



**Office of the Auditor General
Prince Edward Island**

Independent Assurance Report

**Mental Health Review Board -
Rights of Involuntary Patients**

November 2024



Prince Edward Island

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Auditor General

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Honourable Speaker and
Members of the Legislative Assembly
Province of Prince Edward Island

I have the honour of presenting this Report – **Mental Health Review Board – Rights of Involuntary Patients** to the Legislative Assembly.

Respectfully submitted,

Darren Noonan, CPA, CA
Auditor General

Charlottetown, Prince Edward Island
November 26, 2024

Mental Health Review Board - Rights of Involuntary Patients - Highlights

Why we did this audit

- We received a complaint from a concerned citizen that involuntary patients in psychiatric facilities were not being treated in accordance with the *Mental Health Act*.
- Involuntary patients are vulnerable because of their mental illness. They are suffering and in need of immediate treatment, but may be unwilling to accept it.
- The *Mental Health Act* and regulations are designed to help protect these patients, making it important that the content of this legislation is followed.

Objectives

To assess whether:

- Health PEI maintained documentation to demonstrate that involuntary patients were informed of their rights in accordance with Section 32 of the *Mental Health Act*;
- the Mental Health Review Board held hearings and communicated decisions in accordance with the *Mental Health Act*; and
- the Mental Health Review Board monitored and reported on applications received, hearings held, and cancelled hearings.

Conclusions

- Health PEI did not maintain documentation that demonstrated involuntary patients were informed of their rights in accordance with Section 32 of the *Mental Health Act*.
- The Mental Health Review Board did not always hold hearings and communicate decisions in accordance with the *Mental Health Act*; however, due to a scope limitation described in **Appendix B**, we have issued a qualified conclusion on this objective.
- The Mental Health Review Board did not monitor or report to the Department of Health and Wellness on applications received, hearings held, or cancelled hearings.

Audit Scope Period: April 1, 2021-March 31, 2023

What we found

Rights of Involuntary Patients	<ul style="list-style-type: none"> ○ Documentation was not maintained to support that Health PEI informed patients, detained for involuntary psychiatric assessments, of their right to be released after 72 hours in accordance with the <i>Mental Health Act</i>. RECOMMENDATION (paragraph 28) ○ Health PEI did not have documented policies or procedures for informing involuntary patients of their rights. RECOMMENDATION (paragraph 32) ○ The letter used by Health PEI informing involuntary patients of their rights did not inform them of their right to retain legal counsel. RECOMMENDATION (paragraph 36) ○ Documentation was not maintained to support that Health PEI informed involuntary patients of their rights. RECOMMENDATION (paragraph 42) ○ Health PEI did not display patients' rights in psychiatric facilities, in accordance with the <i>Mental Health Act</i>. RECOMMENDATION (paragraph 43)
Mental Health Review Board Hearings and Decisions	<ul style="list-style-type: none"> ○ When assessing if the Review Board held hearings and communicated decisions in accordance with the <i>Mental Health Act</i>, we noted the following weaknesses: <ul style="list-style-type: none"> - The Mental Health Review Board did not always hold hearings and make decisions within legislated timeframes. RECOMMENDATION (paragraph 55) - The Mental Health Review Board did not always maintain documentation to support when it received applications. RECOMMENDATION (paragraph 56) - The Mental Health Review Board did not always receive applications in a timely manner from Health PEI. RECOMMENDATION (paragraph 57) - There was no process to identify all appropriate parties to an application. RECOMMENDATION (paragraph 67) - Documentation was not always maintained to support that all appropriate parties had been informed of the hearings. Where documentation was maintained, they were not always provided three days' notice. RECOMMENDATION (paragraph 68) - Documentation was not always maintained to support that all appropriate parties had been advised of decisions made. RECOMMENDATION (paragraph 75)
Monitoring and Reporting	<ul style="list-style-type: none"> ○ The Mental Health Review Board did not track or monitor: applications received, hearings held and cancelled hearings. RECOMMENDATION (paragraph 81) ○ The Mental Health Review Board did not report annually to the Minister of Health and Wellness on applications received, hearings held, and cancelled hearings. RECOMMENDATION (paragraph 84)

Mental Health Review Board - Rights of Involuntary Patients

Why it's important

According to the World Health Organization, one in every eight people in the world live with a mental disorder. Seeking help for a mental disorder can be extremely stressful for individuals and their loved ones.

