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A Summary of Bills 26 and 29:
Impact on the *Adult Guardianship Act* and
the *Health Care (Consent) and Care Facility (Admission) Act*

I. INTRODUCTION

The *Health Statutes Amendment Act, 2007* (“**Bill 26**”) and the *Adult Guardianship and Planning Statutes Amendment Act, 2007* (“**Bill 29**”) introduce significant amendments to a number of health-related statutes in British Columbia. In particular, Bills 26 and 29 amend the *Health Care (Consent) and Care Facility (Admission) Act* (the “**Consent Act**”), the *B.C. Adult Guardianship Act* (the “**Guardianship Act**”) and the *B.C. Representation Agreement Act* (the “**Representation Agreement Act**”). In addition, Bill 29 repeals the *B.C. Patients Property Act*.

Although Bills 26 and 29 received Royal Assent on May 31, 2007 and November 22, 2007, respectively, the amendments contained within these bills will not be in force until proclaimed by Regulation.

The following summarizes the salient aspects of Bills 26 and 29 and their impact on the *Guardianship Act* and the *Consent Act*, as they relate to the Provincial Health Services Authority (the “**PHSA**”). Reference to relevant amendments in the *Representation Agreement Act* will be made in Part III, in the context of the *Consent Act*.

II. THE ADULT GUARDIANSHIP ACT

The most significant change to the *Guardianship Act* established by Bill 29 is the creation of three types of guardians: **personal guardians**, **property guardians** and **statutory guardians**.

Personal guardians and property guardians, described in detail in Part 2 of the *Act* are court-appointed and have specific areas of authority. Personal guardians may make decisions regarding an adult’s personal care or health care, while the decision-making authority of a property guardian is limited to decisions regarding an adult’s financial affairs. The positions of a personal or property guardian will replace the role of the “committee”, whose authority is derived under the *Patients Property Act*. Once Bill 29 comes into force, it will repeal the *Patients Property Act* and all existing committees will be considered to be personal guardians, property guardians or both, as if they had been appointed under the *Guardianship Act*.

The concept of a statutory guardian is introduced in the new Part 2.1 of the *Guardianship Act*. Unlike personal and property guardians, a court does not appoint a statutory guardian. Rather, it is the recommendations of health care providers and the Public Guardian and Trustee that ultimately determine whether a statutory guardian should be appointed to manage an adult’s financial affairs. A statutory property guardian will not be appointed if the adult already has a property guardian.

Although a statutory property guardian does not have the authority to make decisions about an adult’s health care decisions, it is important for the PHSA to become familiar with this section of the *Guardianship Act* since health care providers play a significant role in the appointment of a statutory guardian.

The guiding principles of the *Guardianship Act*, contained in Part 1, are unchanged and the provisions regarding the support and assistance for abused and neglected adults, contained in Part 3, are amended in only minor ways by Bill 29.

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The following summarizes the amendments to the *Guardianship Act* as enacted by Bill 29 that are relevant to the PHSA. These amendments will be discussed in the order as they appear within the statute.

A. Part 1 – Introductory Provisions

Bill 29 introduces a number of new definitions into the *Guardianship Act* and repeals the definitions of “decision maker” and “nearest relative”.

The following new definitions are relevant to the PHSA:

- **“care facility”** has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*, meaning:
 - (a) a community care facility that
 - (i) is licensed or designated under the *Community Care and Assisted Living Act*, and
 - (ii) provides residential care to adults,
 - (b) a residence that
 - (i) provides care, to no more than 2 persons, in the form of 3 or more prescribed services within the meaning of the *Community Care and Assisted Living Act*, and
 - (ii) is not licensed or designated under that Act as a community care facility or an assisted living residence,
 - (c) a private hospital licensed under Part 2 of the *Hospital Act*
 - (d) an institution designated as a hospital under the *Hospital Act* for the treatment of persons referred to in paragraph (b) or (c) of the definition of “hospital” in that Act, or
 - (e) any other facility, or class of facility, designated by regulation as a care facility, but does not include a service provider under the *Community Living Authority Act* that has not been designated under paragraph (e).
- **“guardian”** means a personal guardian or a property guardian.
- **“health authority designate”** means any person designated by a prescribed body as having authority to issue a certificate of incapability under section 32 of the *Guardianship Act*.
- **“health care provider”** means a person who is licensed, certified or registered under a prescribed Act to provide health care.
- **“personal guardian”** means a person appointed by the court under the *Guardianship Act* to make decisions regarding an adult’s personal care or health care.
- **“property guardian”** means a person appointed by the court under the *Guardianship Act* to make decisions regarding an adult’s financial affairs.
- **“qualified health care provider”** means a medical practitioner or a member of a prescribed class of health care providers.
- **“statutory property guardian”** means a person who, under Part 2.1 of the *Guardianship Act*, may make decisions regarding an adult’s financial affairs.

