and
- (b) given all the powers under section 36 of that Act.

Exception

(3) Subsections (1) and (2) do not apply

- (a) if the individual's estate is governed by a trusteeship order under the *Guardianship and Trusteeship Act*, whether that order is made before or after the certificate of incompetence is issued;
- (b) with respect to personal property, if the individual is not in Nunavut and their estate is governed by a trusteeship order or similar instrument under the laws of the province or other territory where the individual is located; or
- (c) with respect to an estate, or part of an estate, for which a springing power of attorney under section 3 of the *Powers of Attorney Act* is in force.

Assistance

(4) If a resident of Nunavut is involuntarily admitted under the mental health laws of a province or another territory and their estate is governed by a trusteeship order or similar instrument under the laws of the province or other territory that appoints the Public Trustee or similar officer of the province or other territory as trustee

- (a) subject to this section, the order or instrument is valid in Nunavut as if it had been resealed by the Nunavut Court of Justice under sections 15 and 47 of the *Guardianship and Trusteeship Act*;
- (b) the Public Trustee shall give the Public Trustee or similar officer of the province or other territory any necessary assistance in enforcing or implementing the order or instrument; and
- (c) if the individual returns to Nunavut and is, on their return, subject to a certificate of involuntary admission or a community assisted treatment order,
 - (i) the order or instrument ceases to have effect in Nunavut, and
 - (ii) the Public Trustee shall act as trustee in accordance with subsections (1) to (3).

Cancellation of certificate

62. (1) A medical practitioner who has examined an individual subject to a certificate of incompetence and determines the individual is capable to manage their estate shall

- (a) cancel the certificate of incompetence; and
- (b) forward a notice of cancellation to the Public Trustee.

Cancellation of extraterritorial certificate

(2) A person authorized to practice medicine in a province or another territory who has examined an individual subject to a certificate of incompetence issued under subsection 60(2) and determines the individual is capable to manage their estate may

- (a) cancel the certificate of incompetence; and
- (b) forward a notice of cancellation to the Public Trustee.

Discharge

(3) A medical practitioner who, under section 43 or 44, discharges an individual subject to a certificate of incompetence shall send a notice of the discharge to the Public Trustee.

Return to Nunavut

(4) If an individual subject to a certificate of incompetence returns to Nunavut and is, on their return, not subject to a certificate or order under section 43 or 44, the Director shall send a notice of discharge to the Public Trustee.

Termination of trusteeship

(5) A trusteeship established under section 61 is terminated when the Public Trustee receives notice of a cancellation or discharge under this section.

Leave of judge to bring action

63. (1) A person, other than the Public Trustee, shall not bring an action as next friend of an individual of whose estate the Public Trustee is trustee under this Act, unless granted leave by a judge of the court in which the action is intended to be brought.

Service of notice

(2) The Public Trustee shall be served with notice of an application for leave under subsection (1).

Service of document

(3) If an action or proceeding is brought or taken against the estate of an individual that is subject to a certificate of involuntary admission under this Act or a similar instrument under the laws of a province or another territory, the originating notice and other document requiring personal service must

- (a) be endorsed with the name of the health facility where the individual is admitted;
- (b) be served on
 - (i) the Public Trustee,

- (ii) the individual, unless a medical practitioner is of the opinion that personal service on the individual would be likely to cause serious harm to the individual by reason of their mental condition, and
- (iii) the person in charge of the health facility, if a medical practitioner is of the opinion that personal service on the individual would be likely to cause serious harm to the individual by reason of their mental condition.

Service outside Nunavut

(4) With respect to an individual admitted to a health facility outside Nunavut, a reference to "medical practitioner" in paragraph (3)(b) includes a person authorized to practice medicine under the laws of the province or other territory where the health facility is located.

PART 7 MENTAL HEALTH REVIEW BOARD

Mental Health Review Board

64. (1) The Mental Health Review Board is established.

Composition

(2) The Minister shall appoint the following individuals as members of the Board:

- (a) a chairperson of the Board who is
 - (i) a medical practitioner who has knowledge of and experience in mental health practice, or
 - (ii) a lawyer who
 - (A) has knowledge of and experience in mental health law, and
 - (B) is not an employee of the Department of Justice;
- (b) at least six health professionals who have knowledge of and experience in mental health practice, of whom at least three must be psychiatrists;
- (c) at least three lawyers who
 - (i) have knowledge of and experience in mental health law, and
 - (ii) are not employees of the Department of Justice;
- (d) at least three residents of Nunavut who are not
 - (i) health professionals,
 - (ii) members of the Law Society of Nunavut, nor
 - (iii) employees of the Department responsible for the administration of this Act.

Vice-chairperson

(3) The Minister shall designate one of the individuals appointed under paragraphs (2)(b) or (c) as vice-chairperson of the Board to act in the stead of the chairperson when the chairperson is absent or unable to act.

Inuit cultural advisors

(4) The Minister shall appoint at least three individuals who are Nunavut Inuit residing in Nunavut as Inuit cultural advisors.

