

Consent for Admission to a Care Facility in BC

This information is about **adults** (19 years or older). It provides an overview of the legislation that came into effect on November 4, 2019 (put forward by the BC Ministry of Health) to set out requirements for admission to certain types of care facilities located and operating in **BC**.

Consent to admission to a care facility is one decision under authority for personal care. These procedures only apply to authority about consent to care facility admission. These do not apply to legal authority for finances, health care matters, or to other personal care matters.

What law is involved?

The key legislation is [Part 3 of the BC Health Care Consent and Care Facility Admission Act \(HCC&CFA Act\)](#).

The [Health Care Consent Regulation](#) expands on aspects of the HCC&CFA Act. Updates were also made to the [Residential Care Regulation](#) (for licensed community facilities under the [Community Care and Assisted Living Act](#)) and to the [Patients' Bill of Rights Regulation](#) (for licensed facilities under the [Hospital Act, Part 2](#)).

This fact sheet uses the term adult; the legislation uses the term 'person in care.'

What types of care facilities are affected?

The types of care facilities affected by the new legislation for admission are defined in [Part 1 of the HCC&CFA Act](#). The care facility may be operated by a health authority (public) or by a private agency—for profit or non-profit.

Government and others discourage use of the term 'residential care' to be sensitive to indigenous communities and the negative experiences of residential schools. However, it is difficult to come up with a different term that describes the institutional nature of the current system and its medical model approach.

Examples of care facilities that ARE included:

- Long term residential care for chronic and progressive conditions (like dementia).
- Extended care (under Hospital Act).
- Facility for rehabilitation (convalescing) purposes.
- Respite (short term residential care as a break for carers).
- Hospice (residential care at end-of-life and short term palliative services for persons in care).
- Residential care services for mental illness and for substance abuse.

Examples of residential services NOT included:

- Service providers under the Community Living Authority Act (group homes, home share providers, community living agencies).
- Assisted Living Residences.
- Hospitals providing acute care services.
- Designated services under the Mental Health Act—such as a Psychiatric Unit or Observation Unit in a hospital or mental health facility like Riverview.

Although the legislation under Part 3 of the HCC&CFA Act does not apply to admission for some types of facilities or living arrangements such as listed above, it does not mean that consent is not required. Rather, consent may be governed by different legislation or policies.

Consent for admission is NOT required:

- In an emergency for care facilities covered under Part 3 of the HCC&CFA Act if the adult's life is in danger. The law makes clear this is a temporary measure only.
- If someone is involuntarily committed under the BC Mental Health Act. In this case, the person is 'deemed' to give consent to treatment related to their mental disorder and placement (in a mental health facility).

When does consent for admission happen?

For facilities affected by Part 3 of the HCC&CFA Act, consent must be obtained BEFORE admission.

1. An application is made (see top of next page), and
2. Information is provided by the care facility about its services (see next page), and
3. The **manager** of the care facility must obtain consent according to requirements set out in the legislation.

A manager is defined as an individual who is responsible for the operation of the care facility and/or admissions to the care facility. [HCC&CFA Act, section 1] Some care facilities may not use this term. Ask who is responsible for admissions.

Following are links to the BC government website for more information on some of the care options it provides through health authorities:

[Choice in Supports for Independent Living \(CSIL\)](#)
[Home and Community Care — Policy Manual](#)
[Long-Term Care Services](#)
[Residential Care Facilities](#)

Who may apply for admission?

The adult may apply. Anyone else may apply for the adult's admission, but only certain people are allowed to consent on behalf of the adult.

If someone other than the adult applies, section 20(2) of the HCC&CFA Act says they must have reason to believe:

1. The care facility would fit the needs of the adult; and
2. The adult is incapable of giving or refusing consent for admission.

Is there a specific application form to use?

The care facility or the health authority where the facility is located will provide an application form.

What information must be provided?

Section 21(1)(d) of the HCC&CFA Act outlines the information that must be given to applicants:

- The care that will be provided to the adult by the facility;
- The services that will be available to the adult if admitted; and
- The circumstances when an adult may leave (more on this topic later).

Applicants can also ask questions. Get terms in writing, including fees.

If the adult is not capable to arrange bill payment, someone will need legal authority to do this on behalf of the adult. Read [Authority for Finances](#).

Who can consent to care facility admission?