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B. Part 2 – Court Appointed Guardians

Part 2 of the *Guardianship Act* creates a framework for the appointment and authority of personal and property guardians. The authority to appoint a personal guardian or property guardian rests with the court system, whereby guardians can be appointed to act on behalf of an adult who is determined to be incapable of making certain decisions, including decisions regarding the adult’s personal care, health care or financial affairs.

It is important to be familiar with the roles of personal and property guardians and the extent of their decision-making capacity, in the event that either type of guardian accompanies a client into a PHSA facility.

The Appointment Process

- If anyone has reason to believe an adult is incapable of making decisions about their health care and the adult refuses to be assessed, a person may apply to the court for an **order directing** an adult to submit to an **assessment of incapability**. [s.4(1)]
- Assessments of the adult are used for the purposes of a guardianship application, which may be made by anyone who believes an adult is in need of a **personal guardian** or **property guardian** or both. [s.5]
- A court may make an order appointing one or more guardians for an adult if the court is satisfied that:
 - (a) the adult needs to make decisions respecting the adult’s personal care, *health care* or financial affairs,
 - (b) the adult is incapable of making those decisions,
 - (c) the adult needs, and will benefit from, the assistance and protection of a guardian, AND
 - (d) the needs of the adult would not be sufficiently met by alternative means of assistance. [s.(8)]
- A court may appoint one or more guardians, each of whom may have a different area of authority or all or part of the same area of authority. [s.9(1)] In the event multiple guardians share an area of authority, the guardians must act unanimously unless a court orders otherwise. [s.9(2)]
- If a personal guardian is appointed, any provisions respecting personal care or health care within a **representation agreement** or an **advance directive** made by the adult, are **terminated**, unless a court orders otherwise. [s.12(1)] However, pursuant to section 20(2) of the *Guardianship Act*, a personal guardian is obliged to comply with an adult’s instructions or wishes expressed in a representation agreement or advance directive, unless to do so would be inconsistent with a court order.

Powers and Duties of Guardians

The powers and duties of a **personal guardian** are of specific relevance to the PHSA, since the personal guardian oversees decisions regarding personal care and health care. In the context of a patient accompanied by a guardian and seeking treatment at a PHSA facility, it is important for health care providers to make themselves aware of the specific powers of the guardian, since a guardian’s powers are limited to those granted by an order of the court.

- A court may authorize a personal guardian to:
 - (a) do anything the personal guardian considers necessary in relation to the personal care or health care of the adult; or

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- (b) do one or more things including any of the following:
 - i. decide where the adult is to live, including whether the adult should live in a care facility;
 - ii. subject to certain limitations described below, give or refuse consent to health care for the adult;
 - iii. physically restrain, move and manage the adult and authorize another person to do these things, if necessary to provide personal care or health care to the adult. [16(1)]
- A guardian must not delegate any of the guardian’s decision-making authority, unless a court orders otherwise or another enactment provides otherwise. [s.14(2)]
- A guardian has the right to request information and records respecting the adult as long as the information or records relate to:
 - (a) the incapability of the adult; or
 - (b) an area of authority granted to the guardian. [s.15(3)]
- If a personal guardian is given the power to **consent or refuse consent to health care** for the adult, the personal guardian may consent, or refuse consent, to **health care necessary to preserve life**. [s.16(3)]
- A personal guardian **MAY NOT**:
 - (a) give or refuse consent on the adult’s behalf to any type of health care prescribed under section 34(2)(f) of the Consent Act; [16(2)]
 - (b) interfere with the adult’s religious practices; [16(2)]
 - (c) consent to the provision of professional services, care or treatment to the adult for the purposes of sterilization for non-therapeutic purposes. [16(3)]
- Anything done by a guardian, in an area where the guardian has authority is deemed to have been done by the adult, as though that adult were capable of making decisions.

