

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

Table of contents

Care facility admission and the role of the PGT	1
Applying for care facility admission	1
Process for when an adult cannot give or refuse consent to live in a care facility	1
Dealing with objections to a determination of incapability	2
Other legal remedies	2
Emergency care facility admissions	3
Leaving a care facility	3
When to involve the PGT	3
PGT authorizing a substitute decision maker	4
The PGT as substitute decision maker	4
PGT and emergency admission requests for consent	4
Decisions the PGT cannot make	4
How else the PGT can help	5
Making a complaint	5
Contact the PGT	6

Care facility admission and the Role of the PGT

In B.C., adults can only be admitted to a licensed care facility, such as a long-term care home or hospice, with their informed consent. If they are found to be incapable of making the decision, their substitute decision maker must provide informed consent.

Following, is an explanation of the care facility admission provisions in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#) and related regulation. We also outline Ministry of Health policies and explains the Public Guardian and Trustee's (PGT) role as substitute decision maker.

This information is particularly helpful for:

- Assessors interacting with the PGT. An assessor is a medical practitioner, such as a doctor, or another prescribed health care provider under the Act
- Someone requesting consent who works for a regional health authority or is responsible for operating a private care facility
- Adults for whom the PGT acts as substitute decision maker (SDM)

Applying for care facility admission

With appropriate communication and the necessary information and support, most adults can make their own decision to move into a care facility. Capable adults can also decide to leave a care facility.

An adult, or someone acting on their behalf if they are incapable, may apply for care facility admission from:

- Someone working for a regional health authority
- Someone who is responsible for operating a private care facility

The [Provincial Long Term Care Access Guidelines](#) (Chapter 6D) provides guidelines for when an

adult can no longer be safely supported in the community. Under these guidelines, adults or someone acting on their behalf can choose up to 3 (in some cases more) preferred publicly subsidized long term care homes, or an interim care home.

The following licensed settings are included:

- Long-term care homes
- Short-term respite care settings
- Hospices
- Rehabilitation/convalescent settings
- Crisis intervention/stabilization, detox, assessment and treatment, or residential care services for adults with mental health and/or substance use challenges

Process for when an adult cannot give or refuse consent to live in a care facility

If you are the manager responsible for obtaining consent, you must approach the adult for a decision. If you are concerned the adult does not understand the decision to be made, find out whether or not the adult has a court appointed committee of person. A committee of person has the legal authority to make decisions about personal matters for the adult for whom they are acting. These include:

- Personal care
- Where the adult lives
- Health care decisions
- Who can visit with the adult

If the adult does not have a committee of person, you must have the adult's incapability assessed. If the adult is assessed as incapable of giving or refusing consent, you must choose the first available substitute decision maker (SDM) who qualifies to make the care facility admission decision. Choose the first qualified and available SDM from the list below, in order:

- 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 to be SDM 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
- Be willing to comply with the duties of a substitute decision maker

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, you must contact the PGT.

The duties of a substitute decision maker

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

- Consult, or make a reasonable effort to consult, with the adult and any spouse, friend or relative of the adult who asks to assist
- Decide in the adult's best interests

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

- The adult's current wishes, pre-expressed wishes, values and beliefs

- Whether the adult could benefit from admission to the care facility
- 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.

Dealing with objections to a determination of incapability

If the adult disputes the assessment that they are incapable, they may request that you 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 of the facility. All parties should try to address and resolve complaints when and where they are made. If concerns remain unresolved, the adult or others acting on the adult's behalf can contact the applicable Patient Care Quality Office.

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.

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
- 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
- Confirm, reverse or vary a care facility admission decision made by any substitute

Emergency care facility admissions

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

If an adult has been assessed as incapable, you can admit an adult to a care facility 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. You must obtain substitute consent within 72 hours of the admission.

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 to protect the adult from abuse, neglect or self neglect, you can admit the adult without consent. You must obtain substitute consent and an incapability assessment, if that hasn’t already been done, within 72 hours of admission. A designated agency is one of the five regional health authorities, Providence Health Care and Community Living BC (which provide supports to adults with development disabilities). Designated agencies are required to investigate allegations of abuse, neglect and self-neglect of vulnerable or incapable adults.

Leaving a care facility

You must allow a capable adult to leave the facility if they wish or if the adult’s substitute wishes the adult to leave, unless you have 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, you must obtain

substitute consent to continued residence within a reasonable time. This is not needed if the adult was admitted within the previous 30 days or consent for continued residence was obtained within the previous 90 days.

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

When to involve the PGT

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, you must contact the PGT. To contact the PGT about a care facility admission, see our website’s Referrals section and select the Care Facility Admission Referral form.

Contact the PGT if any of these situations apply:

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

The PGT does not charge fees or for expenses when authorizing or acting as SDM for care facility admission.

When contacted, the PGT may do one of the following:

- Authorize an available, willing and qualified person to make the care facility admission decision
- Act as the SDM to make the care facility admission decision

PGT authorizing a substitute decision maker

We recognize that the people closest to the adult often provide the best and most compassionate care. We also recognize that a care facility admission decision has a big impact on an adult and their family at the time of the decision and in future.

We may decide to choose between equally ranked family members to authorize a substitute.

The PGT as substitute decision maker

We will act as substitute decision maker if either of the following apply:

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

As the substitute, we are responsible for following the duties for all SDMs, including deciding in the adult's best interests. This may include making a decision with which the adult does not agree.

These are the first steps we take as SDM 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 person requesting consent for a decision 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

- Provide the person requesting consent with the decision which may include consent for one or more preferred care facilities

If a preferred care facility becomes available for the adult, or is not available, we 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.

We may also give consent for an interim care facility while waiting for a preferred residence, if that is in the adult's best interests.

PGT and emergency admission requests for consent

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

PGT and continued residence requests for consent

When we are asked to decide about continued residence in a facility, we use the same process as when asked to make an admission decision. PGT staff consult with the adult to determine the reason for wishing to leave and consider a less intrusive option, another care home or other supports.

Decisions the PGT cannot make

As the SDM, we can only make care facility admission and continued residence related decisions. We cannot make decisions about:

- The adult's finances. An admission decision does not mean that we are also making the decision to pay the residential care user fees. However, we may be separately appointed to make needed financial decisions
- Sharing information
- Health care decisions. However, we may do so as temporary substitute decision maker under the health care consent provisions of the legislation

- The use of restraints
- Personal care decisions. Unless the court has appointed the PGT to make personal care decisions, we do not sign care home admission packages
- How to move an adult into a care home

How else the PGT can help

The PGT may act as temporary substitute decision maker for health care decisions for the adult if there is no one willing and available who qualifies. In this case, 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 if there are concerns that the adult is not capable of managing their financial affairs, and no one else has been appointed to do so. For more information, see the [Helping an Adult Get Support and Reporting Abuse or Neglect](#) page on our website.

Making a complaint

Part of providing service to clients is making sure that the processes the PGT follows, the services we provide, and the decisions we make are fair. If you disagree with our care facility admission decision, you may make a complaint. Please ask the Regional Consultant for more information or see the [Feedback](#) page on our website.

Contact the Public Guardian and Trustee

Personal Decision Services

700-808 West Hastings Street
Vancouver, B.C. V6C 3L3

Local phone	604-660-4507
Toll free phone	1-877-511-4111
Local fax	604-660-9479
Toll free fax	1-855-660-9479
Email	AIS-PDS@trustee.bc.ca
Website	www.trustee.bc.ca

PGT hours of operation

Monday to Friday 8:30am to 4:30pm
Weekends and holidays 8:00am to 12:00pm (on-call only for
health care decisions or care facility admission decisions)