

PRINCIPAL STATUTES DEALING WITH MENTAL DISABILITY IN ONTARIO (as of August 1, 2011)* **

| ONTARIO STATUTE | Purpose | Who Makes Decisions On Use of Powers | Status of Person Subject to Act | Dangerous Requirement? | Other Qualifying Conditions | What Is Permitted | Controls Over Powers | Duration and Termination of Powers |
|--|--|---|--|--|--|--|--|--|
| <u>Mental Health Act</u> | Regulates administration of mental health care Guidelines on: admission and patient rights in a psychiatric facility; issuing, renewing or terminating community treatment orders | Consent and Capacity Board (CCB); Ministry of Health and Long Term Care; Physicians; Justice of the Peace; Judges; psychiatric facilities; advisory officers; Officer in charge; Police, Substitute decision makers | Informal, voluntary, or involuntary patient | Person held as involuntary patient if they pose a risk to themselves or others | Voluntary and informal patients may be admitted if believed to be in need of observation, care and treatment Admission may be refused where patient's needs are not urgent or necessary | Voluntary or involuntary detainment, examination or treatment Community treatment plan outside psychiatric facility | Standards for involuntary measures; Mandatory review by CCB; Complaint to CCB; Appeal to Superior Court; Offence under Act subject to max fine of 25k | After 72 hrs patient either released, held as involuntary/informal, or admitted as voluntary Voluntary patients may leave any time; Informal and involuntary have mandatory reviews |
| <u>Health Care Consent Act, 1996</u> | Regulates how people are treated or cared for in various facilities, and how decisions are made about their care Deals with: informed consent to treatment; personal care services or facility admission; roles of substitute decision makers | Consent and Capacity Board (CCB); Evaluators; Health care practitioners; Substitute decision makers | Mentally capable person, or; Incapable person - cannot understand info relevant to treatment, or appreciate the reasonably foreseeable consequences of decisions | No | Treatment not administered unless capable person consents, or substitute decision maker consents for incapable person, unless emergency Consent must: be informed, voluntary, relate to treatment, and not be obtained through fraud or misrepresentation | Review of: capacity to consent; Admission to care facility or personal assistant service; Appointment or termination of representative; Consideration of requests from substitute decision maker | Applications to CCB to review: capacity; incapacity; representative appointments; place of treatment, directions; departing from wishes; compliance with consent; compliance with decision making principles | Indeterminate; subject to review by CCB |
| <u>Substitute Decisions Act, 1992</u> | Governs appointment and rules for substitute decision-makers for a person mentally incapable of personal care, or property/finance decisions | Assessors of capacity, substitute decision makers (attorneys, guardians), Office of the Public Guardian and Trustee (OPGT) | Capable person, or; Incapable person - cannot understand info relevant to property or personal care, or appreciate reasonably foreseeable consequences of decisions | No | Substitute decision maker must: Act in best interests of incapable person, considering wishes, values, and beliefs; Keep records/ account of property and transactions, and/or personal care | Allows for appointment of a power of attorney or guardian for incapable person; OPGT may act as guardian where no other authorized decision maker | Capacity assessors must be licensed and independent; CCB may review incapacity; OPGT investigates reports of abuse or neglect | Indeterminate; Subject to length of incapacity |