Duties and Liabilities of Guardians

Guardians must adhere to the following duties: act honestly and in good faith; exercise the care, diligence and skill of a reasonably prudent person; act within their authority; and to the extent possible, encourage the adult’s involvement in any decision that affects the adult.

Personal guardians must comply with the adult’s **pre-expressed wishes** when making decisions on behalf of the adult, unless to do so would be inconsistent with a court order.

- “Pre-expressed wishes” are instructions or wishes regarding personal care or health care that an adult most recently expressed while capable, including any instructions or wishes set out by the adult in a representation agreement or an advance directive that was terminated under section 12 of the *Guardianship Act*.
- If there are **no pre-expressed wishes** relevant to the decision to be made, a personal guardian must **act in the adult’s best interests**. Acting in an adult’s best interests involves taking into account:
 - (a) the adult’s known beliefs and values;
 - (b) whether the adult’s condition or well-being is likely to be improved by the proposed care;
 - (c) whether the adult’s condition or well-being is likely to improve without the proposed care;

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- (d) whether the benefit the adult is expected to obtain from the proposed care is greater than the risk of harm;
- (e) whether a less restrictive or less intrusive form of care would be as beneficial as the proposed care. [s.20(3)]

Reviews and the End of a Guardianship

Only a court has the authority to review and revise an order appointing a guardian. An order appointing a guardian ends when the adult dies or when a court so orders. The authority of a guardian ends if the guardian becomes incapable, dies, is removed by order of the court, becomes bankrupt or is convicted of certain offences. [s.27(1)] Once the guardian's authority ends, the Public Guardian and Trustee may exercise the authority of the guardian until a new guardian is appointed. [s.27(2)]

Investigations and Extrajurisdictional Orders

The Public Guardian and Trustee may conduct an investigation into the actions of a guardian if it has reason to believe that the guardian is not complying with his/her duties. [s.30]

An individual who has been appointed by a court or tribunal outside of British Columbia to act as a guardian of an adult may exercise the powers and perform the duties of a guardian in British Columbia as if the individual were a guardian under the *Guardianship Act*. [s.31]

C. Part 2.1: Statutory Property Guardians

Part 2.1 introduces the concept of a "Statutory Property Guardian", which is defined to mean a person who may make decisions regarding an adult's financial affairs. Although a statutory property guardian does not have the authority to make decisions about an adult's health care decisions, this part of the legislation is relevant to the PHSA since health care providers play a significant role in the appointment process of this type of guardian.

If an adult appears to be incapable of managing his/her own financial affairs and does not have a property guardian, the *Guardianship Act* now provides a means for health care providers to assess an adult and request that the Public Guardian and Trustee assume responsibility for the adult's financial affairs as the adult's statutory property guardian.

- If a health care provider has reason to believe that an adult may be incapable of managing their financial affairs, the health care provider may request that a **qualified health care provider** assess the adult's incapability. [s.32(1)] A "qualified health care provider" is a medical practitioner or a member of a prescribed class of health care providers.
- Under Part 2.1 a qualified health care provider has the authority to:
 - (a) determine that the adult is incapable of managing the adult's financial affairs; and
 - (b) report the adult's incapability to a **health authority designate**. [s.32(2)] A health authority designate is any person designated by a prescribed body as having the authority to issue a certificate of incapability under section 32 of the Act.
- Upon receipt of a report of an adult's incapability, a health authority designate may issue a **certificate of incapability**. The certificate of incapability must then be forwarded to the Public Guardian and Trustee, who can either accept or reject the certificate. If the certificate is accepted, the Public Guardian and Trustee becomes the adult's statutory property guardian.