Those with severe mental disorders may not be well enough to understand they need treatment and are at a risk to themselves or others. It is these instances which sometimes warrant an individual to be involuntarily detained in a psychiatric facility for assessment and treatment.

Although involuntary patients are not consenting to being admitted to a psychiatric facility, they still have the right to be protected from unlawful detention. These individuals, and their loved ones, should be made aware of their rights under the *Mental Health Act* and regulations, and that a Mental Health Review Board is available to those involuntary patients who want to have their medical situation reviewed by an independent body. Complete and detailed records should be maintained in case of situations that may result in litigation.

BACKGROUND

1. Mental disorders can affect anyone and are characterized by significant disturbances in thinking, emotional regulation, or behavior.

Types of mental disorders include mood disorders, anxiety disorders, substance use disorders, post-traumatic stress disorders, eating disorders as well as schizophrenia. According to Statistics Canada, in 2022 over five million Canadians aged 15 and older, representing approximately 18 percent of the population, met the criteria for a mood, anxiety, or substance use disorder in the previous 12 months.

2. The *Health Services Act* gives Health PEI the responsibility for providing publicly funded healthcare services in Prince Edward Island, including mental health services. Health PEI is responsible for the operation of the inpatient psychiatric facilities in PEI which provide treatment for people suffering from mental disorders.
3. There were three psychiatric facilities in the province during our scope period, each with a designated administrator responsible for numerous functions under the *Mental Health Act*. These three facilities were:
 - (a) Hillsborough Hospital;
 - (b) Prince County Hospital; and
 - (c) Queen Elizabeth Hospital¹.
4. A patient can be admitted into a psychiatric facility with a mental health concern as either:

¹ The Queen Elizabeth Hospital had an inpatient mental health unit for part of our scope period. However, this unit transitioned to Hillsborough Hospital in the spring of 2022.

- a voluntary patient, or
 - an involuntary patient.
5. A voluntary patient has agreed to be admitted to a psychiatric facility to get treatment. The person may seek treatment by going to the emergency room, or the person may be referred by their family doctor, community mental health and substance use center, or other health service providers.
 6. Under the *Mental Health Act* (the Act), a person with a mental health disorder, in need of treatment, can be admitted to a psychiatric facility as an involuntary patient. This occurs when a person refuses, or is unable to consent to voluntary admission, and a psychiatrist determines that the person cannot be treated safely in the community, and that the safety of the person or others is at risk.
 7. The Act establishes that each psychiatric facility has an administrator who is responsible for informing involuntary patients of their rights, as soon as reasonably possible, when they are admitted. These include the right to
 - (a) retain legal counsel;
 - (b) communicate with family/guardian;
 - (c) be advised of the Mental Health Review Board; and
 - (d) appeal their involuntary status.

² The applicant and patient are almost always the same person. In cases where they are not the same person, both would be considered appropriate parties.

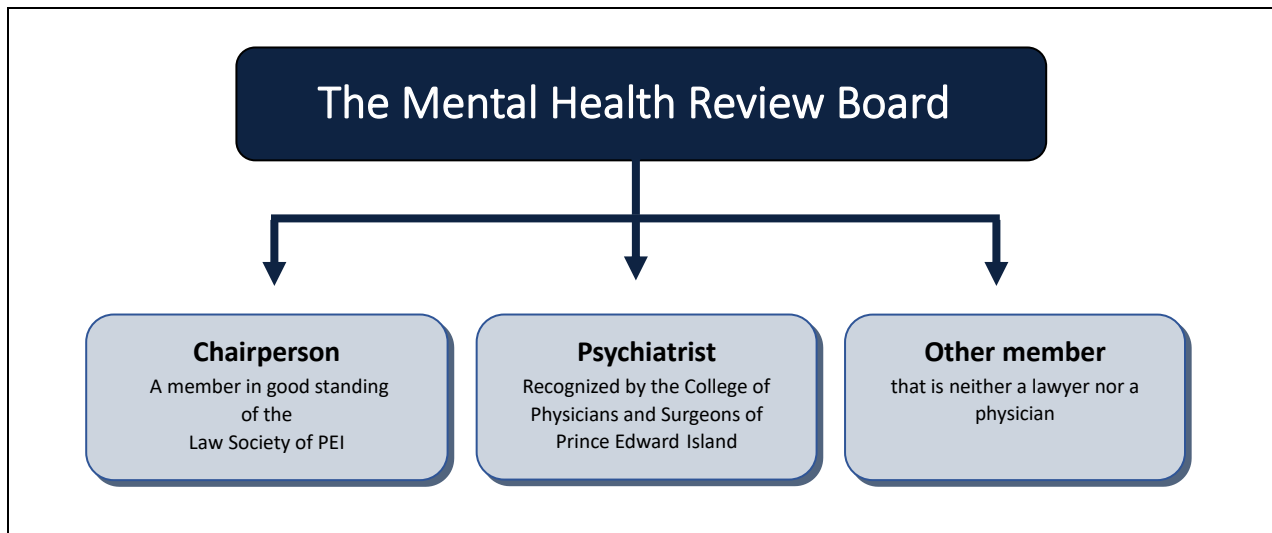
³ The Act requires the administrator to attend the hearings, however the administrator has delegated this responsibility to other Health PEI employees. During our audit, we found this responsibility was delegated to attending psychiatrists.