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| <u>Regulated Health Professions Act, 1991</u> | Regulates 27 health professions, including physicians, nurses, dentists, occupational therapists and psychologists Establishes self-governing regulatory colleges to govern and hold health professionals accountable | Minister of Health and Long-Term Care; Health Professions Appeal and Review Board (HPRAB); Health Professions Regulatory Advisory Council (HPRAC); Regulatory Colleges; Registrar; Committees of: Executive; Patient Relations; Inquiries, Complaints & Reports; Registration; Discipline; Fitness to Practise; Quality Assurance | Health professionals and authorities governed by Act | No, but only person acting in scope of practice shall treat or advise on health where it is reasonably foreseeable that serious bodily harm may result from act or omission | Objectives are to ensure: Regulation of health professionals; Standards of practice; Access to services; Sensitivity to individuals in dealing with professionals, Colleges, and the Board | Sets out powers of Minister; Creates HPRAC and HPRAB; Identifies 14 controlled acts to only be performed by authorized persons; Sets out which professions are self-governed; Establishes Health Professions Procedural Code as part of each health profession Act | HPRAB conducts complaint and registration reviews and hearings; Minister may make inquiries to review activities of a regulatory college and/or require action; make, amend, or revoke a regulation Discipline for misconduct | Membership in a health profession may be refused, restricted or terminated if qualifications are not met, or if misconduct, incompetence or incapacity |
| <u>Personal Health Information Act, 2004</u> | Sets out rules for the collection, use and disclosure of personal health information The Act applies to health settings, including mental health programs and psychiatric facilities | Health information custodians (persons delivering health care services); Recipients of health info; Agents who perform services for custodians; Substitute decision makers; Information and Privacy Commissioner | Individual who has personal health info collected (eg. physical or mental health, provision of care, plan of service, etc.) | No, but info may be disclosed without consent where necessary on reasonable grounds to reduce or eliminate a significant risk of bodily harm | Health info should not be disclosed for purposes unrelated to treatment, though some use is allowed for research and other purposes of social value Act does not apply to info that could not be reasonably used to identify an individual | Custodians must generally obtain consent before they collect, use, or disclose personal health information; Reasonable steps must be taken to ensure info is complete, accurate and up to date | Individuals generally have a right to access and request corrections to their personal health info Commissioner may review complaints of contravention of the Act; Offenders are subject to fines; Individuals may sue for damages | Indefinite |
| <u>Ontario Human Rights Code</u> | Sets out grounds of discrimination to provide equal rights and opportunities, and freedom from discrimination | Ontario Human Rights Commission (HRC); Board of Inquiry; Human Rights Tribunal of Ontario (HRT); Disability Rights Secretariat; Advisory Groups | Persons with a mental impairment or disorder are covered under the ground of 'disability' | No | Equal treatment includes past, present and perceived conditions | Protection from harassment and discrimination in various areas (eg. employment, housing, services membership, etc); Duty to accommodate | HRC duty to protect public interest/ eliminate discriminatory practices HRT holds hearings where issue of human rights infringement | Commissioner, members and Chief, and Tribunal members hold office for term specified by Lieutenant Governor Council |
| <u>Ontario Mental Health Foundation Act</u> | Sets out rules and establishment procedures for The Ontario Mental Health Foundation and Clarke Institute of Psychiatry | Lieutenant Governor in Council; Members, Chair and Vice Chair, Presiding Officer; Auditor General; Minister of Health and Long Term Care | Foundation and Institution constituents | No | Foundation establishes/ conducts mental health program of research, diagnosis and treatment; Institute manages and operates hospital with psychiatric operations | Procedures to set up and operate these institutions | Foundation and Institute subject to audits and must disclose annual report | Indeterminate for Foundation; Institute members hold office for 3 years and subject to reappointment |

