Alberta Ombudsman

Treating people with mental illness fairly

Report on Mental Health Review Panels

June 2019

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Edmonton Office:
9925 – 109 Street NW, Suite 700
Edmonton, Alberta T5K 2J8
Phone: 780.427.2756

Calgary Office:
801 - 6 Avenue SW, Suite 2560
Calgary, Alberta T2P 3W2
Phone: 403.297.6185

Toll free: 1.888.455.2756
Email: info@ombudsman.ab.ca
Website: www.ombudsman.ab.ca
Follow us on Twitter: @AB_Ombudsman

Table of Contents

1. Executive Summary 1

1.1. Our mandate 2

1.2. Our process 3

2. Background and context 4

3. Findings and recommendations 7

3.1. Patients receive inconsistent notice of their right to review 7

3.2. Timeframes in Act not always followed—deviations not always explained 8

3.2.1 Inconsistent documentation on waivers of 7-day notice of hearing 8

3.2.2 No explanation why hearings are not held before 21-day deadline 9

3.2.3 Reasons for Decision not always issued before 14-day deadline to appeal 10

3.3. Inconsistent processes to inform patients of their right to a lawyer 11

3.4. Inadequate processes to ensure patients can access their medical records 12

3.5. Reasons for Decision do not include reasons for dissenting opinions 14

4. Recommendations 15

4.1. To Alberta Health 15

4.2. To Mental Health Review Panels 15

4.3. To Alberta Health and Mental Health Review Panels 15

1. Executive Summary

Mental illness affects many people. The *Mental Health Act* (the **Act**) allows authorities to hospitalize and treat people with mental illness. In some cases, authorities may deem it necessary to hospitalize and treat an individual without their consent. People who are detained (**patients**) can ask for a review of the decision. Mental Health Review Panels (**review panels**) hear reviews to protect the rights of patients. Decisions of review panels can be appealed to court. Patients can also complain to the Alberta Ombudsman, who can investigate the decision-making process.

In 2013 and 2014, the previous Ombudsman found broad areas of unfairness with review panel processes and made several recommendations to improve the situation.

We launched this investigation because the 2014 recommendations had not been fully implemented. This investigation reviewed:

- the procedural fairness of review panels' decision-making process
- the effectiveness of review panels' structure
- the role of review panels in ensuring fair disclosure of information to patients

Our review found that:

- Patients were not always informed of their rights to request a review, have a lawyer, and access their medical records
- Patients who asked for a review could not always access their medical records
- Review panels did not consistently follow the Act's deadlines

We have made 9 recommendations to solve these problems and ensure that people with mental illness are treated fairly. The Minister of Health has accepted all the recommendations, in principle.

We will monitor how the review panels (and Alberta Health) implement our recommendations.

1.1. Our mandate

Every Albertan has the right to be treated fairly in the delivery of public services. The Ombudsman protects this right by promoting standards of fairness. She can conduct investigations and make recommendations if an investigation reveals unfairness.

As an Officer of the Legislative Assembly of Alberta, the Ombudsman reports directly to the Legislative Assembly and operates independently from the Alberta government, political parties, and individual elected officials. The Ombudsman has jurisdiction over Alberta government departments, agencies, boards, commissions, Alberta municipalities, designated professional organizations, and the Patient Concerns Resolution Process of Alberta Health Services. The Ombudsman is not an advocate for complainants nor a representative for government departments or professional organizations.

Through impartial and independent investigations, recommendations, and education, the Ombudsman ensures administrative fairness. People affected by an administrative decision, action or recommendation of an authority may present their concerns to the Ombudsman. And she may investigate.

The Ombudsman is an office of last resort. So complainants must try all other avenues of review and appeal before the Ombudsman can investigate.

Pursuant to section 12(2) of the *Ombudsman Act*, the Ombudsman may initiate an investigation on her own motion (as with this investigation) when questions arise about the administrative fairness of a program. Recommendations based on these types of investigations are aimed at improving systemic issues.

1.2. Our process

We focused on whether mental health review panels are meeting the needs of Albertans in hearing and deciding on applications for review under the Act. The 9 recommendations in this report reinforce the importance of ensuring that review panel processes are procedurally fair.

While review panels report to the Minister of Health, much of our investigation included discussions with staff in the Addiction and Mental Health Branch at Alberta Health. We also spoke with various stakeholders who provide services to patients in the mental health system.

