

## INVOLUNTARY TREATMENT – INITIATING A DISCUSSION

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The Mental Illness Caregivers' Association believes more needs to be done to ensure caregivers understand practices and methods in place for the determination of involuntary treatment status in Ontario. It is also about understanding based on exploring the need for change while both protecting vulnerable people suffering from mental health and/or substance use disorders and an individual's human right to autonomy and self-determination.

#### UNTANGLING THE COMPLEXITY – THE NEED FOR REFORM

In the months ahead, we will invite caregivers to join our discussion focused on legislation, methods, and practices currently in place related to both the determination of involuntary treatment status and privacy. Our intent is to share what we learn from the caregiver community with the Ministry of Health and Long-Term Care early next year.

#### OUR ASK

Issues around involuntary treatment and privacy are not easily addressed and there are likely more questions than there are answers. So, to get things started, we would welcome your thoughts regarding our efforts going forward centred on the following:

##### ▪ **BEST PRACTICES**

##### ▪ **Relevant legislation: Personal Health Information Protection Act (PHIPA), Health Care Consent Act**

- Publishing best practices and guidelines for how capacity should be evaluated in Ontario and ensure relevant legislation is accessible and understood
- Providing direction and interpretation of existing legislation clarifying that the collection of personal health information in relation to involuntary status determinations under the *Mental Health Act* does not violate PHIPA.
- Legislative changes to the Health Care Consent Act, Treatment Pending Appeal to provide for the timely processing of Ontario Consent and Capacity Board decisions under appeal

##### ▪ **MAKING INFORMED DECISIONS – INVOLUNTARY STATUS DETERMINATION**

##### ▪ **Relevant legislation: Mental Health Act**

- Providing for clarity and assurances to health care providers involved in Form 1 determination - a physician may collect personal health information from individuals who are not health information custodians, including family members of the person, without consent of the person. Such collection is not in conflict with the *Personal Health Information Protection Act, 2004*.”
- Improving Form 2 process and communications between and among parties involved to ensure that the correct information is shared with police officers who are presented with the Form 2, as well as attending physicians making determinations about involuntary status during the examination.

#### ***INVOLUNTARY TREATMENT – DEFINED***

*Involuntary admissions to hospitals are regulated provincially. Two involuntary admission criteria are consistent across all jurisdictions: that an individual presents with a mental and/or substance use disorder and that without involuntary admission, presentation of the disorder itself results in likely harm.*

*A person can be found to be a harm to themselves or others, and therefore must be detained, but at the same time can be determined to have capacity to make treatment decisions for themselves and to refuse treatment. Except for emergency situations, all treatment requires informed, capable, voluntary consent.*

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- **LACK OF AUTONOMY**
- **Relevant legislation: Mental Health Act**
  - A broader definition of "Harm to oneself and others" to include psychiatric deterioration and inability to meet basic survival needs.
  - Acknowledging persons with addictions and/or mental health conditions often lack autonomy – for example, anosognosia causes many people with mental illness to refuse treatment as does the inability of persons with SUD to understand that their substance use is problematic.
  - Medical and legal standing for anosognosia with respect to SMI patients. This may include measurements of cognitive status that include evaluation of functions such as judgement and reasoning
- **CIRCLE OF CARE**
- **Relevant legislation: Personal Health Information Protection Act**
- Formally involving caregivers in the “Circle of Care” designated as allied caregivers and informal health information custodians; particularly with respect to informing forms 1 and 2 determinations as well as Consent and Capacity Board decisions including the timely processing of decisions under appeal