

PART V COLLECTION AND DISCLOSURE OF INFORMATION AND RECORD KEEPING

WHAT IS THIS?

Part V Collection and Disclosure of Information and Record Keeping:

- Explains the legislation that governs the collection, use and disclosure of personal information in certificate of incapability process
- Explains the authority for collecting and disclosing information during the certificate of incapability process
- Explains the requirement to protect the identity of the reporting party by not disclosing their name or information that would identify them
- Describes the expectation for health authorities to maintain appropriate records

This is important because...

During their investigations and after the certificate of incapability process is initiated the health authorities and the PGT collect personal information from a variety of sources in order to fulfill their duties under the AGA and the PGT Act. It is important for PGT and health authority staff involved in the certificate of incapability process to clearly understand their authority to collect information including personal information and when information can be requested, shared or must be held in confidence. It is also important that health authorities are able to keep track of adults for whom their health authority has issued a certificate of incapability, and identify their QHCPs and HADs.

RELATED LEGISLATION NOTED

- *Adult Guardianship Act*
- *Public Guardian and Trustee Act*
- *Freedom of Information and Protection of Privacy Act*
- *Personal Information Protection Act*



RELATED FORMS AND PACKAGES

- Form 1 – AGA Report of Assessment of Incapability and Details of Assessment
 - Medical Component of Assessment Form
 - Functional Component of Assessment Form
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HEALTH AUTHORITY INFORMATION MANAGEMENT AND RECORD KEEPING

During their investigations and after the certificate of incapability process is initiated the health authorities and the PGT collect personal information from a variety of sources in order to fulfill their duties under the AGA and the PGT Act. The type of information collected may be personal health information including medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, and personal financial information about the adult's finances, income, assets, liabilities, net worth, bank balances, and financial history or activities.

The collection, use and disclosure of information during the certificate of incapability process are governed by the provisions of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), the *Personal Information Protection Act*, the AGA and the PGT Act.

HADs and most QHCPs are employees of a health authority. Accordingly, they will be familiar with FOIPPA, their obligations under that legislation and their employer's internal policies around collection, use and disclosure of information. QHCPs, including physicians who are not employed by a health authority, will be guided by their professional codes of conduct and any other relevant privacy legislation including the *Personal Information Protection Act*.

This section focuses on the provisions of the AGA which deal with the rules around collecting and disclosing information during the certificate of incapability process. This section also covers health authority record keeping practices specific to the certificate of incapability process.

CAUTION: This is not legal advice. If questions arise about the application of any of these sections it is recommended that you consult with your privacy program and/or obtain legal advice.

RELATIONSHIP OF FOIPPA TO OTHER ACTS

FOIPPA is the overarching provincial legislation that governs how public bodies collect, use and disclose personal information. Other provincial acts, for example the AGA and the PGT Act, also establish rules around collection, use and disclosure of information specific to the functions outlined in those acts. The rules in FOIPPA prevail over all other acts (unless expressly stated otherwise in another act) which means that any rules around collection, use and disclosure of information are read in conjunction with FOIPPA. [FOIPPA s 79]

AGA – RIGHT TO INFORMATION

Designated agencies, QHCPs, and the PGT need to have access to information, including personal information, during the certificate of incapability process in order to perform their duties. FOIPPA authorizes the collection of personal information if the collection is authorized by another Act. [FOIPPA s. 26] Under the AGA designated agencies, QHCPs and the PGT have a right to the information necessary to perform their duties, powers and functions. [AGA s. 62(1)] Any person who has custody or control of the information required by designated agencies, QHCPs and the PGT must disclose that information to them when asked. The authority to collect information in the AGA overrides any

claim of confidentiality or privilege (except a claim based on solicitor-client privilege) and any restriction in an act or common law about the disclosure or confidentiality of information (except a restriction in section 51 of the *Evidence Act*).

Designated agencies, QHCPs and the PGT should take care not to collect personal information that is not required to fulfill their duties under the AGA during the certificate of incapability process.

AGA – DISCLOSING INFORMATION

Designated agencies and the PGT involved in the certificate of incapability process also need to disclose certain personal information during the process. While FOIPPA prohibits unauthorized disclosure of personal information, it permits disclosure of personal information where it is authorized by other legislation. [FOIPPA s. 30.4, 33.1(1) c] Under the AGA, the PGT and designated agencies may disclose information obtained under the Act for the purposes of exercising powers or performing duties or functions specified under the AGA. [AGA s. 62.1(1)]

In addition, a QHCP who performs an assessment of an adult's incapability may disclose information obtained under the AGA for the purposes of providing a Form 1 – AGA Report of Assessment of Incapability and the Details of Assessment to: [AGA s. 62.1(3)]

- The PGT
- A HAD, for the purposes of exercising the powers or performing the duties or functions of the HAD
- A designated agency, for the purposes of exercising the powers or performing the duties or functions of the designated agency under the AGA
- A person who
 - Makes a request, in writing, to the QHCP for the report, and
 - Confirms in the request that the report is to be used only for the purpose of an application to the court for an order under the AGA (this is included because it is in the legislation but currently the sections it would apply to are unproclaimed).

Like the authority to collect information, the authority to disclose information overrides any restriction in an enactment or the common law about the disclosure or confidentiality of information.

Health authorities and the PGT should take care to only disclose personal information that is necessary to fulfill their duties under the Act.

PROTECTING THE IDENTITY OF THE REPORTING PARTY

The PGT and health authorities receive reports about vulnerable adults which may result in an investigation by the PGT or the health authority as a designated agency. As explained in the Determining Need section of this Guide, one possible outcome of an investigation is a decision to initiate the certificate of incapability process.

The PGT, health authority staff or any other person who receives a report which results in an investigation must not disclose or be compelled to disclose the identity of the person who makes the report. [PGT Act s. 17(3)], [AGA s. 46(2)] .In addition to not disclosing the name of a person who makes

a report, the PGT and the health authorities should also take care to not disclose information that would identify the reporting party.

HEALTH AUTHORITY RECORD KEEPING

In the process of determining the adults' financial incapability, personal information may be collected. The details which are not pertinent to the provision of health care should not be included in the health record.

The only forms that should become part of the health record include:

- Medical Component of Assessment Form
- Functional Component of Assessment Form

The other certificate of incapability process related forms should be included in the separate non-health record administrative file used by the health authority to keep track of documentation specifically related to the certificate of incapability process.

MAINTAINING RECORDS FOR THE CERTIFICATE OF INCAPABILITY PROCESS

Health authorities are expected to maintain in a central location:

- A list of its QHCPs and HADs
- A list of clients for whom certificates of incapability have been issued

Health authorities will make a notation on the patient record when it is known there is a statutory property guardian