We sent opening correspondence to the Minister of Health, the Deputy Minister of Health, and the chairs of the three review panels on December 20, 2016, with a request for a lengthy list of information. On February 28, 2017, the investigation team received a comprehensive binder of documents, which resulted in a series of email discussions with Alberta Health. Those discussions continued with Alberta Health throughout this investigation.

We also interviewed:

- three review panel chairs
- three review panel vice-chairs
- three review panel administrative support staff
- Office of the Mental Health Patient Advocate
- Legal Aid duty counsel

The team reviewed 1,017 review panel files for the period April 1, 2016 to March 31, 2017.

2. Background and context

Mental illness is common

According to the Canadian Mental Health Association:

- *Mental illness indirectly affects all Canadians at some time through a family member, friend or colleague.*
- *In any given year, 1 in 5 people in Canada will personally experience a mental health problem or illness.*
- *Mental illness affects people of all ages, education, income levels, and cultures.*
- *Approximately 8% of adults will experience major depression at some time in their lives.*
- *About 1% of Canadians will experience bipolar disorder (or "manic depression").*[1]

In 2016-17, Alberta Health Services reported 24,307 discharges from mental health facilities and the issuance of 444 Community Treatment Orders.[2]

People with mental illness can be hospitalized and treated against their will

People with mental illness are some of the most vulnerable members of society. The Act allows people with mental illness—and people who cannot provide informed consent—to be hospitalized and treated against their will.

Decisions to hospitalize and treat a person takes away their liberty and ability to make personal treatment choices. Under section 7 of the *Canadian Charter of Rights and Freedoms*, everyone has a right to life, liberty, and security of the person. If the state infringes on these rights, it must follow the principles of procedural fairness.

Patients and their rights

When a person becomes a formal patient

A person becomes a **formal patient** (involuntary patient) when they are admitted and detained in hospital and two doctors issue admission (Form 1) or renewal (Form 2) certificates.

To detain a person as a formal patient, the person must be:

- suffering from a mental disorder
- likely to harm themselves or others or to suffer substantial mental or physical deterioration or serious physical impairment
- unsuitable for admission to a facility other than as a formal patient

Community treatment orders for people living in the community

Community Treatment Orders (**CTOs**) (Form 19) are for people with diagnosed mental disorders who require treatment or care but are living in the community, not in a mental health facility. A CTO is defined by the Canadian Mental Health Association as "*a doctor's order to follow a supervised mental health treatment and care plan for a certain period of time while staying in the community rather than*

[1] Canadian Mental Health Association website, Fast Facts about Mental Illness page
[2] Alberta Health Services Annual Report, 2016-17, p. 6

being admitted to a hospital or other facility."[3] Criteria and conditions to issue a CTO are based on a person's medical and hospitalization history. All the following conditions must be met:

- the person must be suffering from a mental disorder
- the person must be likely to harm themselves or others or to suffer substantial mental or physical deterioration or serious physical impairment if they do not receive community-based treatment or care
- the treatment or care the person requires exists in the community, is available to the person, and will be provided to the person
- the person must be able to comply with the treatment or care requirements in the CTO
- the person must be willing to consent to the CTO or their consent is not needed in a specific case

People have a right to a review of a decision to hospitalize and treat them

The right to a review of a decision is part of procedural fairness. Review panels review decisions to hospitalize and treat a person with mental illness. Review panels consider the application for review and the reasons a person was detained or treated. They also confirm all deadlines have been met.

Failure to manage review requests violates procedural fairness and a person's Charter right to liberty.

People have a right to appeal a review panel decision

Under section 43(1), a patient may appeal a review panel decision to the Court of Queen's Bench. They have 14 days to file that appeal. An appeal is a rehearing on the merits of the patient's case.

Review panels and their responsibilities

Review panel structure

There are three review panels in Alberta:

- Calgary and South Mental Health Review Panel
- Central Alberta Mental Health Review Panel
- Edmonton and North Mental Health Review Panel

Review panels are established under section 34 of the Act. Alberta Health describes the review panel role as:

> "*… an adjudicative body that hears and makes decisions on applications pertaining to: patients detained in designated facilities under admission and renewal certificates; return of a patient to a correctional facility after treatment, individuals who are subject to community treatment orders; a patient's competence to make treatment decisions; and the administration of treatment to patients who object to it under the Mental Health Act*."