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- As an adult's statutory property guardian, the Public Guardian and Trustee has all of the powers of a property guardian under the Guardianship Act. [s.33(1)]

D. Part 3: Support and Assistance for Abused and Neglected Adults

Bill 29 does not propose any substantial amendments to Part 3 of the *Guardianship Act*. This section of the Act remains dedicated to a framework for assisting abused and neglected adults who are unable to seek support and assistance because of physical restraint, a physical handicap or an illness, disease, injury or other condition that affects their ability to make decisions about abuse or neglect.

Part 3 is very relevant to the PHSA since this portion of the *Guardianship Act* applies to a "care facility", and Riverview Hospital fits within that definition. In addition, the PHSA falls within the definition of a "designated agency" under the *Guardianship Act*, and designated agencies play a significant role in determining the how an abused or neglected adult should be protected.

E. Part 4: Administrative and Miscellaneous Provisions

Part 4 of the *Guardianship Act* speaks to the disclosure and dissemination of personal information belonging to adults who have an appointed guardian as well as other miscellaneous provisions.

Of significance to the PHSA is how Bill 29 broadens certain sections in Part 4 regarding the right to acquire information and the disclosure of information. Under the amended section 62, a qualified health care provider is now included in the parties entitled to acquire information about an adult to enable them to perform their duties under the *Guardianship Act*. Any person who has custody or control of information that a designated agency, the Public Guardian and Trustee or a qualified health care provider might require, must disclose such information. Claims of confidentiality or privilege, except solicitor-client privilege, are overridden by section 62.

Bill 29 further clarifies the extent to which the PHSA can disclose information about adults who fall under the *Guardianship Act*.

- A new section 62.1(1) provides that a designated agency (PHSA) may disclose information obtained under the *Guardianship Act* for the purpose of exercising their powers or duties as a "designated agency" under the statute.
- A new section 62.1(3) provides that a qualified health care provider who performs an assessment of an adult's incapability under the *Guardianship Act* may disclose information obtained under the *Guardianship Act* for the purposes of providing a report of the assessment to the Public Guardian and Trustee, a health authority designate, a designated agency and a person who requests in writing a report to be used for a court application.

Bill 29 introduces to the *Guardianship Act* a provision that details the transition from the *Patients Property Act*, which is repealed by Bill 29.

- If an adult is a patient within the meaning of paragraph (a) of the definition of "patient" in section 1 of the *Patient's Property Act*, the Public Guardian and Trustee is deemed to be the adult's statutory property guardian under the AGA.
- If an adult is a patient within the meaning of paragraph (b) of the definition of "patient" in section 1 of the *Patient's Property Act* and has a committee, the person who was the committee is deemed to

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have been appointed under the *Adult Guardianship Act* as personal guardian or property guardian or both, as applicable, with the same powers as the committee.

III. THE HEALTH CARE (CONSENT) AND CARE FACILITY (ADMISSION ACT)

The *Consent Act* is amended by Bills 26 and 29. The amendments under Bill 29 are focused on substitute decision-making, specifically in Part 2 and the new Part 2.1. Bill 29 removes previous references to “substitute decision makers” and “guardians” and replaces them with the term “personal guardian”, a more specific definition introduced by Bill 29 in the *Guardianship Act*. Moreover, Bill 29 introduces the concept of an “advance directive” into the *Consent Act* in the new Part 2.1, thereby giving patients the ability to make consent decisions in advance of any future incapacity.

The amendments under Bill 26 are predominantly focused in Part 3 of the *Consent Act*, in which an entirely new Part 3 is enacted to detail issues associated with Admission in a “care facility”. Riverview Hospital fits within the definition of “care facility”.

The amendments to the *Consent Act* introduced by both Bills 29 and 26 that are relevant to the PHSA will be discussed in the order that they appear within the statute.

A. Part 1 – Introductory Provisions

Bills 26 and 29 introduce a number of new definitions into the *Consent Act* and repeal others. Of the definitions repealed, the most relevant are the terms “guardian” and “substitute decision maker”, which are replaced with the new term “personal guardian”. Other relevant terms introduced into the *Consent Act* by Bills 26 and 29 include:

- **“advance directive”** means a written instruction made by a capable adult that
 - (a) gives or refuses consent to health care for the adult in the event that the adult is not capable of giving the instruction at the time the health care is required, and
 - (b) complies with the requirements of Part 2.1 of the *Consent Act*.

