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C.C.S.M. c. P144

The Protection for Persons in Care Act

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Regulations

(Assented to August 18, 2000)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

DEFINITIONS

Definitions

1 In this Act,

"abuse" means mistreatment, whether physical, sexual, mental, emotional, financial or a combination of any of them, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a person, or significant loss to the person's property; (« mauvais traitements »)

"health facility" means

- (a) a hospital designated by regulation under *The Health Services Insurance Act*,
- (b) a personal care home designated by regulation under *The Health Services Insurance Act*, or
- (c) an institution or organization designated as a health facility by regulation under section 13; (« établissement de santé »)

"investigator" means a person designated under section 5 as an investigator or appointed under that section to investigate a report of abuse; (« enquêteur »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"patient" means an adult resident, in-patient or person receiving respite care in a health facility, but does not include a vulnerable person within the meaning of *The Vulnerable Persons Living with a Mental Disability Act*; (« patient »)

"service provider" means a person who provides services to a patient and is employed by, or provides the services on behalf of, a health facility. (« fournisseur de services »)

S.M. 2008, c. 11, s. 2.

DUTY TO PROTECT PATIENTS FROM ABUSE

Duty of health facility to protect patients from abuse

2 The operator of a health facility has a duty to protect the patients of the facility from abuse and to maintain a reasonable level of safety for them.

REPORTING ABUSE

Duty to report abuse

3(1) A service provider or other person who has a reasonable basis to believe that a patient is, or is likely to be, abused shall promptly report the belief, and the information on which it is based, to the minister or the minister's delegate.

If information confidential

3(2) The duty to report applies even if the information on which the person's belief is based is confidential and its disclosure is restricted by legislation or otherwise. But it does not apply to information that is privileged because of a solicitor-client relationship.

Patient may report abuse

4 A patient may report abuse against himself or herself to the minister or the minister's delegate.

INVESTIGATING REPORTS OF ABUSE

Minister to inquire into report of abuse

5(1) On receiving a report of abuse under this Act, the minister shall inquire into the matter and shall consider whether a more extensive investigation is warranted.

Minister to refer matter to investigator

5(2) If, after inquiry, the minister finds there are reasonable grounds to believe that a patient is or is likely to be abused, he or she shall refer the matter to an investigator to carry out a more extensive investigation.

Notice to the patient

5(3) As soon as practicable after referring the matter to an investigator, the minister shall notify the patient that a report of abuse has been made and that an investigation is to be conducted. If the patient has a committee appointed under *The Mental Health Act* to make decisions on his or her behalf, the notice is to be given to the committee instead.

Minister may designate or appoint investigators

5(4) The minister

- (a) may designate as investigators one or more persons or classes of persons employed by the government under the minister; and
- (b) may appoint any other person to investigate a report of abuse specified in the appointment.

S.M. 2008, c. 11, s. 3.

Right to enter a facility

6(1) For the purpose of investigating a report of abuse under this Act, an investigator may enter a health facility at any reasonable time, on presenting identification when requested to do so.

Information and records

6(2) The investigator may require any person who is able, in the investigator's opinion, to give information about the matter being investigated,

- (a) to give the information to the investigator; and
- (b) to produce for examination or copying any record or other thing — including personal health information as defined in *The Personal Health Information Act* — that, in the investigator's opinion, relates to the matter being investigated and that may be in that person's possession or control.

Assistance to investigator

6(3) The operator of a health facility and any person required to give information or produce a record or other thing shall give the investigator all reasonable assistance and all information that the investigator reasonably requires.

Warrant

6(4) A justice who is satisfied by information on oath that an investigator has been prevented from exercising his or her powers under this section may at any time issue a warrant authorizing the investigator, and any other person named in the warrant, to exercise those powers.

Solicitor-client privilege

6(5) Nothing in this section abrogates a privilege that may exist because of a solicitor-client relationship.

INVESTIGATOR'S REPORT

Report to minister

7(1) On completing an investigation, the investigator shall set out his or her conclusions and the reasons for them in a report and give it to the minister.

Patient involvement

7(2) When making a report, the investigator shall try, to the fullest practical extent, to involve the patient and to determine and accommodate the patient's wishes.

DIRECTIONS TO A HEALTH FACILITY

Minister may give directions to health facility

8(1) On receiving an investigator's report under section 7, the minister may give the operator of the health facility involved any directions the minister considers necessary to protect the patient from abuse.