Continuation after expiry of term

(5) Except in the case of resignation, a member of the Board whose appointment has expired or been revoked

- (a) may continue their participation in any panel of the Board to which they were assigned while they were a member; and
- (b) is deemed, for the purposes of that participation, to continue to be a member of the Board.

Exception

(6) Subsection (5) does not apply where the revocation

- (a) specifies that the member of the Board may no longer participate in panels of the Board; and
- (b) is made for cause.

Nominations

(7) Prior to making an appointment under paragraph (2)(d) or subsection (4), the Minister shall solicit nominations from Nunavut Tunngavik Incorporated.

Appointment following nominations

(8) When the Minister receives a nomination solicited under subsection (7) within 60 days after soliciting the nomination, the Minister may only appoint the nominated individual, but may revoke the appointment of that individual without the recommendation of Nunavut Tunngavik Incorporated.

Minister's refusal

(9) The Minister may only refuse or fail to appoint a nominee of Nunavut Tunngavik Incorporated under subsection (7) if

- (a) the Minister does so on reasonable grounds; and
- (b) the Minister provides written reasons for doing so to Nunavut Tunngavik Incorporated within 15 working days of the decision to refuse the appointment.

Temporary members

(10) If the Board has fewer than three members appointed under paragraph (2)(d) or this subsection and the Minister has solicited a nomination under subsection (7), the Minister may, without a nomination from Nunavut Tunngavik Incorporated, appoint an individual described in paragraph (2)(d) as a temporary member of the Board.

Temporary Inuit cultural advisors

(11) If fewer than three Inuit cultural advisors are appointed under subsection (4) or this subsection and the Minister has solicited a nomination under subsection (7), the Minister may, without a nomination from Nunavut Tunngavik Incorporated, appoint an individual described in subsection (4) as a temporary Inuit cultural advisor.

Term – temporary appointees

(12) The term of office of an individual appointed under subsection (10) or (11) ends on the earlier of

- (a) an individual being appointed following the nomination solicited under subsection (7); or
- (b) 60 days after Nunavut Tunngavik Incorporated nominates an individual.

Functions – temporary appointees

(13) For greater certainty, individuals appointed under subsections (10) and (11) have the same functions as individuals appointed under paragraph (2)(d) and subsection (4) respectively.

Criteria to consider

(14) In considering appointments and nominations under this section, the Minister and Nunavut Tunngavik Incorporated, as the case may be, shall

- (a) ensure that the Board and the Inuit cultural advisors have a sufficient variety of knowledge and experience to enable the Board to adequately consider any matter that comes before it under this Act;
- (b) if applicable, give preference to residents of Nunavut;
- (c) consider the potential appointees knowledge of
 - (i) Inuit societal values,
 - (ii) the Inuit language, and
 - (iii) Nunavut; and
- (d) endeavour to have the composition of the Board and the Inuit cultural advisors reflect the cultural, ethnic, regional and gender composition of the population of Nunavut.

Honoraria

(15) The members of the Board and the Inuit cultural advisors shall be paid honoraria in accordance with directives issued under section 78 of the *Financial Administration Act*.

Training

(16) The chairperson of the Board shall ensure that the members of the Board and the Inuit cultural advisors receive the training that is necessary for them to be able to effectively carry out their functions under this Act and other applicable legislation.

Confidentiality

65. A member of the Board, an Inuit cultural advisor and any persons engaged or employed by the Board shall not use or disclose, for a purpose other than the purpose for which the information was received, any information that comes to their knowledge in the performance of their functions under this Act.

Applications to Board

66. (1) An application may be made to the Board for an order

- (a) in accordance with the provisions of this Act;
- (b) cancelling an order or certificate issued under this Act;
- (c) in respect of whether an individual is capable to consent to treatment;

- (c.1) in respect of whether a minor is mature;
- (d) in respect of a restriction or denial of a right of an individual under Part 5; or
- (e) in respect of a matter prescribed by regulation.

Withdrawing application

(2) The following may withdraw an application they have made to the Board at any time before the hearing of the application:

- (a) an individual, other than a health professional, making an application under subsection 17(2);
- (b) an individual in involuntary status;
- (c) the *tikkuaqtaujuq* (selected representative) of an individual in involuntary status.

Limitation

(3) The Board may not order specific medical treatment of an individual but may, as part of an order, make non-binding recommendations with respect to specific medical treatment.

No stay

(4) Subject to this Act, an application or referral to the Board does not act as a stay of any decision, order or certificate under this Act.

Applicant

(5) Unless otherwise provided under this Act, an application to the Board may be made by

- (a) an individual in involuntary status;
- (b) the *tikkuaqtaujuq* (selected representative) of an individual in involuntary status;
- (c) the responsible medical practitioner, or if there is none, the attending health professional, of an individual in involuntary status;
- (d) the person in charge of a health facility where the individual with respect to whom the application is made is located; or
- (e) any other person with leave of the chairperson.

