

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

MENTAL HEALTH AMENDMENT (NO. 2) ACT 2018

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WHEREAS it is expedient to amend the Mental Health Act 1968 to provide for community treatment orders; patient consent to medical treatment for mental disorder; the development and issuance of a Code of Practice; and to make a related amendment to the Parliamentary Election Act 1978;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

MENTAL HEALTH AMENDMENT (NO. 2) ACT 2018

Citation

1 This Act, which amends the Mental Health Act 1968, (“the principal Act”) may be cited as the Mental Health Amendment (No. 2) Act 2018.

Amends section 1

2 (1) Section 1 of the principal Act is amended as follows.

(2) In subsection (1)—

(a) insert the following definitions in their correct alphabetical positions—

“absent without leave” has the meaning given in section 21(3);

“Code” means the Code of Practice issued under section 78A;

“community patient” means a patient in respect of whom a community treatment order is in force;

“community treatment order” means an order made by a responsible medical officer under section 48A;

“community treatment period” has the meaning given in section 48D(2);

“order for discharge” has the meaning given in section 26(1B);

“Part III C certificate” has the meaning given in section 48.1F(1);

“registered medical practitioner” has the meaning given in section 1 of the Medical Practitioners Act 1950;

“restriction order” means an order made under section 38;

“SOAD” or “second opinion approved doctor” has the meaning given in section 48Y(1); and

(b) repeal the definition of “patient” and substitute—

“ “patient” means any person who is suffering or appears to be suffering from mental disorder;”.

Amends section 17

3 (1) Section 17 of the principal Act is amended as follows.

(2) In subsection (1), after “detained in a hospital under this Part”, insert “, or recalled to hospital under Part IIIA,”.

Amends section 18

4 (1) Section 18 of the principal Act is amended as follows.

(2) Repeal subsection (1) and substitute—

“(1) For the purposes of—

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- (a) advising whether an application to the Review Tribunal should be made by or in respect of a patient—
 - (i) who is liable to be detained under this Part; or
 - (ii) who has been recalled under Part IIIA; or
- (b) furnishing information as to the condition of a patient for the purposes of such an application; or
- (c) advising as to the exercise by the nearest relative of any such patient of any power to order his discharge,

any medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application, or by the nearest relative of the patient, as the case may be, may at any reasonable time visit the patient and examine him in private.”.

Amends section 20

5 (1) Section 20 of the principal Act is amended as follows.

(2) In subsection (1), after “The responsible medical officer may”, insert “, subject to subsections (2A) and (2B),”.

(3) After subsection (2), insert—

“(2A) Longer-term leave shall not be granted to a patient unless the responsible medical officer first considers whether the patient should be dealt with under section 48A instead.

(2B) For the purposes of subsection (2A), “longer-term leave” means—

- (a) leave of absence granted indefinitely;
- (b) leave of absence granted for a specified period of more than seven consecutive days; or
- (c) leave of absence granted for a specified period that is extended further, such that the total period of leave of absence exceeds seven consecutive days.”.

Amends section 25

6 (1) Section 25 of the principal Act is amended as follows.

(2) Repeal subsection (1) and substitute—

“(1) Where a patient—

- (a) who is liable to be detained by virtue of the application for admission for treatment; or
- (b) in respect of whom a community treatment order is made,

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is detained in custody in pursuance of any sentence or order passed or made by a court in Bermuda (including any order committing or remanding him in custody), and is so detained for a period exceeding, or for successive periods exceeding in the aggregate, six months, the application or community treatment order (as the case may be) shall cease to have effect at the expiration of that period.”.

Amends section 26

7 (1) Section 26 of the principal Act is amended as follows.

(2) In subsection (1), delete “(in this Act referred to as an order for discharge)” and after that subsection insert—

“(1A) Subject to section 27, if an order in writing discharging a community patient is made in accordance with subsection (2)(c)—

(a) the community patient shall cease to be liable to recall under Part IIIA; and

(b) the application for admission for treatment in respect of such patient shall cease to have effect.

(1B) An order under subsection (1) or (1A) shall be referred to as an “order for discharge”.

(3) In subsection (2)—

(a) at the end of paragraph (a), delete “and”;

(b) in paragraph (b), delete the full stop and insert “; or”; and

(c) after paragraph (b), insert—

“(c) where the patient is a community patient, by the responsible medical officer, by the Chief of Psychiatry or by the nearest relative of the patient.”.

Amends section 27

8 (1) Section 27 of the principal Act is amended as follows.

(2) In subsection (1), after “section 22(3)” insert “or section 48F(2)(b)”.

(3) In subsection (2), after “a patient who is liable to be detained in a hospital” insert “, or in respect of whom a community treatment order is made,”.

Amends section 29

9 (1) Section 29 of the principal Act is amended as follows.

(2) After subsection (6), insert—

“(7) Where an order is made under this section in respect of a patient who is or subsequently becomes a community patient pursuant to Part IIIA, the nearest

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relative of the patient may make an application to the Review Tribunal in respect of the patient within the period of six months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.”.

Amends section 30

10 (1) Section 30 of the principal Act is amended as follows.

(2) In subsection (4)(b), delete the full stop and insert “; or” and after that paragraph insert—

“(c) if the patient was on the date of the order a community patient, or subsequently becomes a community patient, when he ceases to be a community patient.”.

Amends section 38

11 (1) Section 38 of the principal Act is amended as follows.

(2) Insert after subsection (3)(b)—

“(ba) none of the provisions of Part IIIA shall apply;”.

Inserts new Parts IIIA to IIIC

12 After section 48 of the principal Act, insert—

“PART IIIA

COMMUNITY TREATMENT ORDERS

Community treatment order

48A (1) Without prejudice to section 26, the responsible medical officer may make an order in writing discharging a detained patient from hospital, subject to the patient being liable to recall to hospital in accordance with section 48H.

(2) In this section, a “detained patient” means a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.

(3) For the purposes of this Part, an order discharging a patient under subsection (1) shall be referred to as a “community treatment order”.

Relevant criteria

48B (1) A community treatment order may be made in respect of a patient if—

(a) in the opinion of the responsible medical officer, the relevant criteria under subsection (2) are met; and

(b) a mental welfare officer states in writing—

(i) that he agrees with that opinion; and

(ii) that it is appropriate to make the order.

(2) The relevant criteria are—

- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that the patient receive such medical treatment;
- (c) subject to the patient being liable to be recalled to a hospital, medical treatment can be provided without the patient continuing to be detained in a hospital; and
- (d) it is necessary that the responsible medical officer be able to exercise the power under section 48H to recall the patient to a hospital.

(3) In determining whether the criterion in subsection (2)(d) is met, the responsible medical officer shall have regard to—

- (a) the patient's history of mental disorder;
- (b) the risk of deterioration of the patient's condition if he were not detained in a hospital; and
- (c) any other relevant factors.

(4) A community treatment order shall not be made in respect of a patient who has not attained the age of eighteen years.

Conditions

48C (1) A community treatment order shall, subject to this section, specify the following conditions with which a community patient is to comply while the order remains in force—

- (a) a condition that the patient make himself available for examination—
 - (i) for the purposes of section 48F(2); and
 - (ii) if it is proposed in his case to give treatment for which a Part IIC certificate is required, for the purposes of enabling a SOAD to certify, in accordance with section 48.1B(3)(a), that it is appropriate for the treatment to be given; and
- (b) any other condition as agreed between the responsible medical officer and the mental welfare officer.

(2) A community treatment order may only specify a condition under subsection (1)(b) if the responsible medical officer, with the agreement of a mental welfare officer, thinks it necessary or appropriate for one or more of the following purposes—

- (a) ensuring that the patient receives medical treatment;
- (b) preventing risk of harm to the patient's health or safety;
- (c) protecting other persons.

(3) The responsible medical officer may from time to time, by notice in writing, vary or suspend any conditions specified in the community treatment order.