Each review panel has 4 members: a chair or vice-chair, a doctor, a psychiatrist, and a member of the public. Whoever chairs a hearing must be a lawyer.

There is a province-wide roster of members appointed by the Minister. They are psychiatrists, physicians, and public members who are interested in being on a panel.

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[3] Canadian Mental Health Association, Calgary Region, "The Alberta Mental Health Act, A Guide for Mental Health Service Users and Caregivers", 2nd Edition, p. 7

Applications for review

Three types of applications for review are related to admission and detention:

- **to cancel admission certificates or renewal certificates**—Form 12 (section 38)
- **to be transferred back to a correctional centre**—Form 12 (section 33)
- **to review a formal patient's admission or renewal certificates**—an automatic review occurs at or after six months if no review has been held earlier (section 39)

Other applications that patients, individuals under a CTO or their representatives can make by completing a Form 12 are:

- **to review a doctor's opinion** that a formal patient is not mentally competent to make treatment decisions (section 27)
- **to cancel a CTO** (section 38)
- **to cancel a CTO**—this is a deemed (automatic) application on the first renewal of a CTO and every second renewal after it unless an application to cancel it has been made in the month before the renewal (section 39)
- **for a treatment order—**doctors can apply for a treatment order by completing Form 12 if a mentally competent formal patient refuses to consent to treatment, or if a person authorized to make treatment decisions for an incompetent formal patient refuses to consent to treatment (section 29)

Review panel notice times and processes

Section 40 of the Act requires the chair of the review panel to give all parties 7 days' notice (Form 13) of the hearing date, time, place, and purpose when they receive a review application. For applications under sections 27 and 29, they must give "*reasonable notice*". A hearing must be held within 21 days from receiving the application form.

The chair can grant one 21-day adjournment and consider requests from a patient or their representative for more adjournments. On sections 27 and 29 applications, the hearing must be held within 7 days after receiving the application form.

Review panel decisions must be issued within 24 hours

After a hearing, a review panel must issue its decision within 24 hours (section 41(2)(a)).

3. Findings and recommendations

3.1. Patients receive inconsistent notice of their right to review

Recommendation #1
We recommend that Alberta Health ensure that Alberta Health Services and Covenant Health have a process to notify patients of all their review rights under the *Mental Health Act*.

Findings
Patients are not always being fully informed of their right to a review of their detention or mandatory treatment orders.

How patients learn of their right to a review
A hospital or facility where a person is detained must ensure the person is informed of their right to a review[4]. A psychiatrist who issues a CTO must ensure the person named in the CTO is informed of their review right[5].

Psychiatric treatment facilities have processes to ensure patients understand their right to a review and their right to a lawyer at review panel hearings. In some facilities, staff help patients understand their rights. They also coordinate the list of the CTOs, which have met the criteria for review.

Patients can also learn about their review rights from various sources: in treatment facilities, from Alberta Health's website and from the office of the Mental Health Patient Advocate (the **Advocate**). The Advocate may identify and investigate concerns, and if warranted, report those concerns to Alberta Health.

Review panel members were generally satisfied that staff of psychiatric units, dementia units, and brain injury units understood the deadlines in the Act and were experienced in informing patients of their rights and helping them apply for review.

But we were concerned that staff in medical units often did not understand patients' right to a prompt review.

Advocate also concerned about patients' lack of knowledge
We are not the only ones concerned about patients' being unaware of their rights. The Advocate has expressed concerns in annual reports dating back to at least 2011-12 that some patients were unaware of the contents of certificates and unaware of their right to a review of the certificates. Most of the Advocate's recommendations were made to Alberta Health Services (**AHS**) and Covenant Health. They are summed up in the Advocate's recommendation in its 2012-13 Annual Report to the Minister of Health:

[4] Section 14(1)(b)(iii–v)
[5] Section 14(1.1)

> *"AHS and Covenant Health continue efforts to educate and remind staff about their legal obligation to patients under the MHA. Particular effort should target staff on off-service units, as these are where most of the non-compliance occurs."*[6]

The Advocate's concerns about lack of notification to patients of their rights persisted in its 2015-16 Annual Report:

> *"Unfortunately there continues to be cases where patients, family members and/or legal guardians are not informed of the rights found under section 14 of the Mental Health Act 'Duties toward patients' that pertain to notification of formal (involuntary) status until our office becomes involved."*[7]

In its 2016-17 Annual Report, the Advocate defines patient rights as "*the process by which persons who fall under the jurisdiction of the Mental Health Act, or those acting on their behalf, are informed of their legislated rights*."[8] These comprised 45% of the client casework services being tracked by core function; the highest category in this data set. Staff from the Advocate's office, in the fall of 2017, said the lack of notification remains a problem.