Parties

(6) Unless otherwise provided under this Act, the parties to an application or review before the Board are

- (a) the applicant, if any;
- (b) the individual with respect to whom the application is made or to whom the review relates;
- (c) the *tikkuaqtaujuq* (selected representative) of the individual referred to in paragraph (b);
- (d) the responsible medical practitioner, or if there is none, the attending health professional, of an individual referred to in paragraph (b);
- (e) in the case of an order for initial assessment under section 37 made by a psychologist, the psychologist;

- (f) the person in charge of a health facility where the individual with respect to whom the application is made is located; and
- (g) any other person who, in the opinion of the panel, has substantial interest in the application or review.

Legal representation

(7) A party to an application or review before the Board may be represented by a lawyer or an agent.

No fee or reward

(8) An agent, other than a lawyer, who represents an individual before the Board shall not do so for, or in expectation of, a fee, gain or reward from the individual or any other person.

Review and dismissal

67. (1) The chairperson shall review each application made to the Board and may dismiss an application with reasons if the chairperson reasonably believes that

- (a) the application is frivolous, vexatious or not made in good faith; or
- (b) the Board has, within 30 days before the application is made, considered the same matter under a previous application and there has been no significant change in circumstances.

Panels

(2) For each matter coming before the Board that is not dismissed under subsection (1), the chairperson of the Board shall, within two days of the application or referral, assign the following members of the Board to a panel to hear the matter:

- (a) a health professional who, in the opinion of the chairperson, has sufficient knowledge of and experience in mental health practice to consider the matter;
- (b) a lawyer; and
- (c) a member appointed under paragraph 64(2)(d).

Automatic reviews

(3) Where a matter is sent to the chairperson under subsection 43(6) or 44(6), the chairperson

- (a) shall establish a panel in accordance with subsection (2) to review the matter, if
 - (i) no application with respect to the matter has been heard by the Board in the 180 days prior, or
 - (ii) an application with respect to the matter has been heard by the Board in the 180 days prior but there has since been a significant change in circumstances; or
- (b) in any other case may establish a panel in accordance with subsection (2) if the chairperson is of the opinion that, in the circumstances, it is appropriate for the Board to review the matter.

Inuit cultural advisor

(4) The chairperson of the Board shall assign an Inuit cultural advisor to each panel other than a panel dealing with an urgent application.

Role of Inuit cultural advisors

- (5) Subject to subsection (6), an Inuit cultural advisor that is assigned to a panel shall
- (a) meet with, either in person or remotely, and evaluate the individual subject to the application or review;
 - (b) make reasonable efforts to meet with, either in person or remotely, the *tikkuaqtaujuq* (selected representative) of the individual subject to the application or review; and
 - (c) give evidence and advise the panel on Inuit societal values and Inuit perspectives that are relevant to the application or review.

Refusal

(6) An Inuit cultural advisor shall not meet with the individual or their *tikkuaqtaujuq* (selected representative) under subsection (5) if the individual or *tikkuaqtaujuq* (selected representative), as the case may be, refuses the meeting.

Ineligible members

(7) The following individuals may not be assigned to a panel considering an application or review with respect to an individual:

- (a) the chairperson, or the vice-chairperson who established the panel;
- (b) the spouse of the individual or an individual cohabiting with the individual;
- (c) a dependent, spouse, child or parent of the individual;
- (d) a relative who lives with the individual;
- (e) a health professional who has provided psychiatric, medical or other treatment or services to the individual in the past year;
- (f) a staff member of the health facility where the individual is involuntarily admitted;
- (g) a staff member in the same health facility as the health professional whose decision is subject to the application;
- (h) a lawyer who is acting for or against, or has acted for or against, the individual;
- (i) any other individual whose participation in the panel would give rise to a reasonable apprehension of bias.

Decision of panel

(8) The decision of a panel established under subsection (2) or (3) is deemed to be a decision of the Board.

Quorum and majority

(9) The quorum of a panel is all three members and all decisions are made by a majority of the members of the panel.

Lack of quorum

- (10) The chairperson of Board may replace
- (a) a member of a panel in order to maintain quorum; and
 - (b) an Inuit cultural advisor who is unable to act.

Notice of hearing

- 68.** (1) Upon being established under section 67, a panel of the Board shall
- (a) schedule a hearing at the earliest opportunity, taking into consideration the timing requirements under subsection 69(1); and
 - (b) provide written notice of the date, time, place or means and purpose of the hearing to the parties
 - (i) at least 12 hours before the hearing in the case of an urgent application, and
 - (ii) at least three day before the hearing in any other case.

Mode of hearing

- (2) A hearing of a panel of the Board may be held
- (a) in person; or
 - (b) by any reasonable remote means that allows for simultaneous voice communication.

Recording

(2.1) A panel of the Board conducting a hearing shall ensure that an audio recording of the hearing is prepared and provided to the chairperson of the Board.

Redaction

- (2.2) The chairperson of the Board
- (a) shall provide a copy of an audio recording of a hearing on request by one of the parties; and
 - (b) if the request is made by an individual excluded under subsection (9.1), may redact those parts of the audio recording that include portions of the hearing from which the individual was excluded.

Rules of evidence

(3) A hearing of a panel of the Board is not subject to the rules of evidence applicable to judicial proceedings.

