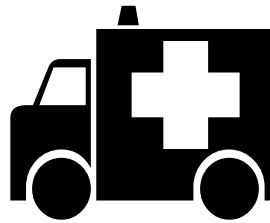


What are my **Health Care** Rights?



- Are you under 18?
- Do you want to get medical help in private?
- Are you anxious or suicidal?
- Does someone else want to force you to get treatment against your will?

Guide to Health and Mental Health Law in Ontario



*This pamphlet is intended for young people under 18 living in Ontario.
Its purpose is to give general information about health and mental health rights.
Speak to a lawyer or legal worker about specific questions.
The information was accurate as of September 2007.*

Some words you should know before reading on:

Health practitioner: a person licensed to provide health care. For example: doctors, nurses, dentists, psychologists and psychiatrists.

Treatment: any procedure performed or prescribed by a health practitioner used to diagnose or treat a physical or mental health condition.

Incapable: someone (usually a health practitioner) has decided that you are not able to understand the possible risks and results of a decision about treatment.

Substitute decision-maker: a person who makes your treatment decisions for you when you have been found incapable.

What is OHIP?

OHIP is the Ontario Health Insurance Plan (OHIP). This plan covers a wide range of medical expenses for residents of Ontario.

To qualify for an OHIP card you must be:
living in Ontario; and
a citizen, landed immigration, or refugee; or have status
under the *Indian Act*.

For newcomers to Ontario, there is normally a 3-month waiting period from the time of arrival (there are some exceptions).

Where can I get more information about OHIP?

For more information:

go to your nearest Ministry of Health office;
call the Ministry of Health INFOline at 416-314-5518 (in Toronto) or 1-800-268-1154 (toll-free in Ontario); or
visit the Ministry of Health website at: www.health.gov.on.ca

What is the Federal Interim Health Program?

The *Federal Interim Health* program provides essential health care services for refugee claimants, Convention refugees and humanitarian claimants.

For more information, visit the Citizenship and Immigration website at:
<http://www.cic.gc.ca/english/refugees/outside/resettle-assist.asp>

Do I need permission from my parents to seek help from a health practitioner?

It depends. You can make your own decisions about your health care as long as you understand the information you are given and the implications (possible results and risks) of your decision. If you can read and understand this pamphlet, you can probably understand the implications of your decisions and therefore, don't need anyone's permission.

Age does play a role. A lot depends on your ability to make decisions and how complex the treatment is. For example, a doctor may decide that you are able to make decisions about whether to take drug medication, but that you are not able to make decisions about whether to undergo surgery. Or a dentist may decide that you are able to make decisions about having a cavity in your tooth filled, but not able to decide whether to have a tooth removed.

Unless the health practitioner decides that you are incapable, you can make decisions without your parents' consent.

If you are in the care of a Children's Aid Society, you do not need permission to see a counsellor if you are 12 or older.

Will my parents find out what I've said to my health practitioner?

No, not without your consent or unless it's been decided that you are incapable. You are the client and your health practitioner should not be giving out any information about you to anyone, including your parents.

If your health practitioner does want to tell anyone the things you have said to them, they should have you sign a "consent" form that states exactly what information you are agreeing to share and who they are allowed to share it with.

It's a good idea to check with health practitioners first to make sure that they will respect your rights and not tell your parents (or anyone else) about the things you say to them.

If you are in the care of a Children's Aid Society, your health care provider cannot tell your foster parent, worker or anyone else about the things you talk about if you are 12 or older.

Exceptions:

- All professionals who work with children are required by law to report all reasonable suspicions that a child is in need of protection. For example, if you are under 16 and share that you have been abused, neglected or poorly treated, the counsellor must call Children's Aid.
- If you say you are going to harm someone else, they may have to tell the police.

Can I see what my health practitioner writes down about me?

Yes. You have the right to see the notes and reports made about you, which is often called a “clinical record,” as long as you have not been found incapable and/or it is not bad for you to see it

You should write a letter to request an appointment to review your clinical record or to request a copy of your clinical record. Ask a doctor, nurse or other worker in the office or hospital you went to, who you should write your letter to. You may be charged a small fee for photocopies.