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| <u>Home Care and Community Services Act, 1994</u> | Ensures services available to people in their own homes/ other community settings so alternatives to institutional care exist; Provides support for caregivers | Minister of Health and Long Term Care; Health Services Appeal and Review Board; Approved agencies; LHINs; Service providers; First Nations; Substitute decision makers; Lieutenant Governor in Council | Persons who have care in their homes or other community settings, including “mentally capable” or “mentally incapable” persons | No | Person receiving community service has: Rights to be dealt with in a way that respects dignity, privacy, autonomy, needs/ preferences; Rights to info, raise concerns/ recommend changes, have records kept confidential; Person may refuse consent to service | Provision of community services, including: community support, homemaking, personal support, and professional services | Approved agency establishes process for reviewing complaints; Appeal to Health Services Appeal & Review Board available Significant fines for offences | Indeterminate; Minister may: Impose terms and conditions on approval or financial assistance; Remove or impose new terms; Revoke or suspend approval of an agency, premises; Issue takeover |
| <u>Long-Term Care Homes Act, 2007</u> | Governs long-term care (LTC) homes so that residents may live with dignity in security, safety, and comfort, and have physical, psychological, social, and spiritual needs met | Licensee; Ministry of Health and Long-Term Care; Health Services Appeal and Review Board; Directors; Substitute decision makers; Lieutenant Governor in Council | Resident in long-term care home | No, but there is a duty to restrain when immediate action is necessary to prevent serious bodily harm to the person or others | Restraints should be minimized as much as possible and reasonable, given resident’s physical and mental condition | Recognizes dignity and ensures safe environment of resident, including right to participate in developing, implementing, reviewing, and revising plan of care | All LTC homes establish written policy with zero tolerance of abuse and neglect of residents; Residents may sue; Mandatory reporting of harm; Minister appoints inspectors; Licensee may appeal to Health Services Appeal & Review Board | Assessments occur within 14 days of admission to home, plan of care developed within 21 days of admission, and assessed at least every 6 months; Discharge permitted by authorized person |
| <u>Ontario Disability Support Program Act, 1997</u> | Provides income and employment supports to eligible persons with disabilities | Ontario Disability Support Program; Ministry of Community and Social Services; Service Co-ordinator; Social Benefits Tribunal; Eligibility Review Officers; Lieutenant Governor in Council | Persons with disabilities who are unable to work, including substantial physical or mental impairment that is continuous or recurrent and expected to last 1 year or more (and presents a substantial barrier to competitive employment, or it restricts daily living) | No | <i>Income Support:</i> Ontario resident; budgetary requirements exceed income and their assets are within prescribed limits; info provided to determine eligibility; Person must not be addicted to drugs or alcohol (unless they are mentally impaired) <i>Employment Support:</i> Ontario resident, intends to gain competitive employment, enters funding agreement with a service co-ordinator | Income and employment support for persons with disabilities | Decisions affecting eligibility for or amount of income support, assistance or extended health benefits can be generally appealed to Tribunal; Appeal to Divisional Court on a question of law | Based on continued eligibility for income or employment support |

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| <u>Accessibility for Ontarians with Disabilities Act 2005 (AODA)</u> | Benefit Ontarians by “developing, implementing, and enforcing accessibility standards [to] achieve accessibility for people with disabilities [in] goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025” | Involvement of people with disabilities, the Government of Ontario and representatives of economic sectors and industries in the process of developing the accessibility standards | Persons with disabilities - including a condition of mental impairment or mental disorder | No | The Act applies to both the private and public sectors and will eventually replace the <i>Ontarians with Disabilities Act, 2001</i> | Reduces barriers for persons disabilities (including mental health) Accessibility standards have or will be developed for: Customer Service, Information or communications, employment, transportation, and built environment | Comprehensive review including consultations with the public and those with disabilities; The reviewer reports on findings and makes recommendations to improve the Act Minister establishes/oversees process to implement accessibility standards, including inspections | Appropriate time frame determined for each measure, policy, practice and requirement Long-term objectives considered by identifying what is to be implemented by January 2025 |
| <u>Ontarians with Disabilities Act, 2001</u> | Improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province | Government of Ontario; Minister of Citizenship; Executive Council; Municipalities; Lieutenant Governor in Council | Person with disability, including a condition of mental impairment, developmental disability, or mental disorder | No | Review of Act 5 years after it came into force | Government of Ontario makes accessible: buildings, goods and services, sites, publications, employee standards; Ministry and municipalities make accessibility plans; Committee advises council on accessibility plans; Agencies make accessibility policies | Council of municipalities include persons with disabilities; Consultations required with persons with disabilities; Persons may make comments on proposed regulations; Offences subject to fine of up to 50k | On a day to be named by proclamation of the Lieutenant Governor, this Act is repealed by the Statutes of Ontario, 2005 |

* All statutes in force (Current to August 1, 2011)

** Nb. While the main Ontario mental health statutes have been included, there are other Ontario statutes with implications for mental health. These include, but are not limited to: *Brian’s Law (Mental Health Legislative Reform) 2000*; *Commitment to the Future of Medicare Act, 2004*; *Freedom of Information and Protection of Privacy Act*; *Health Protection and Promotion Act*; *Local Health System Integration Act, 2006*; *Quality of Care Information Protection Act, 2004*; *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*.