

# **CARE FACILITY ADMISSION AND THE ROLE OF THE PUBLIC GUARDIAN AND TRUSTEE**

**Information for assessors and managers  
interacting with the PGT as well as adults  
for whom the PGT acts as substitute  
decision maker**



**PUBLIC GUARDIAN  
AND TRUSTEE OF  
BRITISH COLUMBIA**

## Care Facility Admission and the Role of the PGT

This brochure explains the care facility admission provisions of the *Health Care (Consent) and Care Facility (Admission) Act* and related regulation and outlines Ministry of Health policies. It also explains the role of the Public Guardian and Trustee (PGT) as substitute decision maker. It is intended for assessors and managers interacting with the PGT as well as adults for whom the PGT acts as substitute decision maker.

### THE GENERAL RULE:

Adults can only be admitted to a licensed care facility with their informed consent. If they are found to be incapable of making the decision, informed consent must be obtained from their substitute decision maker.

## What Adults, Families and Health/Social Service Providers Need to Know About the Law

### Applying for care facility admission

An adult or someone acting on their behalf if the adult is incapable may apply for care facility admission from a manager working for a regional health authority or a manager who is responsible for operating a private care facility.

Under the provincial [Long Term Care Access Guidelines \(Chapter 6D\)](#), adults or someone acting on their behalf can choose up to three (and in some cases more) preferred publically subsidized long term care homes or an interim care home when the adult can no longer be safely supported in the community.

### What types of facilities are covered by this law?

The following licensed settings are included:

- long term care homes;
- short term respite care settings;
- hospices;
- rehabilitation/convalescent settings; and
- crisis intervention/stabilization, detox, assessment and treatment or residential care services for adults with mental health and/or substance use challenges.

### The adult's right to give, refuse, or revoke consent to admission to a care facility

With appropriate communication and the necessary information and support, most adults can make their own care facility admission decisions. An adult must be approached first for a decision. Capable adults can also make a decision to leave a care facility.

### What if an adult is unable to give or refuse consent?

If the manager responsible for obtaining consent becomes concerned that an adult is not understanding the decision to be made, they must determine whether the adult has a court appointed committee of person.

If the adult does not have a committee of person, then the manager must have the adult's incapability assessed. If the adult is assessed as incapable of giving or refusing consent, the manager must choose the first appropriate decision maker available who qualifies to make the care facility admission decision:

- the adult's representative under Section 9 of the *Representation Agreement Act*;
- the adult's spouse;
- the adult's child;
- the adult's parent;
- the adult's brother or sister;
- the adult's grandparent;
- the adult's grandchild;
- anyone else related by birth or adoption to the adult;
- a close friend of the adult;
- a person immediately related to the adult by marriage.

### **To qualify to make the care facility admission decision, the person chosen must:**

- be at least 19 years of age;
- have been in contact with the adult during the preceding 12 months;
- have no dispute with the adult;
- be capable of giving or refusing substitute consent; and
- be willing to comply with the duties of a substitute decision maker.

### **What are the duties of substitute decision makers?**

Before giving or refusing consent to an adult's admission to a care facility (or to remain in a care facility) substitutes must:

- consult, or 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.

### **What is a best interests decision?**

In determining the adult's best interests all substitutes must consider:

- the adult's current wishes, pre expressed wishes, values and beliefs;
- whether the adult could benefit from admission to the care facility; and
- whether a course of action other than admission to a care facility or a less restrictive type of care facility, is available and appropriate.

All substitutes have a right to all of the information and documents to which an adult is entitled and that are necessary for making an informed decision. A substitute can make a decision in the adult's best interests with which the adult may not agree.

## What if the adult objects to a determination of incapability?

If the adult disputes the assessment, the adult may request that the manager arrange for a second assessment from another assessor. If the first assessor was not a physician or nurse practitioner, the second assessor must be.

The adult or others acting on the adult's behalf may object to an action by regional health authority staff by first speaking with the manager. Complaints are best addressed and resolved at the time and place they occur. If concerns remain unresolved after discussing the issue with the manager, the applicable [Patient Care Quality Office](#) may be contacted.