Can other people see my clinical record?

No, not unless you have given your permission. To give permission, you may have to sign a “consent to release information” form – read it carefully to make sure you agree with everything before you sign it.

Exceptions:

- If your chart includes a reasonable suspicion that you have been abused and you are under 16, the suspicion **MUST** be reported to the Children’s Aid Society.
- If a decision has been made that you are incapable, your chart can be seen by your substitute decision maker (which could be your parent).

I’m not sure whether I should consent to a certain treatment. What should I do?

Your consent must be voluntary and informed. This means that you must understand the implications of what you are agreeing to, and any questions that you ask about the treatment should be answered in a way that you understand. Your health practitioner should explain to you:

- what the treatment is and what it’s for;
- how they expect it to help you;
- the possible risks and side effects;
- alternatives to the treatment they are proposing; and
- the likely consequences of not having treatment.

If you are unsure, ask lots of questions.

Can I refuse treatment?

Yes, you are allowed to refuse treatment as long as you understand what your refusal means.

If the planners of your treatment feel that you do not have the capacity to understand the treatment decision, they can decide that you are incapable and seek consent from your substitute decision-maker (which could be your parent). If someone decides that you are incapable, you can appeal the decision to the Consent and Capacity Board. Talk to a lawyer to find out more information about this process.

I consented to treatment, but now I’ve changed my mind. What can I do?

You can withdraw your consent at any time as long as you have not been found incapable. Tell your health practitioner that you don’t want the treatment anymore. You may also want to write a short letter saying this – make sure you sign it, date it and keep a copy for yourself.

How does someone decide if I am “incapable”?

They will look at a number of things, including whether you are able to understand:

- the nature of the illness for which treatment is being suggested;
- the treatment that’s being suggested?; and
- what will happen to you if you give or refuse consent.

For example, if you are diabetic, do you understand what will happen if you do not take insulin?

If I am found to be incapable, who makes decisions about my treatment?

If you are found incapable, the doctor cannot just go ahead and make treatment decisions for you. Treatment decisions will be made by your substitute decision-maker. Substitute decision-makers must be at least 16 years old (unless they are the parents of the patient).

If you are under 16, your substitute decision-maker will be your parent.

If you are 16 or older, it will be one of the following in descending ranking (which means that if there is no one who fits the description in #1, it will be #2, etc.):

1. your court-appointed guardian of the person
2. your attorney for personal care (** more details below **)
3. a representative appointed for you by the Consent and Capacity Board
4. your spouse or common-law partner
5. your parent
6. Children’s Aid or another person standing in the place of your parent
7. your parent who has access rights only
8. your brother or sister (must be at least 16)
9. any other relative
10. the Public Guardian and Trustee (if there is no one else)

**** Attorney for Personal Care:** if you are 16 or older and capable, you can choose someone to make health decisions for you if you later found to be incapable (unable to make your own decision). It is a good idea to arrange this ahead of time if you are concerned that you may be found incapable at some point in the future (or if you have been found incapable in the past). By having a guardian of the person or an attorney for personal care, you can choose someone that you trust and who will respect your wishes.

To give someone this power, you need a written document that states who should make your health decisions if you are ever found incapable and may state which treatment(s) you consent to and which ones you want to refuse. It is especially important to do this if you do not want certain treatments.

Most people do not have a court-appointed guardian of the person or an attorney for personal care. Talk to a lawyer for more information about what these are.

How will my substitute decision-maker make decisions about my treatment?

If you are 16 or older, your substitute decision-maker must consider any wishes that you have expressed while you were capable. Otherwise, they must act in your best interests. The law sets out how to determine these (for example, they must consider your values and beliefs). So you should talk to people who may end up as your substitute decision-maker about your treatment beliefs and wishes in case you are later found to be incapable.

What is a “psychiatric facility”?

A psychiatric facility is a place for the observation, care and treatment of people suffering from a mental health issue. The facility can be a separate hospital or a psychiatric ward of a general hospital.

Note: Secure treatment programs are different - see below for information on secure treatment programs.

I want to go to a psychiatric facility because I’m feeling suicidal or really need help right away – how do I do this?