Mental Health Review Board

8. The Act requires that a Mental Health Review Board (the Board) be established. The primary role of the Board is to hear and review applications from involuntary patients, or anyone acting on behalf of the patient, and make a decision regarding various concerns, as shown in **Appendix D**.
9. Upon receiving an application, the Board has ten days to hold a hearing and make a decision. Those with a substantial interest in the application can attend the hearing. We will refer to those with a substantial interest as “appropriate parties” throughout this report. The Act notes these parties as:
 - the applicant/patient²;
 - the administrator³;
 - public guardian/substitute decision-maker⁴; and
 - any person who, in the opinion of the Board, has a substantial interest in the matter under review.
10. The Board is an independent group consisting of three members and has jurisdiction in all psychiatric facilities in the province over involuntary patient concerns. Board members are appointed by the Lieutenant Governor in Council. The composition of the Board is presented in **Exhibit 1**.

⁴ According to Section 29(4) of the Act, “In an application for authority to give treatment in a case where a substitute decision-maker or the public official empowered with the duty of public guardianship has refused consent on the patient’s behalf, the substitute decision-maker or the said public official is also a party.”

EXHIBIT 1
COMPOSITION OF THE MENTAL HEALTH REVIEW BOARD
FROM APRIL 1, 2021 – MARCH 31, 2023



Source: Section 27(3) of the *Mental Health Act*

**The Lieutenant Governor in Council must also appoint alternate members for each role.*

11. The Board does not have any employees and therefore relies on Health PEI employees to carry out some of its administrative responsibilities under the Act. These include
 - (a) receiving applications for the Board from involuntary patients, or someone acting on their behalf;
 - (b) informing the Board when an application is received;
 - (c) scheduling the Board hearings; and
 - (d) notifying appropriate parties about hearing dates and decisions.
12. The Board held 19 hearings in the 2021-2022 fiscal year and 21 hearings in the 2022- 2023 fiscal year. Most of the hearings held were requesting the Board to review the patient’s involuntary status within one of the psychiatric facilities in the province.
13. **Exhibit 2** provides a visual representation of the different roles and responsibilities of Health PEI and the Board regarding the rights of involuntary patients admitted to a psychiatric facility, as well as the Board hearings.

EXHIBIT 2
ROLES AND RESPONSIBILITIES OF AUDITEES
FROM APRIL 1, 2021 – MARCH 31, 2023

	HEALTH PEI	MENTAL HEALTH REVIEW BOARD
ROLES AND RESPONSIBILITIES	Administrator of psychiatric facilities	Independent appeal board available for involuntary patients
	Inform involuntary patients of their rights	Provide notice of hearings to appropriate parties
	Liaison between involuntary patients and the Board	Hold hearings and make a decision on applications
	Payment of Board member stipends	Communicate decisions to appropriate parties

Source: *Mental Health Act* and interviews with Health PEI and the Mental Health Review Board