If the adult or someone acting on the adult's behalf is concerned about something that takes place in a licensed care facility, they may contact the [Community Care Licensing Officer](#) responsible for that facility.

The Office of the Ombudsperson has jurisdiction to investigate complaints involving B.C. provincial public agencies.

## Are there other legal remedies?

The following individuals can also apply to the court for direction or an order:

- an adult's representative or committee of person;
- a person chosen as a substitute decision maker; or
- an adult who has been assessed as being incapable of giving or refusing consent to admission to a care facility.

The court can order that:

- the adult's incapability be assessed; and
- confirm, reverse or vary a care facility admission decision made by any substitute.

## Can an adult be admitted to a care facility in an emergency?

A capable adult can consent or refuse consent to admission in an emergency.

If an adult has been assessed as incapable, a manager can admit an adult without consent if immediate admission is necessary to preserve the adult's life, prevent mental or physical harm or prevent serious harm to any person. A manager must obtain substitute consent within 72 hours.

If an adult who is unable to seek support and assistance is in serious danger and is taken to a care facility by staff of a designated agency (Regional Health Authority) to protect the adult from abuse, neglect, or self neglect, a manager can admit the adult without consent. A manager must obtain substitute consent and if not already complete, an incapability assessment, within 72 hours of admission.

## Can an adult leave a care facility?

A manager must allow a capable adult to leave the facility if they wish or if the adult's substitute wishes the adult to leave unless the manager has reason to believe the substitute is acting in a manner that may be abusive or harmful to the adult.

If an adult who has been assessed as incapable wishes to leave the care facility, the manager must obtain substitute consent to continued residence within a reasonable time. This is not required if the adult was admitted within the last 30 days or consent for continued residence was obtained within the last 90 days.

If an adult assessed as incapable wishes to leave the care facility and the manager has reason to believe the person in care may now be capable of giving or refusing consent to continued residence, the manager must have the person in care assessed within a reasonable time.

### **What if there is no one to make the decision?**

If no one from the ranked list of substitute decision makers is available, willing or qualified to make the care facility admission or continued residence decision, or there is a dispute between equally ranked substitutes about who is to be chosen, the manager must contact the PGT.

## **What Adults, Families and Health/Social Service Providers Need to Know About the Role of the PGT**

### **When should the PGT be contacted?**

A manager should contact the PGT if:

- an adult needs to make a care facility admission or continued residence decision and the adult has been assessed as being incapable of making the decision;
- there is no available, willing and qualified substitute decision maker; or
- there is a dispute between equally ranked substitutes about who is to be chosen.

### **What is the PGT's role if contacted by a manager?**

When contacted, the PGT may:

- authorize an available, willing and qualified person to make the care facility admission decision; or
- act as the substitute decision maker to make the care facility admission decision.

### **When would the PGT choose to authorize a substitute decision maker?**

The PGT recognizes that the people closest to the adult often provide the best and most compassionate care. The PGT also recognizes that a care facility admission decision is very impactful for an adult and their family at the time of the decision and forward into the future. The PGT may decide to choose between equally ranked family members to authorize a substitute.

### **When would the PGT act as substitute decision maker?**

The PGT will act as substitute decision maker if:

- it is unclear who to choose between equally ranked substitutes; or
- the adult has no one else available who is willing and qualified to make the care facility admission.

As the substitute, the PGT is responsible for following the duties for all substitute decision makers and for making a decision in the adult's best interests. This may include making a decision with which the adult does not agree.

### **What are the first steps the PGT takes as substitute decision maker in making a decision in the adult's best interests?**

- request relevant documents and information needed to make the decision such as information about the adult's medical situation, wishes, interests, finances, cultural background and social situation;
- consult with the adult and any family and friends who ask to assist, this may include visiting the adult and/or the facility being proposed;
- consider whether a care facility is the least intrusive, most effective way of meeting the adult's needs or whether there are other more appropriate alternatives;
- research and assess the list of care facilities provided by the manager that can best meet the adult's care needs and personal circumstances;
- consult with anyone managing the adult's finances to determine what the adult can afford. In some situations, the PGT may be the adult's committee of estate; and
- provide the manager with the decision which may include consent for one or more preferred care facilities.