Alberta Health's position

Alberta Health said the ministry does not have a legislated role in ensuring AHS and Covenant Health meet notification requirements.

3.2. Timeframes in Act not always followed—deviations not always explained

3.2.1 Inconsistent documentation on waivers of 7-day notice of hearing

Recommendation #2
We recommend that, where appropriate, Mental Health Review Panels formalize a process for patients waiving the minimum 7-day notice of a review panel hearing.

Recommendation #3
We recommend that Mental Health Review Panels include a record of a waiver in the Reasons for Decision document when patients waive the minimum 7-day notice.

Findings

Review panels lack a consistent approach to documenting patient waivers of the minimum 7-day notice of review panel hearings.

Review panels usually receive the review requests directly from facilities or CTO coordinators, typically by fax. Patients can also submit review requests directly to the review panel.

[6] Alberta Mental Health Patient Advocate Office 2012-13 Annual Report, p. 26
[7] Alberta Mental Health Patient Advocate Office 2015-16 Annual Report, p. 28
[8] Alberta Mental Health Patient Advocate Office 2016-17 Annual Report, p. 17

Chairs must give 7-day notice of hearing

For applications under sections 33 or 38 and deemed applications under section 39, the chair of a review panel must give at least 7 days' notice of the date, time, place, and purpose of the hearing. [9]

For applications under sections 27 or 29 and deemed applications under section 39, the chair of a review panel must give reasonable notice of the date, time, place, and purpose of the hearing. [10]

Of 710 applications under sections 33, 38 and 39 with usable data on dates, 625 received at least 7 days' notice. Of the 625 applications, the notice period on 46 (6%) was 21 or more days. There were notice periods of 50 and 52 days. There was no explanation in the Reasons for Decision documents to explain the long notice periods, beyond the requirements of the Act.

Some applications had fewer than 7 days' notice

Eighty-five applications (11% of the total we reviewed) had less than 7 days' notice. Some facilities have developed a form for patients to waive their right to 7 days' notice of the date, but there were files with unsigned, undated handwritten notes indicating the patient had waived notice. Other files had no indication why the notice was less than 7 days. The Calgary and Area review panel developed a form, but it is unclear how widespread its use is in that region.

When patients get fewer than 7 days' notice

The 7 days' notice gives patients time to prepare for the hearing. It also gives them time to hire a lawyer if they do not use duty counsel. At the hearing, review panels must explain to patients their right to at least 7 days' notice. They must also verify patients are willing to proceed if they got less notice. This issue was rarely, if ever, addressed in the Reasons for Decision documents reviewed during this investigation.

We brought this concern to the attention of the review panels during this investigation. They are considering developing a form that patients sign to acknowledge they are waiving the minimum 7 days' notice period. The review panels have also said they will ensure the reasons for any waiver will be included in the Reasons for Decision documents.

Reasonable notice of hearing—review panels must decide

Of 88 applications under sections 27 and 29 where there was usable data on dates, 76 notices were issued in 7 days or less. The notice period for the remaining 12 varied from 8 to 13 days. The review panels must decide if these timeframes meet the Act's requirement of "*reasonable notice*."

3.2.2 No explanation why hearings are not held before 21-day deadline

Recommendation #4

We recommend that Mental Health Review Panels develop processes to ensure they hold all hearings within the 21-day deadline in the *Mental Health Act*, unless they grant an adjournment. We also recommend that the Review Panels explain in the Reasons for Decision document why they grant adjournments.

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[9] Section 40(1)

[10] Section 40(2)

Findings
Mental Health Review Panels are not explaining why they are not holding hearings before the 21-day deadline.