Unless you have been found to be incapable, you can make the decision to go to a hospital on your own. However, the hospital does not have to take you unless they agree you need their help.

Can I be put in a psychiatric facility if I don’t want to go?

Maybe. No matter how old you are, if someone (for example, a parent, friend, relative, police officer, doctor or teacher) thinks that one or more of the following situations is happening, you may be put in a psychiatric facility:

- you have harmed yourself or someone else, or you have threatened to cause harm to yourself or another person; or
- you have shown or are showing an inability to take care of yourself (for example, walking outside in shorts during a snowstorm, not eating, or walking in traffic).

You could also be admitted to a hospital if you have been found incapable and in the past you have received helpful treatment for a similar mental health issue which, if not treated this time, will likely lead to either you causing serious harm to yourself or someone else, or you getting worse.

If you are kept in hospital against your will for any of these reasons, you are considered to be an involuntary patient.

If I don’t want to be there, how long can I be kept in hospital?

It depends. Doctors can sign different “Forms” that allow them to keep you in hospital:

- If a doctor signs a Form 1, you can be kept in hospital for up to 72 hours so that the hospital can assess your condition. The doctor may then decide that you can leave.
- If the doctor thinks you should not leave and you are not willing to stay, a doctor can sign a Form 3 (called a Certificate of Involuntary Admission) which allows them to keep you in hospital for up to 2 more weeks.
- After that, you can be kept in hospital if your doctor signs a Form 4 (called a Certificate of Renewal). The first time a Form 4 is signed, you can be kept up to 1 month. The second time, you can be kept up to 2 more months. The third time, you can be kept up to 3 more months. After that, every Form 4 means you can be kept in the hospital for up to 3 more months.

Most people are only kept in a hospital for a few days or weeks. Some people with serious conditions may be kept in hospital for months or even years.

Can I appeal the decision to keep me in a psychiatric facility?

Yes. Except for a Form 1 (which you cannot appeal), you can apply to the Consent and Capacity Board each time a Form 3 or 4 is signed.

How do I appeal?

A Rights Advisor must visit you each time a Form is signed to see whether you want to appeal.

Even if you decide not to appeal when the Rights Advisor visits you, you can change your mind later. Ask to see the Rights Advisor again and they will help you fill out the form.

The Rights Advisor can also help you fill out an application for Legal Aid so that you can have a lawyer help you with your appeal. If you are under 16 and go to the hearing without a lawyer, the Board may ask the Office of the Children's Lawyer to appoint a lawyer to represent you.

When can I leave the facility?

If you are an "involuntary patient" you must stay in the hospital until:

- your doctor gives you permission to leave; or
- the Consent and Capacity Board decides that you cannot be kept there; or
- you are no longer an involuntary patient (if your Form expires without a new one being signed, you are considered a "voluntary patient" and the hospital can not force you to stay).

My parents want to put me in a psychiatric facility, but I don't want to go. Can they do this?

If you are under 16 and you have been found incapable, your parent(s) or other substitute decision maker can agree to you being admitted to a psychiatric facility so that you can get treatment. However, you cannot be forced to stay.

If you are 16 and over, you have been found incapable, and you don't want to be admitted to a psychiatric facility, your parents cannot agree to your admission to hospital unless they are:

- your court-appointed guardian of the person,
- if they have the appropriate power; or
- your attorney for personal care (see page 6).

Someone else has consented to my admission to a psychiatric facility because I am incapable – can I appeal?

If you are under 12, no.

If you are between 12 and 15, sort of. You can not appeal the decision made by someone else to admit you to a psychiatric facility. But you can apply to the Consent and Capacity Board to determine whether you need "observation, care and treatment in a psychiatric facility." You can make this application as soon as you arrive at the psychiatric facility. You can also apply every 3 months. A hearing will be held automatically every 6 months if you do not apply. You can have a lawyer at the hearing.

The Consent and Capacity Board will consider your views and wishes when they are deciding whether you need "observation, care and treatment in a psychiatric facility." It is important to tell the people close to you

what your wishes are, especially if you do not want to be in a psychiatric facility. The Board can decide that you should be allowed to leave the psychiatric facility or they can decide that you should stay.