### **What steps does the PGT take when notified that a preferred care facility has become available for the adult, or is not available?**

- reconfirm that admission to that facility is still the best option for meeting the adult's needs and that no higher ranked and qualified substitute is available; and
- possibly give consent for an interim care facility while waiting for a preferred residence, if in the best interests of the adult.

### **What other roles might the PGT have?**

The PGT might act as temporary substitute decision maker for the adult if there is no one willing and available who qualifies. The PGT makes any health care decisions that need to be made under the health care consent provisions if the adult is not capable of doing so. This is a separate process from the care facility admission process.

The PGT may also initiate a financial investigation when there are concerns that the adult is not capable of managing their financial affairs and no one else has been appointed to do so.

### **What is the role of the PGT in an emergency admission?**

If satisfied that the situation is an emergency, the PGT may provide short term consent to ensure the adult's safety while conducting their normal investigation.

### **What will the PGT do if the adult expresses a desire to leave the facility?**

If the PGT is asked to make a decision about continued residence in a facility, the same duties apply as to an admission decision. Staff will consult with the adult to determine the reason for wishing to leave and determine if a less intrusive option, another care home or other supports are recommended.

### **What decisions can the PGT not make as substitute decision maker for facility admission?**

As substitute decision maker, the PGT can only make care facility admission and continued residence related decisions. This authority does not enable the substitute to make decisions about:

- the adult's finances – an admission decision does not mean that PGT is also making the decision to pay the residential care user fees (although the PGT may be separately appointed to make needed financial decisions);
- sharing information;
- health care decisions (although may do so as temporary substitute decision maker under the health care consent provisions of the legislation); and
- the use of restraints.

### **Is there a cost when the PGT is acting as substitute decision maker?**

No, the PGT does not charge fees or for expenses when authorizing or acting as substitute decision maker for care facility admission.

### **What if someone disagrees with a care facility admission decision made by the PGT?**

In addition to the remedies above, the PGT has an internal process for making complaints. Ask the Regional Consultant for more information or visit our website at [www.trustee.bc.ca/pages/feedback.aspx](http://www.trustee.bc.ca/pages/feedback.aspx).

If you are not satisfied with the PGT response to your complaint, you may direct your concerns to the BC Ombudsperson by calling 1.800.567.3247 or by visiting [www.bcombudsperson.ca](http://www.bcombudsperson.ca).

# Contact the Public Guardian and Trustee

## Personal Decision Services (PDS)

- ☎ Toll free 1.877.511.4111
- ☎ Local 604.660.4507
- 📠 Toll free 1.855.660.9479
- 📠 Local 604.660.9479
- @ Email [AIS-PDS@trustee.bc.ca](mailto:AIS-PDS@trustee.bc.ca)

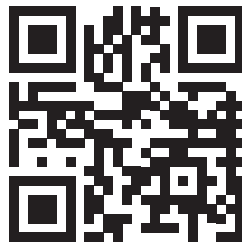
**PDS Hours of operation Monday to Friday 8:30 am to 4:30 pm**  
**Holidays and Weekends 8:00 am to Noon**

## Toll free calling

Toll free calling is available through Service BC.  
After dialing the appropriate number for your area (see below)  
request to be transferred to the **Public Guardian and Trustee**.

- ☎ Vancouver 604.660.2421
- ☎ Victoria 250.387.6121
- ☎ Other Areas in BC 1.800.663.7867

[www.trustee.bc.ca](http://www.trustee.bc.ca)



**Important note:** This publication is provided by the Public Guardian and Trustee of British Columbia. It refers to legal requirements but it is not legal advice. It is general information and is not a substitute for legal advice. If you need legal advice related to care facility admission, contact a lawyer or notary or your local community law office.