Informal hearing

- (4) A hearing of a panel of the Board shall be conducted
- (a) in a non-adversarial manner;
 - (b) in as informal and non-legalistic a manner as, in the opinion of the panel, is appropriate in the circumstances;
 - (c) with due regard to the ability of the individual subject to the hearing or their *tikkuaqtaujuq* (selected representative) to understand the proceedings; and
 - (d) in accordance with the requirements of natural justice.

Hearing respecting cancellation of order or certificate

(5) A hearing by a panel respecting the cancellation of an order or certificate issued under this Act must include

- (a) consideration of all reasonably available evidence concerning the individual's history of mental disorder including
 - (i) voluntary or involuntary admission for treatment, and
 - (ii) compliance with treatment plans following voluntary or involuntary admission; and
- (b) an assessment of whether there is a significant risk that the individual, if the order or certificate is cancelled, will as a result of mental disorder fail to follow the treatment plan that a medical practitioner considers necessary to minimize the possibility that the individual will enter involuntary status again.

Power under *Public Inquiries Act*

(6) Sections 4, 5, 8 and 9 of the *Public Inquiries Act* apply to panels of the Board.

Engaging experts

(7) A panel of the Board may engage independent medical, psychiatric or other professional experts that the panel considers necessary or advisable to give evidence or make submissions at a hearing.

Hearing private

(8) Subject to subsection (9), a hearing of a panel of the Board must be held in private.

Exception

(9) A panel of the Board may permit the public to be present during all or part of a hearing if the panel has obtained appropriate consent and is of the opinion that there is no risk of serious harm or injustice to anyone.

Exclusion from hearing

(9.1) A panel of the Board may exclude an individual subject to a hearing before the panel from participating in the proceedings at times when information that may be harmful to the individual or another individual is disclosed or discussed.

Costs

(10) A panel of the Board may order costs in the same manner as the Nunavut Court of Justice if it considers it reasonable to do so.

Considerations for costs

(11) When making an order for costs against an individual, or considering to do so, a panel of the Board shall take into consideration the individual's ability to pay costs and their mental health status.

Timing of decision

- 69.** (1) Subject to subsection (2), a panel of the Board shall render its decision
- (a) in the case of an urgent application, within 48 hours of the application; or
 - (b) in any other case, within 11 days of the application or referral.

Extension

(2) A panel of the Board shall, at the request of the individual with respect to whom the application is made or to whom the review relates, extend the deadlines in subsection (1) as is necessary to ensure that the requirements of natural justice are met.

Delay

(3) A panel of the Board maintains jurisdiction despite a failure to conform to the deadlines under subsections (1) and (2), but in case of such failure, a party to the application or review may apply to the Nunavut Court of Justice for any appropriate order respecting the delay.

Notice of decision

- (4) The chairperson shall, as soon as practicable after a panel makes a decision, notify the parties of
- (a) the decision, including reasons; and
 - (b) the right to appeal under section 70.

Publication of decisions

(5) Subject to subsection (6), the chairperson shall ensure that the decisions of the Board and the reasons for them are posted on an Internet website maintained by or for the Board.

Redaction of decisions

(6) Decisions and reasons posted under subsection (5) or otherwise made available to persons other than the parties must be edited or redacted in a manner such that the individual to whom the decision relates and their home community are not identified or identifiable.

Appeals

70. (1) A party to an application or review may appeal the decision of the Board respecting it to the Nunavut Court of Justice.

Exception

(2) A decision of the chairperson under subsection 67(1) or (2) is not subject to review or appeal by any court.

Procedure

- (3) Despite subsection 84(2) and section 89 of the *Judicature Act*, an appeal under this section
- (a) may not include a motion for a new trial in the Nunavut Court of Justice;
 - (b) does not require an appeal book;
 - (c) is based on the record of the Board provided under subsection (5); and
 - (d) is determined on the basis of reasonableness, except for questions of jurisdiction which are determined on the basis of correctness.

Stay

(4) Unless otherwise ordered by the Nunavut Court of Justice, an appeal under this section

- (a) stays a decision of the Board to
 - (i) cancel an order or certificate under this Act, or otherwise discharge an individual from involuntary status,
 - (ii) treat an individual without appropriate consent, or
 - (iii) disclose information; but
- (b) does not stay any other decision of the Board.

Record

(5) When a decision of the Board is appealed to the Nunavut Court of Justice, the chairperson of the Board shall provide the record of the Board respecting the decision to the Clerk of the Nunavut Court of Justice, including all materials that would be submitted for a judicial review in accordance with the Rules of the Nunavut Court of Justice.

Decision on appeal

- (6) On an appeal under this section, the Nunavut Court of Justice may
- (a) make any finding that, in its opinion, should have been made;
 - (b) quash, confirm or vary the decision or any part of it; or
 - (c) refer the matter back to the Board for further consideration in accordance with any direction of the Court.

Redaction of decisions

(7) Decisions and reasons of the Nunavut Court of Justice under this section that are published or otherwise made available to persons other than the parties must be edited or redacted in a manner such that the individual to whom the decision relates and their home community are not identified or identifiable.

PART 8
RIGHTS ADVOCATES

Appointment of rights advocates

71. (1) The Minister shall appoint rights advocates.