A review panel must hold a hearing within 21 days of receiving an application under sections 33, 38, and 39[11]. The Chair can adjourn hearings for up to 21 days[12]. But most Reasons for Decision documents did not explain the delays in holding the hearing or whether adjournments had been requested or granted. Occasionally, notes on files indicated problems with scheduling panel members.

Review panels said they will ensure the reasons why a hearing is held after the 21-day deadline are fully documented in the Reasons for Decision document.

3.2.3 Reasons for Decision not always issued before 14-day deadline to appeal

Recommendation #5
We recommend that Mental Health Review Panels issue the Reasons for Decision document well before the 14-day deadline to appeal—under section 43(1) of the *Mental Health Act*—so patients have enough time to decide whether to appeal to court.

Findings
Informing patients of reasons for decision
Reasons for Decision documents are not always issued before the 14-day deadline to appeal.

After all parties have made their submissions at the hearing, the review panel asks them to leave the room. Review panel members then discuss the case and decide to either confirm or cancel the certificates or CTO. The Chair calls the parties back into the room and issues a signed decision form to both the facility staff and the patient. Typically, the Chair will note on the form that formal written reasons will follow.

If a patient has not waited for the decision, the chair asks facility staff to give a copy of the decision form to the patient. Often, in deemed CTO hearings, the patient is not at the hearing. And patients are often discharged from a hospital or facility after the hearing and before the Reasons for Decision document is issued. So review panels must send the Reasons for Decision document to the patient promptly. In most cases, the hospital or facility has a mailing address for discharged patients.

Of 615 hearings held, 448 Reasons for Decision documents had a usable date of decision. (The statistical analysis was hampered because either there were no dates on the Reasons for Decision documents or there were data entry errors.) Of the 448 dated documents, 30 Reasons for Decision documents were dated 14 or more days after the hearing—after the deadline to appeal. And 81 of those 448 documents were issued between 8 and 13 days after the hearing. A patient's ability to appeal may be severely impacted if the patient does not know the reasons for a decision before the appeal deadline. Adequate time is required for the patient to review those reasons as this may affect their decision to file an appeal.

[11] Section 40(4)
[12] Section 40(5)

3.3. Inconsistent processes to inform patients of their right to a lawyer

Recommendation #6
We recommend that Mental Health Review Panels develop a consistent process to notify patients of their right to a lawyer.

Findings
Patients have the right to a lawyer while they are held in a facility and at review panel hearings. It is an important right because patients do not normally know the issues, the processes, or the standard for review required by the review panel. Nor do they always know they have a right to a lawyer.

How hospitals and treatment facilities inform patients of right to lawyer
Hospitals and treatment facilities must inform patients of their right to a lawyer. Different hospitals have different practices.

In most psychiatric units, AHS or Covenant Health staff will discuss with patients their rights to a lawyer when the patients apply for a review and will refer them to duty counsel.

Some hospitals have a handwritten checkbox on the review application and ask patients to check *yes* or *no* to a lawyer. The Calgary region found that with this system in place, the percentage of patients who brought a lawyer to hearings rose dramatically.

But there is no consistency across facilities. At many sites, patients are given the number for Legal Aid Alberta and must make their own arrangements.

How patients named in a CTO are informed of their right to lawyer
The system is more tenuous for people named in a CTO. The sites that regularly provide treatment for patients named in a CTO have a designated staff person responsible to forward review requests to the review panel. This person is also responsible to speak with patients named in a CTO about a lawyer. The review panel chair in Calgary said it was rare for people requesting a CTO review to have a lawyer. All the chairs said it was common for patients named in a CTO not to attend review hearings for deemed applications. Our review of files confirmed this.

How review panels inform patients of right to lawyer
There are inconsistencies and gaps in the way review panels inform patients of their right to a lawyer. At the start of hearings, review panels do not ask patients if they know they have a right to a lawyer. That question would help review panels assess if patients know their rights.

The Calgary region review panel inserts (into the letter with the Form 13 notice of the hearing) a paragraph telling patients of their right to have a lawyer with the contact information for Legal Aid Alberta. The Edmonton region review panel uses either a rubber stamp message or a sticker on the Form 13 notice of the hearing telling patients to contact the Chair's office to arrange for a Legal Aid lawyer. While the contact information is provided for the Edmonton region on the Form 13 notice, it is an address, without a telephone number.