(4) Where a community patient fails to comply with a condition of his community treatment order, that fact may be taken into account for the purposes of exercising the power to recall under section 48H.

Duration of community treatment order

48D (1) A community treatment order shall remain in force until whichever of the following occurs first—

- (a) the expiration of the period of six months (or any period of extension under this Act) beginning with the date on which the order was made;
- (b) the patient is discharged in pursuance of an order under section 26(2)(c) or a direction under section 62;
- (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
- (d) the order is revoked under section 48M.

(2) The six-month period mentioned in subsection (1)(a) shall be referred to as "the community treatment period".

Effect of community treatment order

48E (1) An application for admission for treatment shall not cease to have effect, in respect of a patient, by virtue of his becoming a community patient.

(2) During the period in which a patient is subject to a community treatment order—

- (a) the power to detain that patient pursuant to section 10(1) is suspended;
- (b) reference (however expressed) in this Act, or any other Act or in any statutory instrument to patients liable to be detained or detained under this Act, shall not include him; and
- (c) section 22 shall not apply while he remains a community patient.

(3) Notwithstanding subsection (2), a patient who is subject to a community treatment order shall be liable to be recalled to hospital under section 48H until an order for discharge is made in accordance with section 26(2)(c).

Extension of community treatment period

- 48F (1) The community treatment period may be extended—
- (a) from its expiration, for a period of six months; and
 - (b) from the expiration of any period of extension under paragraph (a), for a further period of one year and so on for periods of one year at a time.
- (2) Within the period of two months, ending on the day on which the community treatment order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible medical officer—
- (a) to examine the patient; and
 - (b) if it appears to him that the conditions set out in subsection (4) are satisfied, and a statement is made under subsection (6), to furnish to the Board or a person designated by the Board, a report to that effect.
- (3) Where a report is furnished under subsection (2)(b), in respect of a community patient, the Board or a person designated by the Board shall, unless it discharges the patient, cause the patient to be informed.
- (4) The conditions referred to in subsection (2)(b) are that—
- (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
 - (b) it is necessary for the health or safety of the patient or for the protection of other persons that he receive such treatment;
 - (c) subject to the patient being liable to be recalled to a hospital, such treatment can be provided without his being detained in a hospital; and
 - (d) it is necessary that the responsible medical officer should continue to be able to exercise the power under section 48H to recall the patient to a hospital.
- (5) In determining whether the criterion in subsection (4)(d) is met, the responsible medical officer shall have regard to—
- (a) the patient's history of mental disorder;
 - (b) the risk of deterioration of the patient's condition if he were not detained in a hospital; and
 - (c) any other relevant factors.
- (6) The statement referred to in subsection (2)(b) is a statement in writing by a mental welfare officer—
- (a) that it appears to him that the conditions set out in subsection (4) are satisfied; and

(b) that it is appropriate to extend the community treatment period.

(7) Before furnishing a report under subsection (2)(b), the responsible medical officer shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.

Applications to Review Tribunal concerning community patients

48G A patient, in respect of whom a community treatment order is made, extended or revoked, may apply to the Review Tribunal in accordance with section 61.

Power to recall to hospital

48H (1) The responsible medical officer may recall a community patient to hospital if in his opinion—

- (a) the patient requires medical treatment in hospital for his mental disorder; and
- (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to the hospital for that purpose.

(2) The responsible medical officer may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 48C(1).

(3) The power to recall under this section shall be exercisable by notice in writing to the patient.

(4) Where a patient is already in the hospital at the time when the power of recall is exercised, a notice under this section shall be sufficient authority to detain the patient there in accordance with this Act.

Powers in respect of recalled patients

48I (1) Where a community patient is detained in hospital by virtue of a notice recalling him there under section 48H(3), the responsible medical officer may—

- (a) in accordance with section 48M, revoke the community treatment order; or
- (b) release the patient (but not after the community treatment order is revoked).

(2) If after the period of seventy-two hours the patient has not been released, nor has the community treatment order been revoked, the patient shall be released.

(3) A community patient who is detained in hospital by virtue of a notice recalling him there under section 48H(3) may be transferred to another hospital and, where so transferred, shall be treated for the purposes of this section—

- (a) as if the notice were a notice recalling him to that other hospital; and
 - (b) as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) A patient who is released under this section shall remain subject to the community treatment order.
- (5) For the purposes of this section—
- (a) “the period of seventy-two hours” means the period of seventy-two hours beginning with the time when the patient’s detention in a hospital by virtue of the notice under section 48H(3) begins; and
 - (b) references to being released shall be construed as being released from that detention and accordingly from being recalled to hospital.

Community patients absent without leave

48J (1) This section applies to a community patient who is absent without leave from a hospital to which he is recalled.

(2) Subject to subsection (3), a patient to whom this section applies may be taken into custody and returned to the hospital by any—

- (a) mental welfare officer;
- (b) officer on the staff of the hospital;
- (c) police officer; or
- (d) person authorised in writing by the responsible medical officer.

(3) A person shall not be taken into custody under this section after the earlier of—

- (a) the period of six months beginning with the first day of his absence without leave; or
- (b) the expiration of the period that the community treatment order is in force.

(4) For the purposes of determining whether a community treatment order is in force, a report under section 48F(2)(b) (to extend the community treatment period) furnished before the first day of the patient’s absence without leave, shall not take effect unless the extension began before the first day of the patient’s absence without leave.

(5) Where a community patient is absent without leave on the day on which the seventy-two-hour period mentioned in section 48I(2) would expire, that period shall not expire until the end of the period of seventy-two hours beginning with the time when—

- (a) the patient is taken into custody under subsection (2) and returned to the hospital; or
 - (b) the patient returns himself to the hospital within the period during which he can be taken into custody under this section.
- (6) Where a community patient is absent without leave—
- (a) on the day on which the community treatment order would cease to be in force; or
 - (b) within the period of one week ending with the day on which the community treatment order would cease to be in force,

the order shall not cease to be in force until the relevant time.

- (7) For the purposes of subsection (6), the relevant time—
- (a) where the patient is taken into custody under subsection (2), is the end of the period of one week beginning with the day on which he is returned to the hospital;
 - (b) where the patient returns himself to the hospital within the period during which he can be taken into custody under this section, is the end of the period of one week beginning with the day on which he so returns himself; and
 - (c) otherwise, is the end of the period during which the patient can be taken into custody under this section.

Special provisions as to community patients absent without leave for less than twenty-eight days

48K (1) This section applies where a community patient who is absent without leave from a hospital to which he is recalled is taken into custody and returned to hospital under section 48J, or returns himself to the hospital, within twenty-eight days beginning with the first day of his absence without leave.

(2) Where a community patient is absent without leave under this section, the community treatment order may be extended under section 48F and any examination and report to be made and furnished in respect of the patient under that section may be made and furnished within the period so extended.

(3) Where the community treatment period is extended by virtue of subsection (2), after the day on which the order would have ceased to be in force, the extension shall take effect as from the day the order would have ceased to be in force.

Special provisions as to community patients absent without leave for more than twenty-eight days

48L (1) This section applies where a community patient who is absent without leave from a hospital to which he is recalled is taken into custody and returned to

hospital under section 48J, or returns himself to the hospital, after a period of more than twenty-eight days beginning with the first day of his absence without leave.

(2) Where a community patient is absent without leave under this section, it shall be the duty of the responsible medical officer, within the period of one week beginning with the day on which the patient is returned or returns to the hospital (hereinafter referred to as his "return day")—

- (a) to examine the patient; and
- (b) if it appears to him that the relevant conditions are satisfied, to furnish to the Board or a person designated by the Board a report in writing to that effect, in respect the patient.

(3) Where a report is furnished under subsection (2)(b), the Board or the person designated by the Board shall cause the patient to be informed.