- **“care facility”** means
 - (a) a community care facility that
 - (i) is licensed or designated under the *Community Care and Assisted Living Act*, and
 - (ii) provides residential care to adults,
 - (b) a residence that
 - (i) provides care, to no more than 2 persons, in the form of 3 or more prescribed services within the meaning of the *Community Care and Assisted Living Act*, and
 - (ii) is not licensed or designated under that Act as a community care facility or an assisted living residence,
 - (c) a private hospital licensed under Part 2 of the *Hospital Act*
 - (d) an institution designated as a hospital under the *Hospital Act* for the treatment of persons referred to in paragraph (b) or (c) of the definition of “hospital” in that Act, or
 - (e) any other facility, or class of facility, designated by regulation as a care facility, but does not include a service provider under the *Community Living Authority Act* that has not been designated under paragraph (e).

[NOTE: this new definition of “care facility” incorporates new subsections (a) and (b). Subsections (c) through (e) are the same as the former version of this term.]

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- “**close friend**” means, in respect of an adult who needs health care, another adult who has a long-term, close personal relationship involving frequent personal contact with the adult, but does not include a person who receives compensation for providing personal care or health care to that adult.
- “**near relative**” means, in respect of an adult who needs health care, an adult child, a parent, a grandparent, an adult brother or sister, any other adult relation by birth or adoption, or a spouse of any of these.
- “**personal guardian**” means a personal guardian appointed by the court under the *Adult Guardianship Act* to make decisions regarding an adult’s personal care or health care.
- “**person in care**” means a person who has been admitted to a care facility.

B. Part 2 – Consent to Health Care

Bills 26 and 29 do not change the fundamental principles set out in Part 2 of the *Consent Act*; the rule that an adult must give or refuse consent to health care remains firmly ingrained within the statute. However, Bills 26 and 29 introduce certain important changes to Part 2, each of which will be discussed in turn.

First, Bill 29 introduces the concept of a “personal guardian” to the *Consent Act* and removes all references to the terms “substitute decision maker” and “guardian”.

Second, Bill 29 expands the group of authorities who are able to assist adults in making health care consent decisions and introduces the concept of an “advance directive”, which is discussed in detail in Section C below. The following summarizes the list of individuals or authorities (in ranked order) who, under the amended *Consent Act* are authorized to give or refuse consent to health care on behalf of an incapable adult:

1. Personal Guardian appointed under the *Adult Guardianship Act*;
2. Representative appointed under the *Representation Agreement Act*;
3. Advance Directive created under the *Consent Act*;
4. Temporary Substitute Decision Maker appointed under s.16 of the *Consent Act*; and
5. The Public Guardian and Trustee.

Bill 29 grants significant authority to the above-mentioned parties to withdraw treatment in two new provisions in the *Consent Act*.

- First, pursuant to section 12(1) health care providers are able to provide health care to an adult without the adult’s consent in an emergent situation where the adult is incapable of giving or refusing consent and there is no personal guardian or representative available to give or refuse consent. However, Bill 29 introduces a new section 12(3), which provides that if a personal guardian or representative becomes available, or if a person is chosen as a temporary substitute decision maker under section 16, any of such persons may *refuse consent for continued health care* and if so, the health care must be withdrawn.
- Second, pursuant to a new section 19.8, if a health care provider provides health care to an adult without the adult’s consent and is subsequently made aware of an advance directive in which the adult refuses consent to the specific health care being given, the health care provider must withdraw the health care unless the health care provider has grounds to support the belief that the advance directive is not applicable to the health care situation.

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The following details some of the salient aspects of the roles and responsibilities of each type of decision-maker authorized under the *Consent Act* as they may relate to the PHSA.