Requirements

- (2) In order to be a rights advocate, a person must
- (a) be knowledgeable about Parts 5 and 6 of this Act;
 - (b) be knowledgeable of the right to apply to the Board;
 - (c) be knowledgeable about Board processes, how to contact the Board and how to make applications to the Board;
 - (d) be knowledgeable about how to obtain legal representation;
 - (e) be knowledgeable about the *Access to Information and Protection of Privacy Act*;
 - (f) be knowledgeable about the *Representative for Children and Youth Act*;

- (g) have the communication skills necessary to perform effectively the functions of a rights advocate under this Act; and
- (h) have successfully completed a training course for rights advocates approved by the Minister.

Official Languages

(3) The Minister shall ensure that the rights advocates, as a group, have the capacity to perform effectively the functions of rights advocates under this Act in all Official Languages.

Knowledge of Official Languages

(4) For greater certainty, an individual rights advocate need not have the capacity to perform effectively the functions of rights advocates under this Act in all Official Languages.

Informing rights advocates

- 72.** (1) A health professional shall notify a rights advocate as soon as practicable after
- (a) placing an individual in involuntary status;
 - (b) issuing the first order with respect to an individual who has been placed in involuntary status by a person other than a health professional; and
 - (c) issuing or renewing a certificate of involuntary admission or community assisted treatment order.

Included information

- (2) A notification under subsection (1) shall include
- (a) the name of the individual;
 - (b) the date on which the action referred to in paragraph (1)(a), (b) or (c) took place;
 - (c) the reason the individual is in involuntary status; and
 - (d) any other information that the health professional has reason to believe the rights advocate will require to accomplish their functions under this Act.

Duty to visit or communicate

- 73.** (1) As soon as practicable after receiving a notification under section 72, a rights advocate shall, for the purpose of providing rights advice under this section,
- (a) if practicable, visit the individual who is subject to the notification and their *tikkuaqtaujuq* (selected representative); or
 - (b) otherwise, communicate with the individual who is subject to the notification and their *tikkuaqtaujuq* (selected representative) by telephone or another means of communication that allows for a simultaneous voice conversation.

Rights advice

- (2) During a visit or communication under subsection (1), the rights advocate shall provide the following rights advice verbally and in writing:
- (a) the authority under which the order or certificate was issued;
 - (b) the reasons for which the order or certificate was issued;
 - (b.1) the right to apply to the Board;

- (c) the function of the Board;
- (d) the contact information of the Board;
- (d.1) the right to retain and instruct a lawyer and the means of accessing a lawyer;
- (e) the relevant rights of the individual under Part 5.

Rights advice – written

(3) If it is impracticable to give the rights advice under subsection (2) in writing during the visit or communication under subsection (1), the rights advocate shall provide it as soon as practicable.

Repeat visits or communications

(4) A rights advocate shall

- (a) make reasonable efforts to ensure that the individual understands the rights advice;
- (b) inform the Director in writing if they are unsure whether the individual understands the rights advice; and
- (c) revisit or recommunicate with the individual to repeat the rights advice, if the rights advocate believes the individual has not been able to understand the rights advice due to their mental state.

Refusal

(5) If the individual subject to the notification refuses the provision of rights advice, the rights advocate

- (a) shall not give rights advice under this section to the individual; but
- (b) shall still give rights advice under this section to their *tikkuaqtaujuq* (selected representative).

Notification

(6) A rights advocate shall inform the Director in writing as soon as practicable after

- (a) providing rights advice to an individual who is subject to a notification under section 72;
- (b) providing rights advice to the *tikkuaqtaujuq* (selected representative) of the individual; and
- (c) a refusal under subsection (5).

General advice and assistance

74. (1) The rights advocate shall, at the request of an individual in involuntary status or their *tikkuaqtaujuq* (selected representative),

- (a) provide advice respecting the rights of the individual in involuntary status;
- (b) provide advice about the processes under Parts 6 and 7; and
- (c) make reasonable efforts to assist in navigating the processes under Parts 6 and 7, including by
 - (i) accompanying the individual in involuntary status,
 - (ii) monitoring a community support plan, and
 - (iii) assist in obtaining legal representation.

Advice and assistance to others

(2) An individual in involuntary status or their *tikkuaqtaujuq* (selected representative) may request that advice or assistance under subsection (1) be given to themselves or to another individual.

General information

(3) A rights advocate may, on request, provide any individual with general information about this Act and related matters.

PART 9
ADMINISTRATION

Minister's duties

75. The Minister shall

- (a) advise the government on matters relating to mental health not dealt with specifically under another Act;
- (b) prepare an annual report within six months of the end of each calendar year respecting the mental health of people in Nunavut and the administration of this Act, including on
 - (i) the Minister's activities under Part 2,
 - (ii) reportable events,
 - (iii) community assisted treatment orders, and
 - (iv) the rights advocates; and
- (c) table the reports referred to in paragraph (b) and subsection 78(1) in the Legislative Assembly during the first sitting of the Assembly after the report is prepared or submitted and that provides a reasonable opportunity for tabling the report.