AUDIT OBJECTIVES AND SCOPE

14. The objectives of this audit were to assess whether:
- Health PEI maintained documentation to demonstrate that involuntary patients were informed of their rights in accordance with Section 32 of the *Mental Health Act*;
 - the Mental Health Review Board held hearings and communicated decisions in accordance with the *Mental Health Act*; and
 - the Mental Health Review Board monitored and reported on applications received, hearings held, and cancelled hearings.
15. This report summarizes the results of our audit work on the rights of involuntary patients within psychiatric facilities, and Mental Health Review Board hearings held, for the period April 1, 2021 to March 31, 2023.
16. On February 1, 2024, subsequent to our scope period, a new *Mental Health Act* and supporting regulations came into force. The

legislation in effect during our scope period was used for the audit and is the Act we refer to throughout this audit report. A table comparing the previous legislation with the new legislation can be found in **Appendix C**.

OBSERVATIONS AND RECOMMENDATIONS

RIGHTS OF INVOLUNTARY PATIENTS

Summary of Findings

17. Documentation was not maintained to support that Health PEI informed patients, detained for involuntary psychiatric assessment of their right to be released after 72 hours in accordance with *the Mental Health Act*.
18. Health PEI did not have documented policies or procedures for informing involuntary patients of their rights.
19. The letter used by Health PEI to inform involuntary patients of their rights did not include their right to retain legal counsel.

20. Documentation was not maintained to support that Health PEI informed involuntary patients of their rights.
 21. Health PEI did not display patients' rights in psychiatric facilities, in accordance with *the Mental Health Act*.
-

22. Our audit focused on involuntary patients who were:
 - (a) held for an involuntary psychiatric assessment; and/or
 - (b) involuntarily admitted to a psychiatric facility.

Patients held for involuntary psychiatric assessment

23. Section 6(1) of the *Mental Health Act* states that, "Where a physician has examined a person and concludes that the person
 - (a) is suffering from a mental disorder of a nature or degree so as to require hospitalization in the interests of the person's own safety or the safety of others; and
 - (b) is refusing or is unable to consent to undergo psychiatric assessmentthe physician may make application to a psychiatrist for an involuntary psychiatric assessment of the person."

24. Section 6(3) of the Act, allows for an individual to be admitted and detained in a psychiatric facility for up to 72 hours for an assessment. If, after the assessment, the psychiatrist concludes that the individual needs hospitalization, but the individual still

refuses to, or is not able to consent to be voluntarily hospitalized, they will become an involuntary patient of a psychiatric facility.

25. The Act also establishes rights for patients who are held for involuntary psychiatric assessment. Section 13(4) of the Act states, if after 72 hours of being detained for an involuntary psychiatric assessment, a person has not been admitted to the facility or released, the administrator of the facility is to, "ensure the person is promptly informed that the person has the right to leave the place of assessment."

Documentation not always on file to support that patients detained for an involuntary psychiatric assessment were advised of their rights

26. We selected a sample of 13 patients who were detained for an involuntary psychiatric assessment between April 1, 2021 – March 31, 2023. We reviewed their medical file to determine whether documentation was maintained to support that those patients held for longer than 72 hours were informed of their right to leave the facility. We found that seven of these patients were detained for longer than 72 hours, and in all seven instances there was no documentation to support that they were notified of their right to leave the facility. We found the remaining six patients were either released, or voluntarily agreed to stay at the facility, within the timelines set out in the Act.

27. It is important that Health PEI comply with the Act and complete the involuntary psychiatric assessment within 72 hours, or maintain documentation confirming that patients have been informed of their right to

leave the facility if the assessment is not completed within the timeframe.

Recommendation

28. Health PEI should inform patients detained for an involuntary psychiatric assessment of their right to be released after 72 hours in accordance with the *Mental Health Act*. Documentation should be maintained that patients were informed of this right.

Patients involuntarily admitted to a psychiatric facility

29. When a patient is involuntarily admitted to a psychiatric facility, Section 32(1) of the Act states, “The administrator of a psychiatric facility shall, as soon as reasonably possible after the admission of the patient to the facility

- (a) provide to the patient a written outline of the functions of the Review Board and the manner in which a matter can be referred to the Review Board; and
- (b) advise the patient of the right
 - (i) to communicate with members of the patient’s family or with his or her guardian or other person having responsibility for managing his or her affairs, and
 - (ii) to retain and instruct counsel.”