1. If a judge of the Supreme Court of BC has determined the adult is incompetent and issued a court order to appoint someone to be the adult's committee of person (guardian), then the manager must get consent from the committee (pronounce kaw-mi-tay). The manager needs to check the court order for any conditions or restrictions. In BC, adult guardianship is often called [Committeeship](#).
2. If there is no committee of person and the manager believes the adult is capable to understand, the adult decides about admission.
 - If the manager is not sure whether the adult is capable to understand, the manager must refer the adult to a qualified assessor.
 - If the assessor determines the adult is capable, the adult decides.
 - If the assessor determines the adult is incapable to decide, the manager must select someone from a list in the law to be a 'substitute decision maker' and to consent on the adult's behalf. See p.3.

What else is important about consent?

The manager has a legal duty to ensure an adult who gives consent does it voluntarily. The adult must be given information a reasonable person would need in order to understand what it means to give consent for admission.

Who can be a qualified assessor?

Only the manager can refer an adult for assessment about the adult's capability to consent.

An assessment can only be done by specific health professionals and only at the request of the manager, see list below. Only one assessor/assessment is required.

- A physician (also called a medical practitioner).
- Registrants of the BC College of Nurses and Midwives if a registered nurse, or a nurse practitioner or a registered psychiatric nurse according to the relevant Regulations under the Health Professions Act.
- Registrants of the BC College of Social Workers.
- Registrants of the College of Occupational Therapists of BC.
- Registrants of the College of Psychologists of BC.

What is involved in an assessment?

The HCC&CFA Act section 26 says that an assessment must be done in the following way:

1. According to the regulations (see next heading); and
2. Based on whether the adult demonstrates an **understanding** of the information provided by the manager about the care facility.
3. The assessor **MUST** communicate with the adult in a way that is appropriate to the adult's skills and abilities. The manager **MAY** allow the adult's spouse, relatives, and friends (who accompany the adult and who offer) to assist the adult to understand/demonstrate understanding and therefore decide.

What does the law say about how an assessment for consent to admission is done?

The [Health Care Consent Regulation](#) outlines procedures in sections 16 to 22.

- Section 16 identifies who is qualified to do an assessment (see list above).
- Section 17 requires an assessor to make sure the adult being assessed has been told the purpose of the assessment and what happens if they are assessed as incapable (see next heading).
- Section 18 says an assessor may allow another person to be present if requested by the adult or if necessary to assist with communication.

- However, the assessor can forbid the presence of another person at some or all of the assessment, even if requested by the adult, if, in the opinion of the assessor, the presence of the other person would create problems.
- Section 19 says that at some point during an assessment, the assessor must review all available and relevant medical information.
 - Sometimes a physical problem or medical condition might affect an adult's cognitive ability to understand.
- Section 20 says that an assessment may be done without the adult being present if:
 - The adult refuses to participate, or
 - The adult is not reasonably able to take part. The assessor can collect information from other sources and observation if they believe the assessment can be done accurately this way.
- Section 21 says, whether or not an adult is present for the assessment, an assessor can consult with and collect information from other persons if it is helpful and relevant to the assessment.
 - An assessor MAY collect relevant information from professionals who provided social or health care services to the adult and from the adult's spouse, near relatives, and close friends.
- Section 22 says that when an assessment is completed, the assessor must produce a report that includes:
 - Details of factors considered in determining the adult's capability or incapability; and
 - The assessor's conclusions, and
 - A summary of any information that was gathered from other sources, as allowed under sections 20 or 21.

A copy of the report is given to:

1. The manager who requested the assessment; and
2. The manager of the care facility to which the adult may be admitted, if different from the manager who requested the assessment; and
3. The adult, unless the assessor believes doing so would cause serious physical or mental harm to the adult or significant loss or damage to the adult's property. (In law, property is broadly defined and includes things the adult owns such as money in a bank account, investments, real estate, vehicles, and personal effects.); and
4. The person who makes the decision on behalf of the adult (if the adult is determined incapable to decide).

If the adult is determined incapable, who can consent for admission on the adult's behalf?

If there is no committee of person and the adult is assessed to be incapable, the HCC&CFA Act section 22(2) provides a list of individuals the manager may select from to decide about admission (be the adult's substitute decision maker).

The list must be followed in a specific order. Anyone on list must meet qualifications (see below).