Appointment of Director of Mental Health and Addictions

76. (1) The Minister shall appoint a Director of Mental Health and Addictions.

Forms

(2) The Director may approve forms for the purposes of this Act.

Statutory Instruments Act

(3) The *Statutory Instruments Act* does not apply to forms approved under subsection (2).

Informing R.C.M.P.

(4) The Director shall inform the Royal Canadian Mounted Police of the resources available to members of the Royal Canadian Mounted Police in each municipality that could assist the members in carrying out their duties as peace officers under this Act, and in particular their duties under subsections 54(1.1) and (1.2).

Mental health rights specialists

77. The Director may, in writing, designate a health professional as a mental health rights specialist for the purposes of this Act if the health professional

- (a) has knowledge of mental health practice; and
- (b) has knowledge of human rights and administrative law related to involuntary mental health services, including sections 7 and 9 of the *Canadian Charter of Rights and Freedoms*.

Chairperson's annual report

78. (1) The chairperson shall, within six months of the end of each calendar year, prepare and submit to the Minister an annual report regarding the operations of the Board.

Meetings of Board

(2) The chairperson shall, at least once per year, call a meeting of the entire Board.

Rules of procedure

(3) The Board may establish rules of procedure respecting the conduct of hearings before its panels.

Statutory Instruments Act

(4) The *Statutory Instruments Act* does not apply to rules made under subsection (3).

PART 10
GENERAL

Observation orders and *Criminal Code* orders

Definition

79. (1) In sections 80 and 81, "designated facility" means a health facility designated under subsection (2).

Designation of facilities

(2) The Minister may, by order, designate health facilities in Nunavut for the custody, treatment and assessment of individuals subject to an order under section 80 or an assessment order, disposition or placement decision under Part XX.1 of the *Criminal Code*.

Application

80. (1) This section does not apply to a young person as defined in the *Young Offenders Act* or the *Youth Criminal Justice Act* (Canada).

Order for observation

(2) If a judge is of the opinion that there is reason to believe that an individual who appears before them, charged with or convicted of an offence, has a mental disorder, the judge may

- (a) order the individual to attend a designated facility or other health facility specified in the order for observation for a period not exceeding 30 days; and
- (b) specify in the order the time within which the individual must be transported to the designated facility or other health facility and any other terms and conditions that the judge considers appropriate.

Evidence for order

- (3) The opinion of the judge under subsection (2) must be supported by
 - (a) the evidence; and
 - (b) if the prosecutor and the accused consent, the written report of a medical practitioner.

Admission

(4) An individual who is ordered under subsection (2) to a designated facility or other health facility for observation must be admitted to the facility as a patient and provided with care and treatment appropriate to the condition of the individual as authorized by this Act and the order.

Rights

- (5) For greater certainty, an individual who is ordered under subsection (2) to a designated facility or other health facility for observation
 - (a) must be given the same care and treatment as they would be given if they were subject to a certificate of involuntary admission; and
 - (b) subject to the order, has the same rights as they would have if they were subject to a certificate of involuntary admission.

Written report

(6) Before the expiration of an order made under subsection (2), the medical practitioner who examines the individual under the order shall provide a written report to the judge on the mental condition of the individual.

No review or appeal

- (7) No review or appeal lies under this Act from an order made under subsection (2).

Criminal Code patients

81. (1) An individual who, under Part XX.1 of the *Criminal Code*, is ordered detained in a designated facility must be admitted to the designated facility as a patient and provided with care and treatment appropriate to the condition of the individual as authorized by this Act and the order.

Rights

(2) For greater certainty, an individual who is ordered detained in a designated facility under subsection (1)

- (a) must be given the same care and treatment as they would be given if they were subject to a certificate of involuntary admission; and
- (b) subject to the *Criminal Code* and the assessment order, disposition or placement decision, has the same rights as they would have if they were subject to a certificate of involuntary admission.

Requirement for examination

(3) An individual who is detained in a designated facility under the authority of an order made under the *Criminal Code*, on a finding that they are unfit to stand trial on account of a mental disorder or not criminally responsible on account of a mental disorder must be, within 72 hours before the expiration of their detention, examined by a medical practitioner to determine whether a certificate of involuntary admission of the individual should be issued.

Effect

(4) A certificate of involuntary admission issued following an examination under subsection (3) comes into effect upon the expiration of the detention of the individual under the *Criminal Code*.

Limitation of liability

Immunity

82. The Minister, the Director, a health professional, a *tikkuaqtaujuq* (selected representative) or any other person or body is not liable for any loss or damage suffered by reason of anything done or not done by them in good faith in carrying out their functions under this Act.

Agreements

Interjurisdictional services agreements

83. (1) The Minister may, on behalf of the Government of Nunavut, enter into agreements with the Government of Canada, the government of a province or another territory or a health facility in a province or other territory

- (a) for the reception, care, observation, examination, assessment, treatment or custody of individuals who have a mental disorder
 - (i) in a health facility in Nunavut, or
 - (ii) in a health facility in a province or another territory; and
- (b) for transfers to or from facilities referred to in paragraph (a).