30. We looked to see if Health PEI had policies and procedures regarding how the above information is communicated with involuntary patients. Specifically, we expected policies and procedures to outline how the information is to be communicated to patients when they are admitted as involuntary patients, as well as

documentation requirements. Such policies and procedures would help to ensure that this information is communicated appropriately and consistently.

No policies and procedures for communicating with patients admitted to a psychiatric facility

31. We found that Health PEI did not have documented policies and procedures providing staff with guidance on the information to be communicated to involuntary patients when they are admitted to a psychiatric facility. We noted various issues with how this information was communicated, which are discussed in the following sections of this report. Having well-defined, documented policies and procedures would help to address many of these issues.

Recommendation

32. Health PEI should have documented policies and procedures to inform involuntary patients admitted to a psychiatric facility of the following:

- **the functions of the Mental Health Review Board;**
- **the manner in which a matter can be referred to the Mental Health Review Board; and**
- **their rights as outlined in the *Mental Health Act*.**

33. We were informed by management of each psychiatric facility that when an involuntary patient is admitted, nursing staff provided them with a document explaining their rights under the Act. While nursing staff at the Queen Elizabeth Hospital and Hillsborough

Hospital provided patients with a short letter, Prince County Hospital provided an eight-page document that did not specifically state how the patient could appeal to the Board, or the patient’s right to communicate to their family. In March 2024, we were informed that Prince County Hospital updated their process to provide the same letter as the other two facilities.

Letter provided to involuntary patients did not inform them of their right to retain legal counsel

34. We obtained a copy of the letter used by all three facilities (see **Appendix E**), and noted that it included information on the Board and how matters can be referred to the Board. It also included the patient’s right to communicate with family, guardian(s), or person(s) managing their affairs. However, the letter did not contain information informing the patient of their right to retain and instruct legal counsel.

35. The right to retain legal counsel is important to convey to an involuntary patient and their family as legal counsel could help all appropriate parties understand the rights of an involuntary patient and navigate the Board process. Given that Health PEI uses a letter to inform patients of all other rights required by the Act, it is important that the right to retain legal counsel is also included in this letter.

Recommendation

36. Health PEI should inform involuntary patients of their right to retain and instruct legal counsel in accordance with the *Mental Health Act*.

37. We selected a sample of 15 individuals who were involuntary patients at one of the three psychiatric facilities between April 1, 2021 and March 31, 2023. We reviewed their medical files and looked to determine if there was documentation that supported these patients had been informed of the functions of the Board, how to refer matters to the Board, as well as their rights upon being admitted at the facility.

No documentation to support involuntary patients were informed of their rights

38. As noted earlier, we were informed that this information was being communicated by Health PEI through a letter provided to involuntary patients when they are admitted. We were also informed that Health PEI staff discussed these matters with the patient, and that this interaction would be documented in the patient’s electronic medical file.

39. Of the 15 patients in our sample, there was documentation to support that four were informed by hospital staff about the Board and their rights as involuntary patients. There was no documentation to support that the remaining 11 patients in our sample were informed of their rights or of the functions of the Board.

Rights of involuntary patients not prominently displayed

40. In addition to informing patients of their rights, Section 32(3) of the Act, requires the administrators to prominently display these rights in the public reception areas and in all wards of the psychiatric facilities.

41. We visited Hillsborough Hospital and the psychiatric unit at Prince County Hospital, and found that the notice of patients' rights was not displayed in the public reception area of either facility, as required by the Act. Although we did not visit the wards of these two psychiatric facilities, Health PEI management confirmed that the required notice was not displayed in the wards. We did not visit the psychiatric unit at Queen Elizabeth Hospital as it was consolidated into Hillsborough Hospital in the spring of 2022, before our fieldwork began.

Recommendations

42. Health PEI should record in the involuntary patient's file when the patient is informed of their rights under the *Mental Health Act*.

43. Health PEI should prominently display the notice of patients' rights in all psychiatric facilities in accordance with the *Mental Health Act*.

- The Mental Health Review Board did not always maintain documentation to support when it received applications.
- The Mental Health Review Board did not always hold hearings and make decisions within legislated timeframes.
- The Mental Health Review Board did not always receive applications in a timely manner from Health PEI.
- There was no process to identify all appropriate parties to an application, and appropriate parties were not always given three days' notice of hearings.
- Documentation was not always maintained to support that all appropriate parties had been advised of hearings held and decisions made.

