

June 27, 1996

## Health Care Consent Act, 1996

The *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act* (Bill 19) recently received Royal Assent and was proclaimed into law on March 29, 1996. Two important parts of this Bill are the *Health Care Consent Act* (which replaces the *Consent to Treatment Act*) and the changes to the *Substitute Decisions Act*.

To obtain a copy of the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act* (Bill 19) contact: Publications Ontario (416) 326-5300 or toll free 1-800-668-9938.

Regulations under the *Health Care Consent Act* and related legislation came into force on proclamation of Bill 19 and will be published in the Ontario Gazette by mid-April. They will be available through Publications Ontario.

For further information you may contact:

***Health Care Consent Act***  
Health Information Centre  
Ministry of Health  
Tel.: (416) 327-7730  
Toll-free: 1-800-461-2036  
Fax: (416) 314-8721

***Substitute Decisions Act***  
The Office of the Public Guardian  
and Trustee in Ontario  
Tel.: (416) 314-2800  
Toll-free: 1-800-366-0335  
Fax: (416) 314-6190

### **Health Care Consent Act - Substitute Decision Making Provisions**

- Health care practitioner determines whether a person is mentally capable of making a decision about treatment.
- A person is presumed to be capable of deciding about treatment, unless it is unreasonable to presume so.
- A person of any age is capable if the person is able to understand the information about the required decision and to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

- If a person is mentally incapable of making the required decision, a substitute decision maker can make the decision.
- Most often the substitute decision maker will be a family member or partner.  
The *HCCA* lists possible substitute decision makers in order of priority:
  1. court-appointed guardian of the person
  2. attorney for personal care
  3. Board appointed representative
  4. spouse or partner
  5. child or parent (or a Children's Aid Society or other person lawfully entitled in place of parent)
  6. parent who only has access
  7. brother or sister
  8. any other relative (related by blood, marriage or adoption)
  9. Public Guardian and Trustee (as a last resort)
- If the substitute decision maker knows of any wishes about health treatment, he or she must follow them in giving or refusing consent.
- A health practitioner may question the decision of a substitute decision maker; in an emergency treatment may be given despite a refusal on the part of the substitute decision maker; in non-emergency situations the health practitioner must apply to the Consent and Capacity Board for a determination of whether the substitute decision maker complied with rules for making substitute decisions.
- If a health practitioner finds a person incapable of consenting to treatment decisions, the health practitioner is required to follow guidelines established by their governing body as to information to be provided to their clients about the consequences of findings of treatment incapacity.

Ministry of Health information centre toll-free line  
for information about the *Health Care Consent Act*:  
1-800-461-2036

### **Health Care Consent Act - Key Elements**

The *Health Care Consent Act, 1996* deals with the issue of consent to health services. The Act establishes the right of people in Ontario to make informed decisions about health treatment. The Act codifies all the elements of consent to health services in one piece of legislation, and applies to treatment provided in all settings by health practitioners specified in the Act. The Act also provides a mechanism to obtain a treatment decision from a substitute decision maker for those who, at the time the health treatment is required, are not mentally capable of consenting on their own behalf.

In order for the consent to be valid, the person must be, in the opinion of the health practitioner who proposes the treatment, mentally capable to consent to that decision.

The consent sought by the health practitioner must relate to the proposed treatment and must be informed. The person must be provided with information about the treatment, the expected benefits, the material risks and side effects, alternative courses of action, and the likely consequences of not having the treatment that a reasonable person in the same circumstances would require in order to make a decision. The consent must be given voluntarily, must not be obtained through misrepresentation or fraud and can be withdrawn at any time by the person if he or she is capable, or by the substitute decision maker if the person is incapable. The consent may be expressly stated or implied.

Consent includes consent to variations or adjustments in the treatment if the nature, risks and benefits, material risks and side effects of the changed treatment are not significantly different from the original treatment. Consent includes consent to the continuation of the same treatment in a different setting if the expected benefits, material risks and side effects would not be significantly different as a result of the change in setting.