1. Personal Guardian

- If a patient has a personal guardian, that person has primary authority to make consent decisions on behalf of the incapable adult.
- Anything done by a personal guardian with regard to an adult patient is deemed to have been done by the adult, as though the adult were capable of making decisions. [s.18 *Guardianship Act*]
- The powers of a personal guardian are set forth in a court order. The court may authorize a personal guardian to do anything the personal guardian considers necessary in relation to the personal care or health care of the adult, including:
 - (a) making decisions about whether the adult should live in a care facility;
 - (b) making decisions about giving or refusing consent to health care for the adult, subject to certain limitations; or
 - (c) making decisions to physically restrain, move and manage the adult or authorize another person to do these things, if necessary to provide health care to the adult.[s.16(1) *Guardianship Act*]
- Unless a court orders otherwise, a personal guardian must not give or refuse consent on an incapable adult's behalf to any type of health care prescribed in section 34(2)(f) of the *Consent Act* or interfere with the adult's religious practices. [s.16(2) *Guardianship Act*]
- If a personal guardian is provided the power to consent, or refuse consent, to health care for the adult, the personal guardian may consent or refuse consent to health care necessary to preserve life. [s.16(3) *Guardianship Act*]
- A personal guardian cannot consent to any services, care or treatment for the purposes of sterilization for non-therapeutic purposes. [s.16(4) *Guardianship Act*]
- Unless a court orders otherwise, if a personal guardian is appointed for an adult, any provisions respecting personal care or health care within a representation agreement or an advance directive made by the adult are terminated. [s.12(1) *Guardianship Act*]

2. Representative

- If an incapable adult does not have a personal guardian, the individual appointed as a representative under the *Representation Agreement Act* may make consent decisions on behalf of the incapable adult.
- Representatives have the power to make health care decisions consistent with the authorization set out in the Representation Agreement appointing him/her as the adult's representative.
- If an adult makes both a representation agreement and an advance directive, regardless of when each are made, the authority of the representative takes priority over the advance directive [s.19.3(a) *Consent Act*]. However, section 19.3(b) of the *Consent Act* provides that the instructions contained in the advance directive are to be treated as the wishes of the adult. Pursuant to section 16 of the *Representation Agreement Act*, a representative must act in accordance with the adult's wishes as long as it is reasonable to do so.

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- As with personal guardians, a representative is not authorized to consent to the provision of professional services, care or treatment to an adult for the purposes of sterilization for non-therapeutic purposes. [s.11(2) *Representation Agreement Act*]
- There are **two** types of Representation Agreements:
 - (1) **Standard Agreements** (or Section 7 Representation Agreements)
 - Standard agreements generally cover daily living and most health care decisions.
 - Representatives authorized by Standard Agreements are not permitted to make or help make decisions to refuse health care necessary to preserve life or to physically restrain the adult.
 - (2) **Non-Standard Agreements** (or Section 9 Representation Agreements)
 - Non-Standard Agreements are a new concept introduced by Bill 29. Non-Standard Agreements replace the former section 9 Representation Agreements, which were repealed by Bill 29.
 - A representative's authority is expanded to include making decisions regarding specific health care decisions such as refusing consent to life-supporting care and treatment.

3. Advance Directive

- If an adult is incapable of making a consent decision and does not have a personal guardian or representative, health care providers may provide health care to an adult if the adult has given consent to that health care in an advance directive.
- See Part C below for a more detailed discussion of advance directives.

4. Temporary Substitute Decision Maker

- If there is no available personal guardian, representative or knowledge of an appropriate advance directive, health care providers may seek authorization for health care decisions from a temporary substitute decision maker under s.16 of the *Consent Act*.
- Bill 29 broadens the list of individuals able to act as a temporary substitute decision maker. The list now includes the adult's grandparent, the adult's grandchild, a close friend of the adult or a person immediately related to the adult by marriage.
- To qualify as a temporary substitute decision maker, the individual must be at least 19 years of age, capable of giving or refusing consent, have been in recent contact with the adult, and willing to comply with the duties set out in s.19 of the *Consent Act*.
- A temporary substitute decision maker must, before giving or refusing substitute consent, consult to the greatest extent possible with the adult and comply with any instructions or wishes the adult expressed while he or she was capable. [s.19(1) *Consent Act*]

C. Part 2.1: Advance Directives

Bill 29 introduces the concept of an "advance directive" into the *Consent Act*. An advance directive gives capable adults the ability to make certain decisions regarding their health care by writing written instructions that may be subsequently interpreted as the adult's wishes regarding consent or refusal to health care in the event that the adult is not capable of making such decisions.