45. The primary role of the Mental Health Review Board (the Board) is to give involuntary patients fair, timely, and independent reviews of their involuntary status. When the Board receives an application, they are required to review the case, hold a hearing, and issue a decision.

MENTAL HEALTH REVIEW BOARD HEARINGS AND DECISIONS

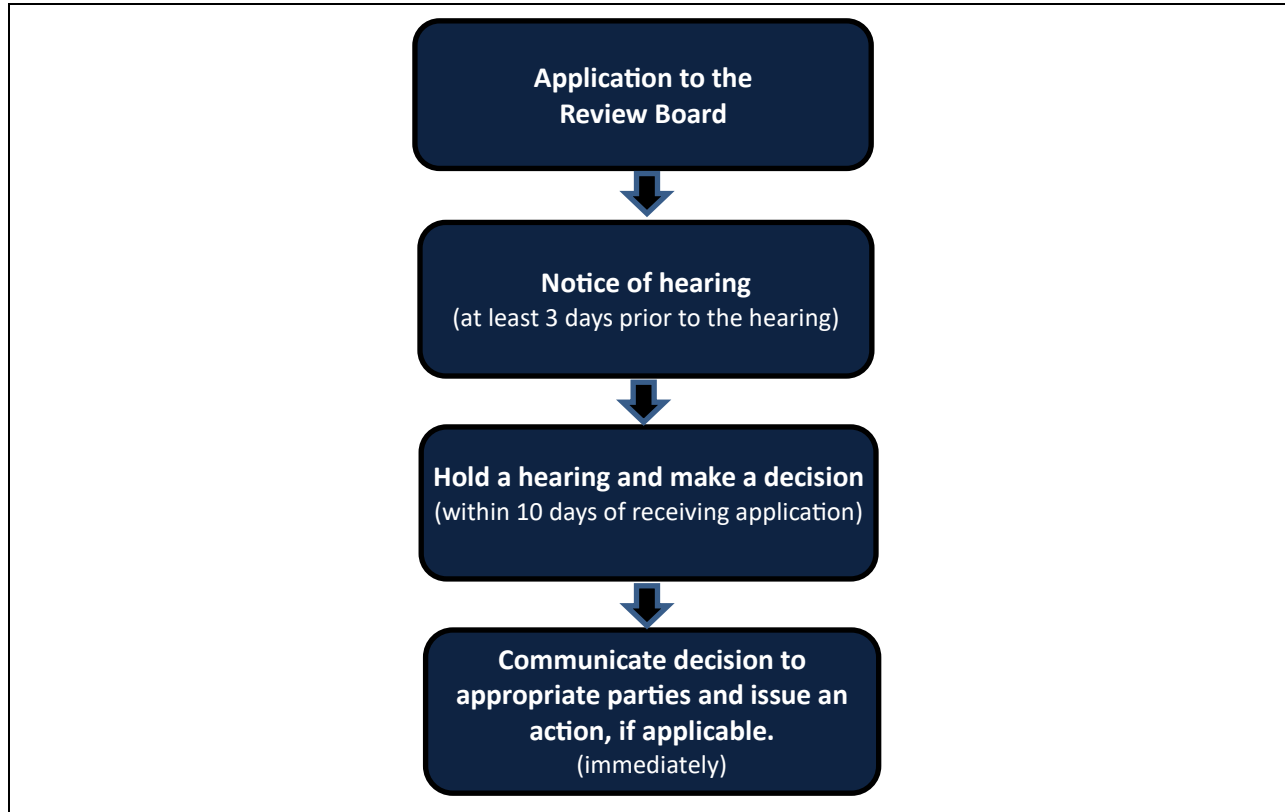
Summary of Findings

44. When assessing if the Review Board held hearings and communicated decisions in accordance with the *Mental Health Act*, we noted the following weaknesses:

46. Sections 29 and 30 of the Act set out timeframes⁵ for the Board regarding hearings and decisions. **Exhibit 3** shows the timeframes for hearings and decisions of the Mental Health Review Board.

⁵ To determine the timeframe in our testing we used business days between events. The *Interpretation Act* states, "A period of time described by reference to a number of days between two events excludes the day on which the first event happens and the day on which the second event happens."