(4) Before furnishing a report under subsection (2)(b), the responsible medical officer shall consult—

- (a) one or more other persons who have been professionally concerned with the patient's medical treatment; and
- (b) a mental welfare officer.

(5) Where the community treatment order in respect of a patient under this section would (apart from any extension of the community treatment period on or after the patient's return day) be in force after the end of the patient's period of absence without leave, the community treatment period shall be deemed to expire at the end of that period of absence unless a report is duly furnished in respect of that patient under subsection (2)(b).

(6) If the community treatment order in respect of a patient under this section is revoked during the period of one week beginning with his return day—

- (a) subsections (2) to (5) shall not apply; and
- (b) any report already furnished in respect of the patient under subsection (2) shall be of no effect.

(7) Where the community treatment order in respect of a patient under this section would (apart from section 48J) have ceased to be in force on or before the day on which a report under subsection (2)(b) is furnished, the report shall extend the community treatment period in accordance with section 48F(1).

(8) Where a community treatment period is extended by virtue of subsection (7)—

- (a) the extension shall take effect as from the day on which (apart from that subsection and section 48J) the order would have ceased to be in force; and
- (b) if (apart from this paragraph) the period as so extended would expire on or before the day on which the report under subsection

(2)(b) is furnished, the report shall further extend that period, as from the day on which the period would expire, in accordance with section 48F(1).

(9) Where the community treatment order in respect of a patient under this section would (taking into account any extension under subsection (7)) cease to be in force within the period of two months beginning on the day on which a report is furnished under subsection (2)(b), the report shall, if it so provides, have effect also as a report furnished under section 48F(2) and the Board or the person designated by the Board shall, unless it discharges the patient, cause the patient to be informed.

(10) In this section, “the relevant conditions” means the conditions set out in section 48F(4).

Revocation of a community treatment order

48M (1) The responsible medical officer may by notice in writing given to the patient or to the person for the time being in charge of the patient revoke the community treatment order—

- (a) if in his opinion the grounds mentioned in section 10(2) are satisfied in respect of the patient; and
- (b) if a mental welfare officer states in writing—
 - (i) that he agrees with that opinion; and
 - (ii) that it is appropriate to revoke the order.

(2) Where a community treatment order is revoked—

- (a) section 15 shall have effect as if the patient had never been discharged from hospital by virtue of a community treatment order;
- (b) section 22 shall have effect as if the patient had been admitted in pursuance of the application for admission for treatment on the day on which the order is revoked; and
- (c) any provisions of this Act or any other Act relating to patients liable to be detained or detained in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made.

Effect of expiry of community treatment order

48N (1) Without prejudice to section 26(2)(c), on expiry of the community treatment order the community patient shall be deemed to be discharged absolutely from liability to be recalled to hospital under this Act and the application for admission for treatment shall cease to have effect.

(2) For the purposes of subsection (1), a community treatment order expires on the expiry of the community treatment period as extended under section 48F, but this is subject to section 48J.

PART IIIB
CONSENT TO TREATMENT

Application of Part IIIB

48O (1) This Part applies—

- (a) subject to subsection (2), to any patient who is liable to be detained in hospital under this Act; and
- (b) to a community patient if he is recalled to hospital under section 48H.

(2) This Part does not apply to a patient who is liable to be detained under this Act by virtue of—

- (a) section 7(3A) or 7(3B);
- (b) an emergency application and the second medical recommendation referred to in section 13(4)(a) has not been given and received; or
- (c) section 14(2), 71(3) or 72(2).

Treatment requiring consent and a second opinion

48P (1) This section applies to the following forms of medical treatment for mental disorder—

- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
- (b) such other forms of treatment as the Minister may by regulations prescribe for the purposes of this section.

(2) Subject to section 48V, a patient shall not be given any form of medical treatment to which this section applies unless he has consented to the treatment and—

- (a) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) and two other persons (not being registered medical practitioners) approved, for the purposes of this paragraph, in accordance with section 48Y(2), have certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and

(b) the SOAD referred to in paragraph (a) has certified in writing that it is appropriate for the treatment to be given.

(3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and, of those persons consulted—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) The negative resolution procedure shall apply to regulations made under this section.

Treatment requiring consent or a second opinion

48Q (1) This section applies to the following forms of medical treatment for mental disorder—

(a) the administration of medicine to the patient by any means (not being a form of treatment under paragraph (b), section 48P or section 48R) and at any time during the period for which he is liable to be detained as a patient to whom this Part applies, where the period of three months or more has elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder; and

(b) such other forms of treatment as the Minister may, by regulations, prescribe for the purposes of this section.

(2) Subject to section 48V, a patient shall not be given any form of treatment to which this section applies unless—

(a) the patient has consented to the treatment and either the responsible medical officer in charge of the treatment or a SOAD has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; or

(b) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question or, being so capable, has not consented to it but it is appropriate for the treatment to be given.

(3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and, of those persons consulted—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) The negative resolution procedure shall apply to regulations made under this section.

Electro-convulsive therapy, etc. (requiring consent or a second opinion)

48R (1) This section applies to the following forms of medical treatment for mental disorder—

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as the Minister may, by regulations, prescribe for the purposes of this section.

(2) Subject to section 48V, a patient shall not be given any form of treatment to which this section applies unless—

- (a) the patient has consented to the treatment and either the responsible medical officer in charge of the treatment or a SOAD has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; or
- (b) a SOAD (not being the responsible medical officer or the person in charge of the treatment in question) has certified in writing—
 - (i) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
 - (ii) that it is appropriate for the treatment to be given; and
 - (iii) that giving him the treatment would not conflict with—
 - (A) any previous wishes made by the patient, which the SOAD concerned is satisfied are valid and applicable to the treatment in question; or
 - (B) a decision made by a judge appointed under Part IV or a donee of a power of attorney.

(3) Before giving a certificate under subsection (2)(b), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment and of those persons consulted—

- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
- (b) neither shall be the responsible medical officer or the person in charge of the treatment in question.

(4) When giving a certificate in respect of the matters set out in subsection (2)(b)(iii)(A), the SOAD concerned shall act in accordance with the Code.

(5) The negative resolution procedure shall apply to regulations made under this section.

Plans of treatment

48S Any consent or certificate given under section 48P, 48Q or 48R may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that section applies.

Withdrawal of consent

48T (1) Where a patient has consented to any form of treatment under section 48P, 48Q or 48R, the patient may, subject to section 48V, at any time before the completion of the treatment withdraw his consent.

(2) Where a patient has consented to treatment for the purposes of section 48P, 48Q or 48R, but before the completion of the treatment—

- (a) withdraws his consent; or
- (b) ceases to be capable of understanding the nature, purpose and likely effects of the treatment,

those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(3) Where a patient, before the completion of any treatment for which a certificate under section 48Q or 48R is given certifying that the patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies, becomes capable of understanding the nature, purpose and likely effects of the treatment—

- (a) that certificate shall, subject to section 48V, cease to apply to the treatment; and
- (b) those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(4) Without prejudice to the application of subsections (1) to (3) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to section 48V, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

Review of treatment

48U (1) This section applies in respect of a patient who is given treatment—

- (a) in accordance with section 48P, 48Q(2)(b) or 48R(2)(b); or

(b) by virtue of section 48W in accordance with a Part IIIC certificate.

(2) A report on the treatment and condition of a patient, to whom this section applies, shall be given by the responsible medical officer in charge of the treatment to the Board—

(a) on the next occasion on which the responsible medical officer furnishes a report under section 22(3), 48F(2), or 48L(2); and

(b) at any other time if so required by the Board.

(3) Where a patient to whom this section applies is subject to a restriction order or to a direction under section 45(2), subsection (2) shall have effect as if paragraph (a) of that subsection required the report to be made—

(a) in the case of treatment in the period of six months beginning with the date the order was made, at the end of that period; and

(b) in the case of treatment at any subsequent time, on the next occasion on which the responsible medical officer makes a report in respect of the patient.