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If a health care provider is attending to an adult who is determined to be incapable of giving or refusing consent to the health care, and there does not appear to be a personal guardian or representative available to provide consent, a health care provider may rely on the instructions given in an advance directive, if available, to make the decision regarding the provision of health care.

However, a health care provider does not have to follow the instructions in an advance directive if he/she feels that:

- (b) the advance directive does not address the health care decision to be made;
- (c) the instructions in the advance directive are not clear;
- (d) while the adult was capable and since the advance directive was made, the adult's wishes, values or beliefs have changed and the advance directive does not reflect such changes;
or
- (e) since the advance directive was made there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult.

If a health care provider believes there are grounds not to follow an advance directive, he/she must obtain substitute consent from a personal guardian, representative or temporary substitute decision maker.

In the event that an adult makes both an advance directive and a representation agreement, the instructions contained in the advance directive are to be treated as the wishes of the adult expressed while capable. [s.19.3 *Consent Act*]

D. Part 3: Admission to a Care Facility

Bill 26 replaces the existing Part 3 of the *Consent Act* (which was not in force), with a new Part 3, which seeks to clarify an adult's admission to a care facility.

Riverview Hospital fits within the definition of "care facility". Pursuant to subsection (d) of the definition, a "care facility" is an institution designated as a hospital under the *Hospital Act* for treatment referred to in paragraph (b) or (c) of the definition of "hospital" in that Act. The *Hospital Act* defines "hospital" as a non-profit institution that has been designated as a hospital and is operated primarily to treat persons: (a) suffering from the acute phase of an illness or disability; (b) convalescing from or being rehabilitated after an acute illness or injury; or (c) requiring extended care at a higher level than that generally provided in a private hospital.

An adult, or a person acting on the adult's behalf may apply for the adult's admission to a care facility. A manager of a care facility must not admit an adult unless the adult consents, valid substitute consent is given pursuant to section 22 of the *Consent Act* or the adult is admitted on an emergency basis under section 24 of the *Consent Act*.

- Consent given by the Adult – The consent requirements for an adult consenting to admission to a care facility are the same as that for health care; consent must be voluntary, the adult must be capable of making the decision, the adult must have reasonable information to make the decision and the adult has an opportunity to ask questions and receive answers about admission to the care facility. [s. 21]
- Consent given by a substitute decision maker – An adult may be admitted to a care facility without giving consent if consent is given by a personal guardian or an individual listed in section 22(2) as long as the adult is determined to be incapable of giving or refusing consent to admission. As with all health care decisions, a substitute decision maker must act in the adult's best interest.

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- If no one is available to give substitute consent on behalf of an incapable adult or if there is a dispute as to who should be chosen to give substitute consent, the manager must notify the Public Guardian and Trustee, who will then choose someone to give or refuse substitute consent. [s.22(5)]
- Admission on an emergency basis – A manager to a care facility may admit an adult without consent from the adult or a substitute decision maker if the adult is deemed incapable and immediate admission is necessary to preserve the adult's life, prevent serious physical or mental harm to the adult or any person. [s.24(1)] If an emergency admission is made, the manager must obtain substitute consent within 72 hours of the adult's admission to the care facility. [s.24(2)]

Only a medical practitioner or a prescribed health care provider can determine whether an adult is incapable of giving or refusing consent to admission or continued residence in a care facility. [s.26(1)]

A manager must not prevent or obstruct a person in care from leaving a care facility if the adult is capable and expresses a desire to leave or if the incapable adult's substitute decision maker expresses a desire for the adult to leave. [s.25(1)] If an incapable adult expresses a desire to leave, the manager must, within 21 days, obtain substitute consent for the continued residence of the adult in the care facility. [s.25(2)]

The means in which restraints can be used in a care facility is specifically addressed in Part 3. A manager has the responsibility to ensure that a person in care is not restrained for the purpose of punishment or discipline or for the convenience of care facility staff. [s.26.1(2)]