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July 9, 2014

Mr. Bruce McKee  
Mental Health Program Consultant  
Community Care Branch, Ministry of Health  
3475 Albert Street  
Regina, SK S4S 6X6

Dear Mr. McKee:

**Re: Mental Health Services Regulations Review**

Thank you for asking Ombudsman Saskatchewan to review the proposed changes to *The Mental Health Services Regulations*.

Since 2008, Ombudsman Saskatchewan has offered government what we refer to as fairness lens reviews. These reviews are meant to be proactive. We encourage government to request them when it is developing or introducing legislation, regulations, policies or procedures. Our comments are directed towards improving the overall administrative fairness of the processes described in the drafts we review. They are neither intended to provide legal advice nor should they be considered as formal recommendations from the Ombudsman. We may review the Act and Regulations again in the context of a specific complaint or issue. When we do, we may provide additional comments or recommendations about them.

Our comments are presented in the order that your May 30, 2014 letter presented the proposed changes. We then follow with a few comments about other sections of the Regulations. On October 29, 2012, we provided comments to [REDACTED] a Mental Health Consultant with the Ministry of Health, on proposed changes to *The Mental Health Services Act*. We have also repeated some of our comments from that submission.

### **Involuntary Examination by a Prescribed Health Professional**

We recognize the difficulties in delivering services across the province and understand that expanding the prescribed health professionals who can order an involuntary examination is intended to address the lack of physicians available in rural or remote areas. Given the impact these decisions have on the people detained involuntarily, it is important that prescribed health professionals are not only qualified, but that the Regulations (and the policies and practices that result from them) outline the need for specific and recent training in the area of mental illness. We acknowledge that the proposed list of requirements includes them having at least two years of experience, but there is no indication of how recent this experience needs to be. We recommend that the Regulations require prescribed health professionals to have recent experience working in mental health services.

### **Limits to the Number of ECT Sessions Used**

Our Office takes no position on the clinical practices of a discipline. From an administrative fairness perspective, though, we would expect to see any limits be based on the best available scientific evidence and in consultation with the medical community and patients, their families and patient advocates.

### **E-Warrants**

We have no comments about these proposed changes.

### **Other comments**

Certification – Over the years, we have received calls from patients or their families asking for assistance in appealing mental health certifications. Often they are not familiar with the services of Official Representatives. While an application for detention must be served on the Official Representative, there is currently no requirement that a patient, the nearest relative, a personal guardian, or a substitute decision maker be informed about the services of the Official Representative. Section 20 of *The Ombudsman Act, 2012* has provisions that maybe of interest to the Ministry. They require facilities to ensure that persons are advised of our services. A provision similar to this, but with respect to the services available from Official Representatives, could improve accessibility to the review process for patients and their families. We encourage the Ministry to consider adding more specific requirements such as these to the Regulations.

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July 9, 2014

Page 3 of 3

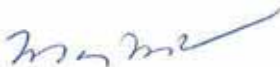
In one of our recent cases, an adult was repeatedly certified over an 18-month period. This person's personal guardians under *The Adult Guardianship and Co-decision-making Act* were ill-informed as to the certification process and their right to request appeals. To our knowledge, they were never contacted by the Official Representative. Nor is it certain that the Official Representative was ever made aware that the adult patient had personal guardians. We would strongly encourage the Ministry to consider these potential practice gaps and to include procedures in the Regulations to help safeguard against them.

Transfer of Patients – Our office has also dealt with situations where the transfer of a patient from one facility in one region to one in a different region has not been seamless. In one case, the transfer Form K was initiated, but not accepted by the intended receiving region. In other situations, we have been informed that out-of-region referrals are not readily accepted by the second region's psychiatrists. We encourage the Ministry to consider how province-wide transfers of certified patients can be supported by the Regulations (or the resulting policies and procedures).

Approved Homes Administration – We note the intention to decentralize the administration of approved home programs from the Ministry to the health regions. Based on our experience, we suggest that the authority to review or decide appeals relating to a refusal to license an applicant, or a decision to decertify a licensed home, remain with the Ministry or another decision-making body separate from the health regions. This will alleviate any concerns that the regional authorities are biased or not independent from the original decision-makers whose decision are being reviewed or appealed.

We appreciated the opportunity to offer our feedback. Please feel free to contact my office at (306) 787-6211 if you have any questions or require any further information.

Yours truly,



Mary McFadyen  
Ombudsman

MM/rmk