If you are 16 or older, yes. You can apply to the Consent and Capacity Board to challenge someone else's decision to admit you to the hospital for treatment.

What is "secure treatment"?

A secure treatment program is different than being in a psychiatric facility. These programs are for treating people under the age of 19 who have mental health issues.

Everyone in secure treatment should be under 19 years old, but in a psychiatric facility young people often stay there with adults. Placements in secure treatment have to be ordered by a court (unless it's an emergency). A court order for placement in secure treatment may last longer than being in a psychiatric facility and it may be harder to see your "chart" or "clinical record" if you're in secure treatment.

Currently, there are only 3 secure treatment facilities in Ontario:

- Toronto: Youthdale (emergencies only - up to 30 days)
- Oakville: Syl Apps
- Ottawa: Robert Smart Centre

I want to be in a secure treatment program – what should I do?

You can apply for a secure treatment program for yourself if you are 16 or 17. To make this application, speak to a lawyer.

My parents, guardians or Children's Aid wants to put me in secure treatment - can they do this?

It depends.

If you are under 12, the Minister of Community and Social Services has to give permission before a court can order that you be put in secure treatment.

If you are between 12 and 15, your parents, guardians or Children's Aid can ask the court to order that you be put in secure treatment. You have the right to have a lawyer tell the court what you want.

If you are 16 or 17, your parents, guardians or Children's Aid can apply to the court for an order only if you agree. Your doctor can apply to the court without your consent. You have the right to have a lawyer tell the court what you want.

If it is an emergency, the same rules apply, but the administrator of the secure treatment facility must consent instead of the court.

How will the court decide if I should be put in secure treatment?

A hearing will be held to decide whether you should be in secure treatment. If you are between 12 and 17, you can have a lawyer there to help you. If you go to the hearing without a lawyer, one will be appointed for you.

The court will consider whether:

- you have a mental health problem, and
- in the last 45 days, you have harmed or tried to harm yourself or someone else, and
- within the last year, you have also threatened to harm, tried to harm or actually harmed yourself or someone else, and
- the secure treatment program would be effective in preventing you from harming yourself or others, and
- the right treatment is available at the facility, and
- there is no less restrictive way of providing the treatment.

The test for an emergency short-term admission (up to 30 days) is almost the same except that there only needs to be one example of threatened or actual harm.

How long will I be kept in secure treatment?

The court can order that you stay there for up to 180 days (6 months). Then another application can be made to extend the time period for up to another 180 days. If you turn 18 while in secure care, they can keep you there until the time period expires.

! The administrator may release you before the order is completed if they believe you no longer require a secure treatment program.

I'm in secure treatment but I don't want to be – is there anything I can do?

Yes. If you are 12 years old or older, you can make an application for a “review.”

① Talk to someone at the Advocacy Office (416-325-5669) or a lawyer for help.

What should I do if my health practitioner did something that I think is wrong?

- For doctors, contact the College of Physicians and Surgeons:
(416) 967-2615 or 1-800-268-7096 Ext. 615
- For other health care professionals, check
http://www.health.gov.on.ca/english/providers/providers_mn.html
- See if the hospital or medical clinic has a complaints process.
- Speak with a lawyer at Justice For Children and Youth (416) 920-1633 or 1-866-999-5329
- Or call Lawyer Referral Service: 1-800-268-8326 (free for youth under 18) – for a referral to a lawyer who will provide 30 minutes of free advice.

Other Resources:

Kids Help Phone

416-973-4444 / 1-800-668-6868

Provides support and information for youth.

Toronto 211

Inside the 416 / 647 area codes, just dial 211

For information about community, government, social and health issues in Toronto.

www.211Toronto.ca

Outside of Toronto dial 416-397-4636 or visit www.211Ontario.ca

Psychiatric Patient Advocates Office

416-327-7000 or 1-800-578-2343

www.ppao.gov.on.ca

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JUSTICE FOR CHILDREN AND YOUTH

415 Yonge Street, Suite 1203

Toronto, Ontario M5B 2E7

GTA: (416) 920-1633

Elsewhere in Ontario: 1-866-999-JFCY (5329)

www.jfcy.org