EXHIBIT 3
TIMEFRAMES FOR HEARINGS AND DECISIONS
MENTAL HEALTH REVIEW BOARD
APRIL 1, 2021-MARCH 31, 2023



Source: *Mental Health Act*

47. When conducting our audit work to assess whether the Board held hearings and communicated decisions in accordance with the Act, we found that the Board did not retain all applications received during the audit scope period, but it did maintain records of all decisions made. We used the records of decisions to form our audit population; however, the decisions did not give us a complete audit population as it would only include applications that went to a hearing, since a hearing must be held before a decision is made. If a hearing was not held, there would not have been a decision made, and the application would not be included in the population. Therefore, by

using just the decisions we could not be certain that we had the complete population in order to select our sample. Further, from the population of decisions we did test, we were unable to obtain sufficient documentation for the scope period of our audit, as shown in **Exhibit 4**. Both instances resulted in a scope limitation which is described in **Appendix B**.

48. A scope limitation arises when an auditor cannot obtain enough audit evidence to complete their audit procedures. This impacts the ability of the auditor to make a conclusion on their objective. As a result of this scope limitation, we have qualified our

conclusion on this objective. The remainder of this section will highlight what we found

based on the documentation that was available.

EXHIBIT 4
SCOPE LIMITATION
DOCUMENTATION AVAILABLE FOR OUR SAMPLE TESTING

	Support for when the Board received the application	Notice of hearing provided to appropriate parties		Decision provided to appropriate parties	
		Attending Psychiatrist	Patient	Attending Psychiatrist	Patient
Samples requested	20	20	20	20	19*
Documentation provided	10	17	7	16	10

**For one sample the patient was released prior to the decision being made.*

Timeframe for hearings and decisions

49. As previously noted, the Board is required to hold a hearing and make a decision within 10 days of receiving an application. These timeframes are important to provide the patient with access to a fair and timely review of their situation.

50. We selected a sample of 20 hearings and decisions during our scope period: 10 from the 2021-2022 fiscal year and 10 from the 2022-2023 fiscal year. We also requested the corresponding application made to the Board. We expected documentation to support when the application had been received by the Board so we could determine if the hearings and the decisions were both completed within the timeframes required by the Act.

Hearings and decisions not always completed in accordance with the timeframes in the Act

51. The Board was only able to provide support for the date when it had received the application for 10 of the 20 hearings in our

sample. We found that of these 10 applications, there were two instances where a hearing was not held, and a decision was not made, within 10 days of the application being received by the Board as required by the Act.

Applications not received by the Board in a timely manner

52. We noted the Board did not always receive these applications immediately after they were signed by the applicant. It took on average, seven days for the Board to receive the applications after the applicant had signed them, with the longest instance taking 24 days. During our scope period, these delays occurred because the Board was not provided with the applications until after the hearing was scheduled.

53. Although there was no documentation to support when the remaining 10 applications were received, the Chairperson of the Board informed us that these applications were received on the date of the hearing. Based on this information, it took on average

approximately eight days, for the Board to receive these applications after the applicant had signed them, with the longest instance taking 16 days.

54. Although the Act does not specify this, applications should be submitted to the Board as soon as they are completed by the applicant. The date the Board receives the application marks the beginning of the independent review process and is used to determine if applications are being reviewed in accordance with legislation. Perhaps more importantly though, a delay in providing the applications to the Board means the concerns of involuntary patients are not heard in a timely manner. These patients are being held against their will, and they have the right to have a review conducted within an appropriate timeframe.

Recommendations

55. The Mental Health Review Board should hold hearings and make decisions within the timeframes required by the *Mental Health Act*.

56. The Mental Health Review Board should maintain documentation to support when it receives an application.

57. The Mental Health Review Board should work with Health PEI to ensure that applications from involuntary patients, or anyone on the patient's behalf, are provided to the Mental Health Review Board in a timely manner.

Notice of Hearings

58. As noted earlier, appropriate parties are those with a substantial interest in the

application made to the Board. Section 29 of the Act requires the Board to give all appropriate parties three days' notice of hearings. This notice is important to allow patients, legal counsel, and other appropriate parties time to prepare for the hearing.

59. We expected the Board and Health PEI to have a process in place to identify appropriate parties and that documentation would be maintained to support that all appropriate parties were provided with three days' notice of the hearing, in accordance with the Act.