Information-sharing

(2) An agreement under subsection (1) must have provisions respecting the collection, use, disclosure and exchange of the personal mental health information of individuals who are transferred from Nunavut to a province or another territory, or from a province or another territory to Nunavut, including provisions that

- (a) provide that personal mental health information collected, used, disclosed or exchanged under the agreement may not be further used or disclosed for any purpose other than providing for the effective reception, care, observation, examination, assessment, treatment or custody of individuals who have a mental disorder, unless applicable legislation requires such use or disclosure;
- (b) if the *Archives Act* or an enactment of another Canadian jurisdiction does not provide for the retention and destruction of personal mental health information collected, used, disclosed or exchanged under the agreement, provide for retention and destruction schedules for the information;
- (c) provide that personal mental health information collected, used, disclosed or exchanged under the agreement is confidential; and
- (d) establish mechanisms for maintaining the confidentiality and security of personal mental health information collected, used, disclosed or exchanged under the agreement.

Provision of information

(3) A health professional who transfers an individual from Nunavut under an agreement entered into under this section shall provide information in writing on the manner in which personal mental health information respecting them may be collected, used, disclosed or exchanged under the agreement to

- (a) unless doing so is not in the best interests of the individual, the individual; and
- (b) the *tikkuaqtaujuq* (selected representative) of the individual.

Interpretation

84. (1) In this section,

- (a) "head", "personal information" and "public body" have the same meaning as in the *Access to Information and Protection of Privacy Act*; and
- (b) section 69 of the *Access to Information and Protection of Privacy Act* applies with respect to "head" and the Minister.

Interagency agreements

(2) The Minister may enter into agreements for the purpose of coordinating services and assistance for individuals at risk of suicide with

- (a) heads of public bodies; and
- (b) government institutions as defined in the *Privacy Act* (Canada).

Information-sharing

(3) An agreement under this section may include provisions respecting the collection, use, disclosure and exchange of the personal mental health information, including

- (a) provisions for the collection, use, disclosure and exchange of personal mental health information and other personal information without consent to the extent it is required to provide services or assistance to an individual at imminent risk of suicide as defined in the agreement; and

- (b) provisions for the collection, use, disclosure and exchange of personal mental health information and other personal information with appropriate consent for the purpose of providing services or assistance to an individual who is otherwise at risk of suicide as defined in the agreement.

Required provisions

- (4) An agreement under this section shall
 - (a) provide that personal mental health information collected, used, disclosed or exchanged under the agreement may not be further used or disclosed for any purpose other those referred to in subsection (3), unless applicable legislation requires such use or disclosure;
 - (b) provide that personal mental health information collected, used, disclosed or exchanged under the agreement is confidential; and
 - (c) establish mechanisms for maintaining the confidentiality and security of personal mental health information collected, used, disclosed or exchanged under the agreement.

Offences and penalties

Offence – freeing from involuntary status

85. (1) A person shall not, without a lawful excuse, free an individual who is in involuntary status from lawful custody.

Offence – abuse

(2) Subject to this Act and to other exceptions provided by law, a person involved in the care, observation, examination, assessment, treatment or custody of an individual under this Act shall not subject the individual to any act that

- (a) physically, mentally or emotionally injures or damages the individual;
- (b) causes undue discomfort to the individual; or
- (c) takes unfair advantage of the individual.

Offence – false information

(3) A person shall not knowingly provide false information to a person or body carrying out functions under this Act.

Offence – orders

(4) A person shall not knowingly fail to comply with an order of the Board or the Nunavut Court of Justice under this Act, other than an order for costs.

Offence – false imprisonment

- (5) A person shall not, unless authorized by law,
 - (a) fail to discharge an individual who exits involuntary status under this Act; or
 - (b) otherwise maintain involuntary custody of an individual who exits involuntary status under this Act.

Punishment

(6) A person who contravenes the following provisions is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000, to imprisonment for a term of not more than six months, or to both a fine and imprisonment:

- (a) subsections 7(1) and 8(3) (reporting requirements);
- (b) subsections 10(1) and 13(4) (collection, access, use or disclosure);
- (c) section 26 (treatment requiring specific consent or approval);
- (d) section 56 (treatment without consent);
- (e) this section.

Limitation period

(7) A prosecution for an offence under this Act may not be commenced more than two years after the time when the act or omission occurred.

PART 11 REGULATIONS

Regulations

86. (1) The Minister may make regulations

- (a) prescribing classes of persons as health professionals for the purposes of this Act;
- (b) respecting health professionals;
- (c) prescribing health facilities in Nunavut for the purposes of this Act;
- (d) respecting the selection of a *tikkuaqtaujuq* (selected representative) under paragraph 3(1)(c);
- (e) respecting reportable events, including
 - (i) who must report them, and
 - (ii) the contents of reports;
- (e.1) prescribing persons and classes of persons for the purposes of paragraph 8(6)(i);
- (f) respecting suicide attempts, including their definition;
- (g) respecting the information which must be provided under paragraph 17(1)(g);
- (h) respecting the right to return under subsection 27(1);
- (i) respecting communications under section 31;
- (j) defining non-governmental organizations and community agencies for the purposes of paragraph 31(2)(b);
- (k) respecting visitation hours and means of communications under subsection 31(3);
- (l) respecting the rights information to be provided under subsection 32(1);
- (m) respecting the written reasons to be provided under subsection 38(5);
- (n) respecting the duty to document under section 57;
- (o) respecting the content and form of orders and certificates under this Act; and
- (p) respecting matters that may be subject to an application to the Board.