(4) The Board may at any time give notice directing that, subject to section 48V, a certificate given in respect of a patient under section 48P(2), 48Q(2)(b) or 48R(2)(b) shall not apply to treatment given to him after a date specified in the notice and sections 48P, 48Q and 48R shall apply to any such treatment as if that certificate had not been given.

Urgent treatment

48V (1) Sections 48P and 48Q shall not apply to any treatment—

(a) which is immediately necessary to save the patient's life;

(b) which is immediately necessary to prevent a serious deterioration of the patient's condition, provided such treatment is not irreversible; or

(c) which—

(i) is immediately necessary to alleviate serious suffering by the patient; or

(ii) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others,

provided such treatment is not irreversible or hazardous.

(2) Section 48R shall not apply to any treatment—

(a) which is immediately necessary to save the patient's life; or

- (b) which is immediately necessary to prevent a serious deterioration of the patient's condition, provided such treatment is not irreversible.
- (3) For the purposes of this section, treatment is—
 - (a) irreversible if it has unfavourable irreversible physical or psychological consequences; and
 - (b) hazardous if it entails significant physical hazard.
- (4) Section 48T shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48P, 48Q or 48R, if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

Treatment on recall of community patient or revocation of order

- 48W (1) This section applies where—
- (a) a community patient is recalled to hospital under section 48H; or
 - (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 48M.
- (2) For the purposes of section 48Q(1)(a), a patient to whom this section applies is to be treated as if he had remained liable to be detained since the making of the community treatment order.
- (3) But section 48Q shall not apply to treatment given to the patient if—
- (a) for the purpose of section 48.1B(1), the certificate requirement is met; or
 - (b) as a result of section 48.1B(4)(c), the certificate requirement does not apply.
- (4) Section 48R does not apply to treatment given to the patient if for the purpose of section 48.1B(1)—
- (a) there is authority to give the treatment; and
 - (b) the certificate requirement is met.
- (5) Where this section applies and a certificate (for the purpose of section 48.1B(1)) falls within section 48.1B(3), the certificate requirement is met only in so far as—
- (a) the certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified in the certificate); or

(b) where a notice is given under section 48.1F(5), treatment is authorised by virtue of section 48.1F(8).

(6) Subsection (5)(a) shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B, if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

(7) Where this section applies and the certificate requirement is no longer met for the purposes of section 48.1B(3)(c), the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B, shall not be precluded if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of the treatment under the plan) would cause serious suffering to the patient.

(8) In a case where subsection (1)(b) applies, subsection (3) only applies pending compliance with section 48Q.

Treatment not requiring consent

48X (1) The consent of a patient shall not be required for any medical treatment, not being a form of treatment to which section 48P, 48Q or 48R applies, given to him for the mental disorder from which he is suffering if the treatment is given by or under the direction of the responsible medical officer in charge of the treatment.

(2) Notwithstanding subsection (1), where any medical treatment, not being a form of treatment to which section 48P, 48Q or 48R applies, is given to a patient for the mental disorder from which he is suffering, the consent of the patient shall wherever practicable be sought and the patient's consent, refusal to consent or a lack of capacity to give consent must be recorded.

(3) Subsection (2) shall not apply to medical treatment given to a patient in the circumstances set out in section 48V if the treatment is given by or under the direction of the responsible medical officer in charge of the treatment.

SOADs and other approved persons

48Y (1) For the purposes of this Act, a SOAD shall be a registered medical practitioner who—

- (a) is a specialist in psychiatry; or
- (b) is qualified to practise as a psychiatrist by virtue of a qualification recognised by the Bermuda Medical Council; and
- (c) is appointed as a SOAD by the Minister in accordance with the Code.

(2) Persons approved for the purposes of section 48P(2)(a), shall be persons approved in accordance with the Code.

(3) A SOAD or other person approved under this section may, for the purpose of exercising his functions under Part IIIB or Part IIIC, at any reasonable time—

- (a) visit and interview and, in the case of a SOAD, examine in private any patient detained in hospital or any community patient in a hospital or establishment of any description or (if access is granted) other place; and
- (b) require the production of and inspect any records relating to the treatment of the patient there.

Supplementary provisions for Part IIIB

48Z For the purposes of this Part—

- (a) “consent” in relation to a patient, means the voluntary permission of a patient to be given a proposed treatment where sufficient information has been given to the patient of the purpose, nature, likely effects and risks of that treatment, including the likelihood of its success and any alternatives to it;
- (b) it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case;
- (c) any certificate shall be in such form as the Board may determine.

PART IIIC

TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

Application of Part IIIC

48.1A (1) This Part applies to the giving of relevant treatment to a community patient who is not recalled to hospital under section 48H.

(2) In this Part, “relevant treatment” in relation to a patient means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is a form of treatment to which section 48P does not apply; or
- (c) is a type of treatment to which section 48Q or 48R applies if, at the time when it is given to the patient, section 48Q or 48R, respectively, would have applied to it had the patient remained liable to be detained in hospital in pursuance of an application for admission for treatment rather than being a community patient by virtue of section 48A.

- Treatment under a community treatment order
- 48.1B (1) Relevant treatment shall not be given unless—
- (a) there is authority to give it; and
 - (b) where such treatment is of a form to which section 48Q or 48R applies, the certificate requirement under subsection (3) is met.
- (2) For the purposes of subsection (1)(a), there is authority to give relevant treatment to a patient if—
- (a) the patient has capacity to consent to it and does consent to it; or
 - (b) the giving of such treatment is authorised in accordance with section 48.1D or 48.1E.
- (3) For the purposes of subsection (1)(b), the certificate requirement is met if—
- (a) a SOAD (not being the responsible medical officer or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
 - (b) where conditions are so specified, the conditions are satisfied; or
 - (c) where there is authority to give the treatment under subsection (1)(a), the responsible medical officer in charge of the treatment has certified in writing that the patient has the capacity to consent to the treatment and has consented to it.
- (4) The certificate requirement does not apply—
- (a) if giving the treatment to the patient is authorised in accordance with section 48.1E;
 - (b) if the treatment is immediately necessary and the patient has capacity to consent to it and does consent to it; or
 - (c) to the administration of medicine that is a form of treatment to which section 48Q applies, if such medicine is administered to the patient at any time during the period of one month beginning with the day on which the community treatment order is made.
- (5) For the purposes of subsection (4)(b), treatment is immediately necessary if—
- (a) in the case of treatment of a form to which section 48Q applies—
 - (i) it is immediately necessary to save the patient's life; or
 - (ii) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or

- (iii) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
 - (iv) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous; or
 - (b) in the case of treatment of a form to which section 48R applies, it falls within paragraph (a)(i) or (a)(ii).
- (6) In subsection (5), treatment is—
- (a) irreversible if it has unfavourable irreversible physical or psychological consequences; and
 - (b) hazardous if it entails significant physical hazard.

Withdrawal of consent

48.1C (1) Where the consent of a patient to treatment has been given as mentioned in section 48.1B(2)(a), the patient may at any time before the completion of the treatment withdraw his consent and that section shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Where a patient has consented to treatment for the purposes of section 48.1B(2)(a) but, before the completion of the treatment, loses capacity to consent to the treatment—

- (a) the patient shall be treated as having withdrawn his consent; and
- (b) that section shall then apply as if the remainder of the treatment were a separate form of treatment.

(3) Without prejudice to the application of subsections (1) and (2) to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

(4) This section shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with section 48Q, 48R or 48.1B if the responsible medical officer in charge of the treatment considers that the discontinuance of the treatment (or of treatment under the plan) would cause serious suffering to the patient.

Community patients lacking capacity

48.1D (1) A person is authorised to give relevant treatment to a patient under section 48.1B(2)(b) if the conditions in subsections (2) to (6) are satisfied.