In the Central region, hearings are held the same day each week at the same location, so the lawyers on the duty counsel roster make it a practice to be available on site. Often, patients in the Central region who have not requested a lawyer will go into the hearing with the available duty counsel. In the

Edmonton and Calgary regions, the assigned duty counsel for the week receives a list of those patients who have requested a lawyer and will only attend at the site of a review panel hearing if a patient has requested representation. The numbers of hearings in the Edmonton and Calgary regions where patients appear with legal representation remains significantly lower than in the Central region.

Legal Aid Alberta says there are rosters of lawyers interested in this area of the law for Edmonton, Red Deer, Calgary and Lethbridge. Lawyers are on a rotating schedule to act as duty counsel for review panel hearings. In other parts of the province, patients contact Legal Aid Alberta directly.

As a result, there are far fewer hearings in the Edmonton and Calgary regions where duty counsel is present, though as noted above, the Calgary region is experiencing improvements.

3.4. Inadequate processes to ensure patients can access their medical records

Recommendation #7
We recommend that Mental Health Review Panels inform patients of their right to medical records when they issue the Form 13 Notice of Hearing to patients.

Recommendation #8
We recommend that Alberta Health and the Mental Health Review Panels develop a process to provide patients access to medical record information so they can prepare for the review panel hearing, unless patients should not receive certain information under section 11 of the *Health Information Act*.

This recommendation will be hard to implement. Several parties (the review panels, Alberta Health, the facilities that hold the records, and possibly the Office of Information and Privacy Commissioner) will have to decide who will be responsible to ensure patients have this access.

Findings
Currently, information given to patients on their right to access to medical records is inadequate. Alberta Health and review panels are jointly responsible to ensure that patients know of their right to access medical records and that they can access their medical records.

Panels don't ask patients about their right to medical records
At hearings, review panels don't ask patients if they know about their right to their medical records. That question would help review panels assess if patients know of their right to their medical records.

A typical review panel hearing starts with the chair introducing everyone and explaining the issues, the criteria to decide the issues, the relevant legislation, and the test that must be met for the certificates to be upheld.

Panel chairs said they explain the hearing process, including the fact the facility must prove the certificate is valid. The doctor and nursing staff speak first and the patient or their lawyer can question them. The panel may ask questions, and the patient can make submissions. The patient or their lawyer then summarizes the patient's arguments.

All review panel chairs interviewed in October and November 2017 said they ensure the certificates are in place and correctly filled out. The medical records are available for review, and most chairs said the medical chart is important for history and context, but the more critical evidence comes from the medical staff at the hearing.

When medical records must be disclosed and withheld

The disclosure of health information is governed by the *Health Information Act* (**HIA**). Section 7(1) of the HIA states, "*an individual has a right of access to any record containing health information about the individual that is in the custody or control of a custodian*." Section 11 of the HIA allows a custodian to withhold some information in some circumstances. These are related to the potential for harm to the applicant's mental or physical health or safety, and to third-party information, which may be on the record. Similarly, section 37(4) of the *Mental Health* Act (the **Act**) allows a review panel to refuse to disclose information to the patient when the review panel thinks that such disclosure may "*seriously endanger the safety of another person*." Nothing in the Act or the HIA prevents the review panel from ensuring disclosure of information to a patient except under these cases.

Typically, the hospital where a patient is held is the custodian of the medical records. For patients named in a CTO, the treating clinic likely holds the records. Review panels notify facilities in writing of the names, dates, and times of review hearings. This notice prompts facilities to provide the records for the panel's review.

Review panels reported no significant problems in accessing medical records before hearings. It is common practice for facilities to have the records available for the review panel members when they arrive at the facility for the hearing.

Access to medical records by lawyers

For lawyers to access to medical records, third-party consent from the patient or guardian is needed. Some facilities will prepare an information package for lawyers, while other facilities will make the entire file available. While the process for making information available varies, there were no reports of problems gaining access to this information from the Legal Aid lawyers we interviewed.

Access to medical records by patients without a lawyer

Access to medical records becomes problematic for patients not represented by a lawyer. The Advocate said the most significant complaint from patients who choose not to have a lawyer is lack of access to medical records before the review panel hearing.