Notice to patient

8(2) The minister shall give a copy of the directions to

- (a) the patient about whom the investigation was conducted or, if the patient has a committee under *The Mental Health Act*, the committee; and
- (b) any other person the minister considers should be notified, having regard to the nature of the abuse reported and the need to protect the patient's privacy.

Operator must comply with directions

8(3) Within the time the minister specifies, the operator of the health facility shall comply with the minister's directions and give the minister a written report describing what action has been taken or will be taken to comply.

REFERRAL TO A PROFESSIONAL BODY

Referral to professional body

9(1) If the minister believes on reasonable grounds that a person has abused a patient or has failed to comply with the duty to report under section 3, the minister may refer the matter to the body or person that governs the person's professional status or that certifies, licenses, or otherwise authorizes or permits the person to carry on his or her work, profession or occupation.

Requirement to investigate

9(2) A body or person that receives a report under subsection (1) shall

- (a) investigate the matter to determine whether a professional status review or disciplinary proceedings should be commenced against the person; and
- (b) on conclusion of the investigation and any review or proceedings, advise the minister of the determination under clause (a), the reasons for the determination, and, if applicable, the results of any professional status review or disciplinary proceedings.

When investigation not required

9(3) If a referral is made under this section to a body or person that the minister considers can deal appropriately with the matter, the minister may decide not to refer the matter to an investigator under section 5, or may defer doing so.

S.M. 2008, c. 11, s. 4.

PROTECTION FOR PERSONS WHO REPORT

Protection from liability

10 No action or other proceeding may be brought against a person for making a report of abuse under this Act in good faith.

Adverse employment action prohibited

11(1) No operator of a health facility shall take adverse employment action against a service provider of the facility because that person made a report of abuse in good faith under this Act.

Interruption of service prohibited

11(2) No operator of a health facility or other person shall alter, interrupt or discontinue, or threaten to alter, interrupt or discontinue, service to a patient or to a person who has made a report of abuse under this Act, or to a relative of either of them who receives services from the facility, because a report of abuse has been made under this Act in good faith.

Protection of identity

- 11.1(1)** A person acting under the authority of this Act or engaged in its administration
- (a) is not required to disclose or produce any information that could reasonably be expected to reveal the identity of
 - (i) a person who reported an abuse, or
 - (ii) a person who was interviewed, or who provided information in confidence, in the course of an inquiry or investigation under this Act; and
 - (b) cannot be compelled to disclose or produce such information for the purpose of any civil legal proceeding.

Exceptions

- 11.1(2)** Subsection (1) does not prevent the disclosure of information
- (a) to a person engaged in the administration or enforcement of this Act for the purpose of administering or enforcing it; or
 - (b) to a court, upon application by a person seeking the disclosure of the information, for the purpose of determining whether the information could reasonably be expected to reveal the identity of a person whose identity is protected by subsection (1).

Court to take precautions against disclosing

- 11.1(3)** If information is disclosed to a court under clause (2)(b), the court must take every reasonable precaution, including receiving representations *ex parte*, conducting hearings in private and examining records in private, to avoid the disclosure of any information that could reasonably be expected to reveal the identity of a person whose identity is protected by subsection (1).

S.M. 2008, c. 11, s. 5.

OFFENCES**Offence and penalty**

- 12(1)** A person who contravenes this Act is guilty of an offence and is liable on summary conviction,
- (a) in the case of an individual, to a fine of not more than \$2,000.; and
 - (b) in the case of a corporation, to a fine of not more than \$30,000.

Offence of making a false report

- 12(2)** A person who makes a report of abuse under this Act, knowing it to be false, is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000.

Prosecution within two years

- 12(3)** A prosecution under this Act may be commenced not later than two years after the alleged offence is committed.

REGULATIONS**Regulations**

- 13** The Lieutenant Governor in Council may make regulations
- (a) designating institutions or organizations as health facilities for the purposes of this Act;
 - (b) respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

GENERAL PROVISIONS**Minister may delegate**

- 14** The minister may delegate to any person any power conferred or duty imposed on the minister by this Act.

Protection from liability

- 15** No action for damages or other proceeding may be brought against the minister, an investigator or any other person acting under the authority of this Act or engaged in administering it,

(a) for anything done in good faith in performing or intending to perform a duty or in exercising or intending to exercise a power, under this Act; or

(b) for any neglect or default in performing a duty or exercising a power in good faith under this Act.

Crown bound

16 This Act binds the Crown.

C.C.S.M. reference

17 This Act may be referred to as chapter P144 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

18 This Act comes into force on a day fixed by proclamation.

NOTE: S.M. 2000, c. 12 was proclaimed in force May 1, 2001.