(2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.

- (3) The second condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it.
- (4) The third condition is that—
- (a) the person has no reason to believe that the patient objects to being given the treatment; or
 - (b) the person does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
- (a) the person is in charge of the treatment and is the responsible medical officer; or
 - (b) the treatment is given under the direction of the responsible medical officer.
- (6) The fifth condition is that giving the patient the treatment would not conflict with—
- (a) any previous wishes made by the patient, which the person authorised to give the treatment is satisfied are valid and applicable to the treatment in question; or
 - (b) a decision made by a judge appointed under Part IV or a donee of a power of attorney.
- (7) When determining the matters set out in subsection (6)(a), the person authorised to give the treatment shall act in accordance with the Code.

Emergency treatment for community patients lacking capacity

48.1E (1) A person is also authorised to give relevant treatment to a patient under section 48.1B(2)(b) if the conditions in subsections (2) to (5) are satisfied.

- (2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it.
- (3) The second condition is that the treatment is immediately necessary.
- (4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—
- (a) the treatment needs to be given in order to prevent harm to the patient; and
 - (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.
- (5) For the purposes of subsection (3), treatment is immediately necessary if, subject to subsections (6) and (7)—

- (a) it is immediately necessary to save the patient's life; or
- (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
- (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others, and is not irreversible or hazardous.

(6) Where treatment is of a form to which section 48R(1)(a) applies, treatment is immediately necessary if it falls within subsection (5)(a) or (b).

(7) Where treatment is of a form to which section 48R(1)(b) applies, treatment is immediately necessary if it falls within subsection (5)(a) to (d) as may be specified in regulations made under section 48R.

(8) Section 48V(3) applies for the purposes of this section as it applies for the purposes of that section.

Part IIIC certificate; supplementary provisions

48.1F (1) A certificate meeting the requirements of section 48.1B(3) (referred to as a "Part IIIC certificate") may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of treatment to which section 48Q or 48R applies.

(2) A Part IIIC certificate shall be in such form as the Board may determine.

(3) Before giving a Part IIIC certificate that falls within section 48.1B(3)(a), the SOAD concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—

- (a) at least one shall be a person who is not a registered medical practitioner; and
- (b) neither shall be the patient's responsible medical officer or the person in charge of the treatment in question.

(4) Where a patient is given treatment in accordance with a Part IIIC certificate that falls within section 48.1B(3)(a), a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the Board if so required by the Board.

(5) The Board may, at any time, give notice directing that a Part IIIC certificate shall not apply to treatment given to a patient after a date specified in the notice and, where such notice is given, the relevant section shall then apply to any such treatment as if that certificate had not been given.

(6) The relevant section is—

- (a) if the patient is not recalled to hospital, section 48.1B; or
- (b) if the patient is recalled to hospital or is liable to be detained in hospital under this Act following revocation of the community treatment order under section 48M—
 - (i) section 48Q, in the case of treatment to which section 48Q applies (subject to section 48W(2)); or
 - (ii) section 48R, in the case of treatment to which section 48R applies.

(7) The notice under subsection (5) shall be given to the person in charge of the treatment in question.

(8) Subsection (5) shall not preclude the continuation of any treatment (or of treatment under any plan) pending compliance with the relevant section, if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

Factors to be considered in determining whether patient objects to treatment

48.1G (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.

(2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

Supplementary provisions for Part IIIC

48.1H Section 48Z applies for the purposes of this Part as it applies for the purposes of Part IIIB. ”.

Amends section 61

13 (1) Section 61 of the principal Act is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (e), after “an application for admission for treatment” insert the words “, or in respect of patient for whom a community treatment order is made”;
- (b) in paragraph (f), delete “of this Act,” and substitute “, or who is or subsequently becomes a community patient pursuant to Part IIIA; or”; and
- (c) after paragraph (f), insert—

“(g) a community treatment order, in respect of a patient, is made under section 48A; or

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- (h) a report is furnished under section 48F(2)(b) in respect of a community patient and the patient is not discharged; or
 - (i) a community treatment order, in respect of a patient, is revoked under section 48M.”.
- (3) In subsection (2)—
- (a) repeal paragraph (b) and substitute—
 - “(b) in the cases mentioned in paragraphs (b), (g) and (i) of that subsection, six months beginning with the day on which the patient is admitted, or the community treatment order is made or revoked, as so mentioned;
 - (ba) in the case mentioned in paragraph (h) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;”;
 - (b) repeal paragraph (e) and substitute—
 - “(e) in the case mentioned in paragraph (f) of that subsection—
 - (i) in respect of a patient who is or subsequently becomes liable to be detained under Part II, twelve months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force; and
 - (ii) in respect of a community patient, six months beginning with the date of the order, and in any subsequent period of twelve months during which the order continues in force.”.

Amends section 61G

- 14 (1) Section 61G of the principal Act is amended as follows.
- (2) Repeal subsection (1) and substitute—

“(1) Where—

- (a) a patient liable to be detained under this Act in a hospital; or
- (b) a community patient,

is to be discharged otherwise than by virtue of an order for discharge made by his nearest relative, the Board shall, subject to subsection (2), take such steps as are practicable to inform the person (if any) appearing to the Board to be the nearest relative of the patient; and that information shall, if practicable, be given at least seven days before the date of discharge.”.

Amends section 62

- 15 (1) Section 62 of the principal Act is amended as follows.

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(2) After subsection (1) insert—

“(1A) Where application is made to the Review Tribunal by or in respect of a community patient, the tribunal shall direct the discharge of a community patient if it is not satisfied—

- (a) that the patient is suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
- (b) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or
- (c) that it is necessary that the responsible medical officer should be able to exercise the power under section 48H to recall the patient to hospital; or
- (d) in the case of application by virtue of section 61(1)(e), that the patient, if discharged, would be likely to act in a manner dangerous to other persons or himself.”.

Amends section 65

16 (1) Section 65 of the principal Act is amended as follows.

(2) Repeal subsection (1) and substitute—

“(1) Where a person (“D”) has, pursuant to this Act, care or custody (whether by virtue of any legal or moral obligation or otherwise) of—

- (a) a mentally disordered person; or
- (b) a person who lacks, or who D reasonably believes lacks, mental capacity,

it shall be an offence for D to ill-treat or wilfully neglect that person.”.

Amends section 67

17 (1) Section 67 of the principal Act is amended as follows.

(2) In subsection (1)(a), after “Part II” insert “or recalled to hospital under Part IIIA”.

Amends section 75

18 (1) Section 75 of the principal Act is amended as follows.

(2) In subsection (1), after “or rules” insert “or Code”.

Inserts section 78A

19 After section 78 of the principal Act, insert—

“Code of Practice

78A (1) The Minister shall prepare and issue a Code of Practice providing for—

- (a) the guidance of registered medical practitioners and other health professionals responsible for the care and treatment of patients suffering from mental disorder;
- (b) the guidance of persons acting in connection with the care or treatment of patients;
- (c) the guidance of persons assessing whether a patient has capacity in relation to any matter;
- (d) the guidance of persons responsible for assessing whether a patient gives consent in relation to a matter and shall include criteria for assessing the validity and applicability of any previous wishes made by the patient;
- (e) the appointment, and minimum qualifications, of a mental welfare officer;
- (f) the appointment, selection, training and utilisation of SOADs and other persons approved for the purposes of section 48Y; and
- (g) such other matters concerned with this Act as the Minister thinks fit.

(2) The Code may include a statement of principles which the Minister thinks should inform decisions under this Act.

(3) In preparing the statement of principles, the Minister shall in particular ensure that each of the following matters is addressed—

- (a) respect for patients' past and present wishes and feelings;
- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation;
- (c) minimising restrictions on liberty;
- (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them;
- (e) avoidance of unlawful discrimination;
- (f) effectiveness of treatment;
- (g) views of carers and other interested parties;
- (h) patient wellbeing and safety; and
- (i) public safety.