1. Representative named in the adult's Representation Agreement section 9 (RA9).
2. Adult's spouse (legally married or living in a marriage-like-relationship/common law).*
3. One of the adult's children.
4. A parent of the adult.
5. One of the adult's siblings.
6. A grandparent of the adult.
7. A grandchild of the adult.
8. Any other relative of the adult by birth or adoption.
9. A close friend of the adult.
10. An in-law who is most immediately related to the adult by marriage.
11. A staff of the Public Guardian and Trustee of BC.

* *For care facility admission, there is no time period that common-law spouses have to be together. The definition of spouse also does not include the term co-habiting.*

Qualifications that must be met in order to be selected to decide on adult's behalf: [HCC&CFA sections 22&23]

- Not be the manager of the facility to which the adult is being admitted; and
- Be 19 years of age or older; and
- Have been in contact with adult in the preceding 12 months; and
- Have no dispute with the adult; and
- Be capable of giving or refusing consent to admission to a care facility; and
- Be willing to comply with their duties, which are:
 - Make a reasonable effort to consult with the adult and with any spouse, friend or relative of the adult who asks to assist, and
 - Make a decision in the adult's best interests by considering:
 - » The adult's current wishes, pre-expressed wishes, known values and beliefs; and
 - » Whether the adult could benefit from admission to the care facility; and
 - » Whether an alternative is available and appropriate. Is there an alternative type of facility or other arrangement that is less intrusive or restrictive that could meet the adult's needs?

Although there is a legal requirement for the substitute to consider the adult's current or pre-expressed wishes and values about admission to a care facility, there is no requirement to comply with the adult's wishes.

Right to information—the person selected as substitute has the right to access information and documents about the adult (that the adult is entitled to). Their access must be related to the decision about the adult's admission.

What if there is a disagreement about who is selected to consent on behalf of an adult?

If there is a dispute about who should be selected to decide about admission on behalf of an adult, the manager may contact the Public Guardian and Trustee (a government official) who can authorize someone on the list or refer the decision to PGT staff.

What about leaving the facility?

In section 25 of the HCC&CFA Act, leaving or being discharged from a facility is called consent for continued residence. In section 50.1 of the Residential Care Regulation under the Community Care and Assisted Living Act it is called continued accommodation.

The response to leaving, depends on who is making the request.

REQUEST BY COMMITTEE

If there is a court order authorizing someone as committee of person over the adult, the manager must not prevent the adult from leaving.

REQUEST BY ADULT (NO COMMITTEE)

- If the manager believes the adult is capable to decide, the manager must not prevent the adult from leaving; OR
- If the manager has doubts about the adult's capability to decide, the manager must refer the adult to a qualified assessor.
 - If the assessor finds the adult capable, the manager must not prevent adult from leaving.
 - If the assessor finds the adult incapable, the same procedures are followed by the manager for identifying and qualifying someone to decide about continued residence/accommodation on the adult's behalf. If the person who is then selected to consent on the adult's behalf expresses a desire for the adult to leave the facility, the manager must not prevent this. [HCC&CFA Act section 25(1)(b)]

REQUEST BY ADULT'S SUBSTITUTE

If the person who gave consent to admission on behalf of the adult expresses a desire for the adult to leave the facility, the manager must refer the adult to a qualified assessor. See sub-bullets under previous explanation of assessment outcomes for request by adult.

There are limits on the number of times re-assessments can be requested of licensed facilities. The first time, it can be done 30 days or more after the adult was admitted; additional reassessments are done 90 days or more after consent was given for continued accommodation.

TIP: *The health authority where the facility is located may become involved in any discussions about an adult leaving a care facility. Their concern is to protect the adult. Be prepared to show that appropriate and sufficient care will be provided if an adult is being transferred to another facility or discharged to live at home.*

The initial stage of consenting to admission is critical. Unless the adult regains abilities, it will be difficult for the adult and others to argue in favour of leaving the care facility for a living situation that provides 'lower' levels of care. Take the time to research or develop alternatives and less intrusive approaches early on – plan ahead! Check out community-based options like [Abbeyfield](#) and [L'Arche](#).

Make a Representation Agreement. A representative can assist with researching care options and has authority to consent on behalf of an adult for in-home services and supports such as through the CSIL program ([link on p. 1](#)).

Information and Resources from Nidus

Health care consent is not discussed here but is very important. Learn about your rights.

Information, stories, videos at nidus.ca

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