Restriction

(2) A class of persons may only be prescribed under paragraph (1)(a) if that class of persons is authorized by law to perform the functions assigned to health professionals under this Act.

Power to differentiate

- (3) Regulations made under this Act may
- (a) be general or particular in application;
 - (b) be different for different classes or subclasses; and
 - (c) establish classes for the purposes of paragraph (b).

PART 12
FINAL PROVISIONS

Transitional

Definition

87. (1) In this section, "former Act and regulations" means the *Mental Health Act*, R.S.N.W.T. 1988,c.M-10, and the *Mental Health Regulations*, N.W.T.Reg. R-018-92, as they read immediately prior to their repeal by this Act.

Continuation of orders and certificates

- (2) An individual who was subject to an order or certificate made or issued under the former Act and regulations immediately prior to their repeal remains subject to the former Act and regulations as if they had not been repealed until the earlier of
- (a) the day they are no longer subject to any order or certificate made or issued under the former Act, including under the authority of this section;
 - (b) the day they become subject to an order or certificate issued under this Act; or
 - (b) 60 days after the repeal of the former Act and regulations.

Power, duty and immunity

(3) A person, court or other body that had a power, duty or immunity under the former Act and regulations continues to have that power, duty or immunity with respect to an individual referred to in subsection (2) for as long as the individual remains subject to the former Act and regulations under that subsection, as if the former Act and regulations had not been repealed.

Transitioning individual to this Act

- (4) Despite any provision of the former Act and regulations that remain in force with respect to an individual referred to in subsection (2),
- (a) a person authorized to issue an order or certificate under this Act may do so at any time they would otherwise be authorized to under this Act; and
 - (b) a medical practitioner is authorized to conduct a psychiatric assessment of the individual at any time that they are subject to the former Act and regulations, for the purpose of determining whether a certificate of

involuntary admission or a community assisted treatment order should be issued under this Act.

Repeal

(5) This section is repealed on the day that is 61 days after the repeal of the former Act and regulations.

Agreements – section 83

88. (1) An agreement existing on the coming into force of this section that complies with the requirements of section 83 is deemed to have been made under that section.

Agreements – section 84

(2) The agreement entitled "Interagency Information Sharing Protocol: A collaborative arrangement created to better identify and assist individual at risk of suicide", as it reads on the day this section comes into force, is deemed, for the purposes of this Act, to be an agreement under section 84 and may be amended or replaced in accordance with that section.

Related amendments

89. Section 1 of the the *Hospital Insurance and Health and Social Services Administration Act* is amended

(a) **by repealing and replacing the definition of "health facility" by:**

"health facility" means any of the following owned or funded by the Government of Nunavut:

- (a) a hospital,
- (b) a health centre,
- (c) an alcohol or other drug treatment facility or service,
- (d) a mental health facility or service,
- (e) any other health program or service; (*établissement de santé*)

(b) **in the definition of "social services facility", deleting "alcohol and other drug treatment service, mental health service,".**

Consequential amendments

90. Subparagraph 106(1)(c)(i) of the *Business Corporations Act* is repealed and replaced by:

- (i) who is named in a certificate of incompetence issued under the *Mental Health Act*;

91. Paragraph (b) of the definition of "mentally incompetent person" in section 1 of the *Devolution of Real Property Act* is repealed and replaced by:

- (b) a person who is named in a certificate of incompetence issued under the *Mental Health Act*;

92. Paragraph (b) of the definition of "person under a legal disability" in section 1 of the *Land Titles Act* is repealed and replaced by:

- (b) a person who is
 - (i) named in a certificate of incompetence issued under the *Mental Health Act*, or
 - (ii) declared to be mentally incompetent by the Nunavut Court of Justice,

93. Paragraph 74(2)(c) of the *Property Assessment and Taxation Act* is amended by replacing "hospital" with "health facility".

Coordinating amendments

94. On the coming into force of section 3 of the *Medical Profession Act*, introduced as Bill 35 in the Second Session of the Fifth Legislative Assembly, or if it is in force, on Assent, the definition of "psychiatrist" in subsection 2(1) is amended by replacing "Part Two of the Medical Register" with "the Specialist Register".

Repeals

95. The *Mental Health Act*, R.S.N.W.T. 1988,c.M-10, the *Mental Health Regulations*, N.W.T.Reg. R-018-92, and the *Hospitals Designation Order*, R.R.N.W.T. 1990,c.M-6, are repealed.

Commencement

96. (1) Subject to this section, this Act comes into force on a day to be fixed by order of the Commissioner.

(2) Paragraph 7(1)(d) and section 17 may not come into force before initial regulations under paragraph 86(1)(f) are made.