(4) The Minister may from time to time amend the whole or any part of the Code and issue that amended Code or part.

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(5) The Minister may delegate the preparation or amendment of the whole or any part of the Code to the Board or such other body as he considers appropriate.

(6) The Minister shall publish on the Bermuda Government Portal at the web address: www.gov.bm—

- (a) the Code as first issued; and
- (b) any amendment to the Code.

(7) Before issuing or amending the Code, the Minister shall prepare and publish a draft of the Code or amendment and consider any representations made to it about the draft, and may modify the draft accordingly.

(8) A failure on the part of any person to observe any provision of the Code shall not of itself render the person liable to any proceedings; but in any proceedings before a court, the Code shall be admissible in evidence and if any provision of the Code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(9) The Code shall not be subject to the Statutory Instruments Act 1977.”.

Amends the First Schedule

- 20 (1) The First Schedule to the principal Act is amended as follows.
- (2) In paragraph 4(2) after subparagraph (2)(a), insert—

“(aa) in the case of a patient in respect of whom a community treatment order is made under section 48A, extended under section 48F or revoked under section 48M; ”.

Amends the Second Schedule

- 21 (1) The Second Schedule to the principal Act is amended as follows.
- (2) In the first column, under the heading “Section of Part II and subject matter”—
- (a) in the row beginning, “s.20 (Leave of absence from hospital)”, in the third column—
 - (i) insert after ““may””, the words “, the words “subject to subsections (2A) and (2B)” shall be omitted and”; and
 - (ii) insert before “In subsection (4)”, the words “Subsections (2A) and (2B) shall not apply.”;
 - (b) in the row beginning, “s.24 (Special provisions as to patients absent without leave)”, repeal the first, second and third columns; and

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- (c) in the row beginning, “s.26 (Discharge of patients)”, in the third column delete “In subsection (2),” and substitute “Subsection (1A) shall not apply. In subsection (2), paragraphs (a) and (c)”.

Amends the Parliamentary Election Act 1978

22 In section 4(2) of the Parliamentary Election Act 1978, repeal paragraph (f) and substitute—

- “(f) he is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Bermuda.”.

Transitional and commencement provisions

23 (1) The Minister responsible for health may, by regulations subject to the negative resolution procedure, make such transitional provisions as he considers necessary as a result of the insertion of Parts IIIA to IIIC in the principal Act.

(2) Subject to subsection (3), this Act shall come into operation on 31 October 2020 unless brought into operation sooner on a date appointed by the Minister responsible for health by notice published in the Gazette.

(3) Section 22 of this Act shall come into operation on Assent.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Mental Health Act 1968 (the “Act”) to provide for; community treatment orders, patient consent to medical treatment for mental disorder, the development and issuance of a Code of Practice, and to make a related amendment to the Parliamentary Election Act 1978.

Clause 1 provides the citation for the Bill.

Clause 2 amends section 1 of the Act to insert definitions in respect of new and existing terms.

Clause 3 amends section 17 of the Act to enable that section, as it relates to the receipt of correspondence, to apply to a patient who by virtue of a community treatment order is recalled to hospital under Part IIIA as it applies to a patient detained in hospital under Part II.

Clause 4 amends section 18 of the Act to enable that section, as it relates to the ability of a medical practitioner to visit and examine a patient liable to be detained in hospital under Part II (for the purposes of advising whether an application to the Review Tribunal should be made in respect of that patient), to apply to a patient who is subject to a community treatment order and is recalled under that order to hospital.

Clause 5 amends section 20 of the Act by inserting new subsections which (a) provide for the granting of a longer-term leave of absence in respect of a patient, (b) define what is meant by “longer-term leave” and (c) require that, before granting such leave, the responsible medical officer first consider whether the patient should instead be given a community treatment order.

Clause 6 amends section 25 of the Act to enable that section to apply to a patient who is subject to a community treatment order as it does to a patient who is liable to be detained under the Act. In such case, where a community patient is in custody, in pursuance of any sentence or order of a court and that detention is for a period or exceeds the period set out in that section, the community treatment order to which that patient is subject shall cease to have effect at the expiration of that period.

Clause 7 amends section 26 of the Act to include the discharge of a patient who is subject to a community treatment order as being a type of order for discharge which may be made by the responsible medical officer, the Chief of Psychiatry or by the nearest relative of the patient. This clause also provides that where such an order for discharge is made, the community patient to whom it applies shall cease to be liable to recall to hospital and the application for admission for treatment in respect of that patient shall cease to have effect.

Clause 8 amends section 27 of the Act to enable that section, as it relates to restricting the ability of a patient’s nearest relative from discharging that patient, to apply to a patient

who is subject to a community treatment order as it applies to a patient who is liable to be detained in hospital.

Clause 9 amends section 29 of the Act to enable that section, as it relates to the functions of a court-appointed acting nearest relative, to apply (with the necessary modifications) to a patient who is subject to a community treatment order as it does to a patient who is liable to be detained in hospital. In such a case, a person so appointed may make an application to the Review Tribunal in respect of a community patient within the period of 6 months from the date of the order of his appointment and in any subsequent period of 12 months during which his order of appointment continues in force.

Clause 10 amends section 30 of the Act to provide that a court order made under section 29 appointing a nearest relative in respect of a person who is subsequently becomes a community patient, shall cease to have effect when the patient ceases to be a community patient.

Clause 11 amends section 38 of the Act to provide that Part IIIA (community treatment orders) shall not apply to a patient who is subject to a hospital order, where such hospital order is subject to a further order made by the Supreme Court restricting the discharge of the patient from hospital.

Clause 12 inserts new Parts IIIA, IIIB and IIIC into the principal Act.

Part IIIA introduces new sections relating to community treatment orders as follows:

Section 48A empowers a responsible medical officer to make an order discharging a detained patient from hospital, subject to that patient being liable to be recalled to hospital. This section defines a detained patient as a patient who liable to be detained in a hospital in pursuance of an application for admission for treatment.

Section 48B provides that a community treatment order may be made where the responsible medical officer is of the opinion that (a) the patient is suffering from mental disorder and it is appropriate for him to receive medical treatment; (b) it is necessary for the health or safety of the patient or for the protection of other persons that the patient receive such medical treatment; (c) subject to the patient being liable to be recalled to hospital, medical treatment can be provided without the patient continuing to be detained in a hospital; and (d) it is necessary that the responsible medical officer be able to exercise the power to recall the patient to hospital if the relevant criteria are met. This section also requires that, before making a community treatment order, a mental welfare officer must agree with the opinion of the responsible medical officer and must agree that such an order is appropriate. Finally, this section provides that a community treatment order shall not be made in respect of a patient who has not attained the age of 18 years.

Section 48C sets out the conditions that a community treatment order must specify. Such conditions include that the patient make himself available for examination and any other condition as agreed between the responsible medical officer and the mental welfare officer. This section also provides that failure to comply with a condition may be taken into account for the purposes of exercising the power to recall the patient to hospital.

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Section 48D provides for the duration of a community treatment order which shall, subject to that section, be 6 months.

Section 48E provides that where a patient is subject to a community treatment order, the application for admission for treatment in respect of that patient does not cease to have effect but the power to detain the patient in hospital pursuant to section 10(1) does not apply during the period the patient is subject to the community treatment order.

Section 48F provides that a community treatment order may be extended from the 6-month period for a further 6 months and from the expiration of that period for a period of one year and so on for periods of one year at a time. This section requires that within the period of 2 months before the expiration of the community treatment order, the responsible medical officer must examine the patient. If from this examination the conditions set out under this section are met, the community treatment order may be extended. This section, however, requires that when determining whether the conditions are met, one or more other persons professionally concerned in the patient's medical treatment must be consulted.

Section 48G enables a patient who is subject to a community treatment order to apply to the Review Tribunal with respect to the making, extension or revocation of such order.