Review panel chairs do not think that patients know their rights to medical records under the HIA. The printed information for patients about their rights, specific to reviews of their certificates, explains the application process and their right to a lawyer, but is non-specific about their right to medical records. The only printed reference to disclosure is in a pamphlet entitled "Review Panels: Formal Patients Under The Mental Health Act". In response to the question "*May I or my representative be present at a review panel hearing?*" the pamphlet says:

> "*Review panel hearings are conducted in private. No person has the right to be present without the prior consent of the Chair. However, the patient and the patient's representative do have the right to be present while any evidence is being given to the review panel. They are also able to cross-examine any person who gives evidence to the review panel.*

If the review panel is of the opinion that disclosure of certain information to the patient might seriously endanger the safety of another person, the review panel may refuse to disclose the information to the patient."

The review panel pamphlet written for people named in CTOs has the same message, written slightly differently.

The Advocate publishes a brochure describing some of the rights of patients. One of the rights mentioned is the right "*To ask for information from their health records.*"

In 2016 correspondence to the Ombudsman, the review panels said they do not have the resources to obtain and provide medical records or chart notes to patients. They said this would be a lawyer's responsibility. Some review panel members said a request for an adjournment would be possible if a patient requested time to review medical records. But the deadline for a review hearing is short, so the option to grant adjournments to give patients time to access records is limited. Patients sometimes need urgent treatment and it is critical to hear matters quickly.

3.5. Reasons for Decision do not include reasons for dissenting opinions

Recommendation #9

We recommend that Mental Health Review Panels explain the reasons for dissenting opinions in the Reasons for Decision document.

Findings

Usually, review panel decisions are unanimous. But sometimes, there is a dissenting opinion. And when there is, review panels are not explaining the reasons for dissenting opinions in the Reasons for Decision document.

The Chair of the hearing prepares the **Reasons for Decision document**. We reviewed over 500 Reasons for Decision documents written between April 2016 and March 2017. By the fall of 2017, their content had improved noticeably. Review panels are now implementing most of our recommendations on the content of the Reasons for Decision document. Specifically, they are:

- Explaining the function of the review panel
- Documenting the names and positions of everyone at the hearing
- Identifying documents reviewed at the hearing
- Documenting main arguments and evidence of all the parties
- Identifying the test to be met
- Basing conclusions on the Act
- Having the document signed and dated by the Chair

But reasons for dissenting opinions were not included. Yet those reasons could greatly assist a person in their appeal. There is no transparency if patients are not informed of the reason for a dissenting opinion. It is imperative that reasons for dissenting opinions be included in the Reasons for Decision document.

We discussed this recommendation with the review panels. They said they will fully document the reasons for dissenting opinions in the Reasons for Decision document.

4. Recommendations

4.1. To Alberta Health

- ❖ We recommend that Alberta Health ensure that Alberta Health Services and Covenant Health have a process to notify patients of all their review rights under the *Mental Health Act*.

4.2. To Mental Health Review Panels

- ❖ We recommend that, where appropriate, Mental Health Review Panels formalize a process for patients waiving the minimum 7-day notice of a review panel hearing.
- ❖ We recommend that Mental Health Review Panels include a record of a waiver in the Reasons for Decision document when patients waive the minimum 7-day notice.
- ❖ We recommend that Mental Health Review Panels develop processes to ensure they hold all hearings within the 21-day deadline in the *Mental Health Act*, unless they grant an adjournment. We also recommend that the Review Panels explain in the Reasons for Decision document why they grant adjournments.
- ❖ We recommend that Mental Health Review Panels issue the Reasons for Decision document well before the 14-day deadline to appeal — under section 43(1) of the *Mental Health Act* — so patients have enough time to decide whether to appeal to court.
- ❖ We recommend that Mental Health Review Panels develop a consistent process to notify patients of their right to a lawyer.
- ❖ We recommend that Mental Health Review Panels inform patients of their right to medical records when they issue the Form 13 Notice of Hearing to patients.
- ❖ We recommend that Mental Health Review Panels explain the reasons for dissenting opinions in the Reasons for Decision document.

4.3. To Alberta Health and Mental Health Review Panels

- ❖ We recommend that Alberta Health and the Mental Health Review Panels develop a process to provide patients access to medical record information so they can prepare for the review panel hearing, unless patients should not receive certain information under section 11 of the *Health Information Act*.

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