Section 48H empowers the responsible medical officer to recall a patient in respect of whom a community treatment order is made where, in his opinion, the patient requires medical treatment in hospital and there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.

Section 48I provides that where a patient, in respect of whom a community treatment order is made, is recalled to hospital, the responsible medical officer may either revoke the community treatment order or release the patient. This section also provides that where such a patient is recalled to hospital and his community treatment order has not been revoked, the patient must after 72 hours be released but will remain subject to the community treatment order.

Section 48J provides for instances where a patient, in respect of whom a community treatment order is made, is recalled to hospital but then absents himself from that hospital without permission. This section sets out, in such cases, the persons who are permitted to take such patients into custody to be returned to hospital. This section also prohibits such a patient from being taken into custody after 6 months have lapsed from the first day of his absence without leave or after his community treatment order has expired. Finally, this section provides for instances in which the community treatment order may be extended where such a patient is absent without leave. These include where the patient is absent without leave (a) on the day on which the 72-hour period within which he can be held on recall expires; (b) on the day the community treatment order is to expire; or (c) the week before the community treatment order is to expire.

Section 48K applies to a patient, in respect of whom a community treatment order is made, who is recalled to hospital but is then absent without leave from that hospital for less than 28 days. This section provides for instances where the patient returns before the community treatment order expires or after the community treatment order expires and in both cases the community treatment period may be extended upon the return of the patient.

Section 48L applies to a patient, in respect of whom a community treatment order is made, who is recalled to hospital but is then absent without leave from that hospital for a period exceeding 28 days. This section sets out, in such cases, the duty of the responsible medical officer upon the patient's return to hospital. This section also provides for the extension of the patient's community treatment period and when such an extension is to be deemed to take effect.

Section 48M empowers the responsible medical to revoke a community treatment order if, in his opinion, the grounds for which a person may be admitted to treatment under section 10 of the Act are met and it is appropriate to revoke the order. This section also enables a number of provisions to take effect (after revocation) as if the patient had never been discharged onto the community treatment order or to take effect as they did before the community treatment order was made. These provisions include (a) section 15 of the Act, which deals with the effect of an application for admission; (b) section 22 of the Act, which deals with the duration for which a patient admitted to hospital may be detained in hospital; and (c) provisions of the Act and any other Act relating to patients liable to be detained or detained in hospital in pursuance of an application for admission to hospital for treatment.

Section 48N provides that where a community treatment order expires, the patient to whom it applied shall be deemed to be discharged absolutely from liability to be recalled to hospital and provides that the application for admission for treatment shall cease to have effect. This section also provides that expiration of the community treatment order takes place upon the expiration of the community treatment period, which is subject to extension under the Act.

Part IIIB introduces new sections relating to consent to treatment as follows:

Section 48O provides that Part IIIB applies to any patient who is liable to be detained in hospital under the Act and to community patients who are recalled to hospital. This section, however, provides that Part IIIB does not apply to the following patients (a) patient who is by virtue of a voluntary or informal admission for assessment becomes liable to be detained for 72 hours; (b) a patient who is under an emergency application for assessment that has not ceased; (c) an in-patient who may be detained in hospital for a period of 3 days; (d) a patient who is removed to a place of safety in the execution of a warrant and may be detained there for 72 hours; and (e) a patient who is removed from a public place to a place of safety and may be detained there for 72 hours to enable such a person to be examined and the necessary arrangements for care made.

Section 48P provides for the forms of treatment requiring patient consent and a second medical opinion. Such treatment includes any surgical operation for destroying brain tissue or the functioning of brain tissue and any other forms of treatment that the Minister may by regulations, subject to the negative resolution procedure, prescribe. This section provides that such forms of treatment may only be given if the patient has consented and a second opinion approved doctor (a "SOAD") has certified (a) along with 2 other persons (who are not registered medical practitioners) that the patient is capable of understanding the nature, purpose and likely effects of the treatment; (b) that the patient has consented to the treatment; and (c) that it is appropriate for the treatment to be given. This section requires that when certifying that it is appropriate for the treatment to be given, the SOAD must consult other persons (none of whom shall be the responsible medical officer or the

person in charge of the treatment) who have been professionally concerned with the patient's medical treatment.

Section 48Q provides for the forms of treatment requiring patient consent or a second medical opinion. Such treatment includes the administration of medicine to the patient by any means and at any time during the period for which he is liable to be detained as a patient to whom this Part applies, where three months or more have elapsed since the first occasion in that period when the medicine was administered to him for his mental disorder. This section also empowers the Minister to prescribe by regulations, subject to the negative resolution procedure, other forms of treatment to which this section is to apply. This section provides that such forms of treatment may only be given if: (a) the patient has consented and either the responsible medical officer in charge of the treatment or a SOAD has certified that the patient is capable of understanding the nature, purpose and likely effects of the treatment and that the patient has consented to the treatment; or (b) a SOAD has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; or that the patient being so capable has not consented to it but that it is appropriate for the treatment to be given. This section requires that when certifying that it is appropriate for the treatment to be given, the SOAD must consult other persons (none of whom shall be the responsible medical officer or the person in charge of the treatment) who have been professionally concerned with the patient's medical treatment.

Section 48R provides for the forms of treatment involving electro-convulsive therapy and such other forms of treatment as the Minister may prescribe by regulations, subject to the negative resolution procedure. Such forms of treatment require patient consent or a second medical opinion. This section provides that such forms of treatment may only be given if: (a) the patient has consented to the treatment and either the responsible medical officer in charge of the treatment or a SOAD has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and that the patient has consented to it; or (b) a SOAD has certified in writing that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but that it is appropriate for the treatment to be given and that giving the treatment would not conflict with any previous wishes made by the patient which may be valid and applicable to the treatment in question. This section requires that when certifying that it is appropriate for the treatment to be given, the SOAD must consult other persons (none of whom shall be the responsible medical officer or the person in charge of the treatment) who have been professionally concerned with the patient's medical treatment.

Section 48S provides that any consent or certificate given under sections 48P, 48Q and 48R may relate to a plan of treatment under which the patient may be given one or more forms of treatment to which those sections apply.

Section 48T provides that a patient may at any time withdraw his consent in respect of any form of treatment to which sections 48P, 48Q and 48R apply. This section provides that if a patient has consented to such treatment but, before its completion, withdraws his consent or if a patient ceases to be capable of understanding the nature, purpose and likely effects of the treatment, then the remainder of the treatment will constitute a separate form of treatment and the sections which apply to the treatment will apply as such.

Section 48U provides for the review by the Bermuda Hospitals Board in the following circumstances: (a) where treatment requiring consent and a second opinion (section 48P)

is given to a patient; (b) where treatment requiring consent or a second opinion (section 48Q) is given to a patient in a case where a SOAD has certified that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question or, being so capable, has not consented but it is appropriate for the treatment to be given; (c) where electro-convulsive therapy or such other form of treatment is given to a patient (section 48R) in a case where a SOAD has certified that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question but it is appropriate for the treatment to be given; and (d) where treatment is given in respect of a community patient who is recalled to hospital. This section sets out when a report on the treatment and condition of the patient is to be submitted to the Board and provides that the Board may give notice directing that any certificate enabling treatment to be given under the various sections to which this section applies shall not apply to treatment after a certain date, and in such cases the relevant sections will apply as if no such certificate had been given.

Section 48V provides for circumstances in which the requirements for the giving of treatment under section 48P (treatment requiring consent and second opinion), section 48Q (treatment requiring consent or a second opinion) and section 48R (electro-convulsive therapy, etc.) do not apply. These circumstances include where it is immediately necessary (a) to save a patient's life; (b) to prevent serious deterioration of the patient's condition, provided the treatment is not irreversible; (c) to alleviate serious suffering; or (d) where it represents the least interference necessary to prevent the patient being a danger to himself or others, provided the treatment is not irreversible or hazardous.

Section 48W provides for the giving of treatment in respect of patients who are subject to a community treatment order but are detained in hospital after being recalled there or who are detained after having their community treatment order revoked. This section provides that the requirements for the giving of some forms of treatment do not apply if the certificate requirement in respect of that patient has been met, thereby having already authorised the giving of such treatment.

Section 48X provides that the consent of a patient shall not be required for any medical treatment that is not a form of treatment to which section 48P (treatment requiring consent and a second opinion), section 48Q (treatment requiring consent or a second opinion), or section 48R (electro-convulsive therapy, etc.) applies. This section provides, however, that in such cases the consent of the patient shall wherever practicable be sought and the patient's consent, refusal or lack of capacity to give consent must be recorded.

Section 48Y provides that a SOAD must be a medical practitioner, registered under the Medical Practitioners Act 1950 and must be either a specialist in psychiatry or qualified to practise as a psychiatrist by virtue of a qualification recognised by the Bermuda Medical Council. This section also provides that such a person must be appointed by the Minister in accordance with the Code of Practice. This section also provides for the approval of other approved persons in accordance with the Code of Practice.

Section 48Z provides supplementary provisions for Part IIIB.

Part IIIC introduces new sections relating to the treatment of patients who are subject to a community treatment order but who are not recalled to hospital. These sections are as follows:

Section 48.1A provides that Part IIIC applies in respect of “relevant treatment” given to community patients. Relevant treatment is defined under this section as treatment for the mental disorder from which the community patient is suffering and is either a type of treatment to which section 48P (treatment requiring consent and a second opinion) does not apply or is a type of treatment to which section 48Q (treatment requiring consent or a second opinion) or section 48R (electro-convulsive therapy, etc.) does apply if when given to the community patient those sections would have applied to that treatment had the patient remained liable to be detained in hospital.

Section 48.1B provides that in order for relevant treatment to be given to a community patient, there must be authority to give it (i.e. the patient has consented to the treatment and has the capacity to consent) and, if it is a type of treatment to which 48Q (treatment requiring consent or a second opinion) or section 48R (electro-convulsive therapy, etc.) applies, the certificate requirement authorising that treatment is met. This section provides that the certificate requirement is met if (a) a SOAD has certified that it is appropriate for the treatment to be given, and (b) the responsible medical officer has certified that the patient has capacity to consent to the treatment and has consented to it. Finally, this section provides for instances where the certificate requirement does not apply (i.e. where treatment is immediately necessary for any of the reasons set out in section 48V).

Section 48.1C provides that where a community patient has given consent with respect to any treatment, he may at any time before the completion of the treatment withdraw his consent. Where a community patient’s consent is withdrawn, the remainder of the treatment will constitute a separate form of treatment for which authority must be obtained before it can be given. This section, however, also provides that treatment under section 48Q (treatment requiring consent or a second opinion) or 48R (electro-convulsive therapy, etc.), may be continued, pending compliance with those sections, if the responsible medical officer in charge of the treatment considers that discontinuance of the treatment would cause serious suffering to the patient.

Section 48.1D provides for the various conditions that must be met before a person is authorised to give treatment to a community patient. Such conditions include, for example, (a) taking reasonable steps to establish whether the patient lacks capacity to consent to the treatment; (b) having reasonable belief that the patient lacks capacity to consent to the treatment; (c) having no reason to believe that the patient objects to being given the treatment; and (d) ensuring that the giving of such treatment does not conflict with any previous wishes made by the patient which the person authorised to give the treatment is satisfied are valid and applicable to the treatment in question.

Section 48.1E provides, in cases of emergency, for the various conditions that must be met before a person is authorised to give treatment to a community patient who is lacking capacity to consent. Such conditions include, for example, (a) having reasonable belief that the patient lacks capacity to consent to the treatment; and (b) that the treatment is immediately necessary for any of the reasons set out in section 48V.

Section 48.1F makes supplementary provisions with respect to the certificate requirements under Part IIIC. This section provides that a certificate meeting the requirements may relate to a plan of treatment under which a patient may be given one or more forms of treatment (to which section 48Q or 48R applies) and requires that a SOAD, before giving such a certificate, shall consult one or more other persons professionally

concerned in the patient's medical treatment. Finally, this section enables the Board to give a notice directing that such a certificate is not to apply to treatment given to a patient after a date specified in the notice.

Section 48.1G provides for what is to be considered when assessing whether a community patient objects to treatment.

Section 48.1H provides supplementary provisions for Part IIIC.

Clause 13 amends section 61 of the Act to provide for the periods within which an application may be made to the Review Tribunal (a) by the nearest relative seeking discharge in respect of a community patient; (b) by a court appointed acting nearest relative in respect of a patient who is or subsequently becomes a community patient; (c) by a community patient in respect of whom a community treatment order is made; (d) by a community patient with respect to a report to extend the period of his community treatment order; and (e) by a community patient whose community treatment order has been revoked.

Clause 14 amends section 61G of the Act, as it relates to the Board informing a patient's nearest relative of that patient's discharge, to apply to a patient who is subject to a community treatment order as it does to other patients.

Clause 15 amends section 62 of the Act to enable the Review Tribunal to discharge a patient who is subject to a community treatment order.

Clause 16 amends section 65 of the Act to provide more simply that it is an offence for a person who has care or custody (whether by virtue of any legal or moral obligation or otherwise) of a mentally disordered person, or a person who lacks or appears to be lacking mental capacity, to ill-treat or wilfully neglect that person.

Clause 17 amends section 67 of the Act to include as an offence inducing or knowingly assisting a community patient recalled to hospital under Part IIIA to absent himself without leave.

Clause 18 amends section 75 of the Act to include, as a protected act, an act done pursuant to a Code of Practice.

Clause 19 inserts new section 78A into the Act. This section requires the Minister to prepare, issue and publish a Code of Practice to provide (a) for the guidance of all health professionals responsible for the care and treatment of patients suffering from mental disorder; (b) for the guidance of persons acting in connection with the care or treatment of patients; (c) for the guidance of persons assessing whether a patient has capacity in relation to any matter; (d) for the guidance of persons responsible for assessing whether a patient gives consent in relation to a matter and shall include criteria for assessing the validity and applicability of any previous wishes made by the patient; (e) the appointment, and minimum qualifications, of a mental welfare officer; (f) for the appointment, selection, training and utilisation of SOADs and other approved persons; and (g) with respect to such other matters as the Minister thinks fit. This clause also provides for the Minister to include, in the Code, a statement of principles and enables the Minister to amend the Code and to delegate the preparation or amendment of the Code or any part to the Board or such other body as the Minister considers appropriate.

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Clause 20 amends the First Schedule to the Act to provide that in proceedings before the Review Tribunal, where such proceedings relate to a patient in respect of whom a community treatment order is made, extended or revoked, the Review Tribunal must comprise one medical practitioner who satisfies the Chairman that he has experience in psychiatric care.

Clause 21 amends the Second Schedule to the Act in relation to Part III of the Act to do the following (a) to provide that when considering a leave of absence for a patient, the requirement of the responsible medical officer to first consider a community treatment order shall be read as not applying to a patient who is subject to a restriction order, or who is kept in custody until the pleasure of the Minister is known or who is subject to a transfer direction that is further restricted; (b) to provide that the provisions relating to the discharge of a community patient shall also be read as not applying to those patients; and (c) to make housekeeping amendments where the provisions no longer apply.

Clause 22 amends the Parliamentary Election Act 1978 to repeal section 4(2)(f) for the purposes of removing the reference to the mental disorder (as defined under the Act) and substituting the wording set out in section 55(2)(b) of Schedule 2 to the Bermuda Constitution Order 1968.

Clause 23 sets out the commencement provision and empowers the Minister to make transitional provisions regarding the implementation of Parts IIIA to IIIC.