No process in place to identify all appropriate parties

60. During discussions with Health PEI employees and the Chairperson of the Board, we were informed that attending psychiatrists and patients are always notified of a hearing; however, there is no process to identify and notify other appropriate parties.

61. For the 20 hearings and decisions in our sample, there were five instances where the decision identified that the patient had a substitute decision maker or was subject to a guardianship. In all of these instances, there was no documentation to support whether these individuals were considered an appropriate party and should have been made aware of, or attended, the hearing.

62. The Public Guardian for the Province is appointed to assist individuals over the age of 18 who are unable to look after their own personal affairs, and have no trusted family or friend who can do this for them. We spoke with the Public Guardian, who indicated their Office is often not informed of Board

hearings or decisions for patients that are under public guardianship. This is concerning, as the Public Guardian may be the decision-maker for some patients; therefore, they should be made aware of decisions affecting these patients’ medical affairs.

63. We reviewed the medical files for patients in our sample to determine if appropriate parties were given notice of the hearing. There were many instances where documentation was not available to support when, or even if, parties were provided with

a notice of the hearing. Although we know from reviewing the decisions that the patient and the attending psychiatrist attended each hearing, there was no documentation for 65 percent of the patients, and 15 percent of the attending psychiatrists, indicating that they had been notified of the hearing.

64. **Exhibit 5** summarizes the instances in our sample where documentation was not available to support whether appropriate parties were informed of the hearings.

**EXHIBIT 5
SAMPLE TESTING
DOCUMENTATION NOT AVAILABLE FOR NOTICE OF HEARING**

Party	Number of samples	Number of samples documentation was not available	% of samples documentation was not available
Patient	20	13	65%
Attending Psychiatrist	20	3	15%

Three days’ notice of hearings not always provided

65. Where documentation was available, we compared the date of the notice of the hearing to the actual hearing date to determine whether a minimum of three days’

notice was given as required by the *Mental Health Act*. As shown in **Exhibit 6**, parties were not always given appropriate notice of the hearing.

**EXHIBIT 6
SAMPLE TESTING
APPROPRIATE NOTICE OF HEARINGS NOT PROVIDED**

Party	Number of samples	Number of samples where documentation was available	Number of samples where appropriate notice was not provided*	% of samples where appropriate notice was not provided*
Patient	20	7	2	29%
Attending Psychiatrist	20	17	6	35%

*Out of the samples where documentation was available.

66. It is important the Board maintains documentation to support that appropriate parties have been notified of hearings in the appropriate timeframe. Without notifying all appropriate parties, and within the timelines as required by the Act, there is a risk that these individuals will not have time to prepare for the hearing.

Recommendations

67. The Mental Health Review Board should develop a process with Health PEI to identify all appropriate parties for involuntary patient hearings.

68. The Mental Health Review Board should maintain documentation to support that all appropriate parties identified were provided notice of hearings within the timeframe required by the *Mental Health Act*.

Notification of Decisions

69. Section 30(9) of the Act requires, that after a decision on a hearing, the Board is to notify the appropriate parties of the decision. Communicating the decisions immediately is important to ensure patients are provided with a conclusion to their application and any required action can be taken in a timely manner.

Notification of decisions not always documented

70. For the 20 hearings in our sample, we requested documentation to support the decision was communicated to the appropriate parties. As shown in **Exhibit 7**, there was no documentation available to support when 47 percent of the patients, and 20 percent of the psychiatrists, were notified of the decision. None of the files contained documentation to indicate that other appropriate parties, such as guardians, had been notified of the decisions.

EXHIBIT 7

SAMPLE TESTING

DOCUMENTATION NOT AVAILABLE FOR COMMUNICATION OF DECISIONS

Party	Total number of samples	Number of samples documentation was not available	% of samples documentation was available
Patient	19*	9	47%
Attending Psychiatrist	20	4	20%

**For one sample the patient was released prior to the decision being made.*

71. Although the Act requires the Board to inform appropriate parties of its decision, we were informed by the Chairperson of the Board that they rely on Health PEI to provide the decision to the patient. The Board does not confirm when, or if, this has been completed.

72. Where documentation was available to support that parties had been notified of the decision, we looked to determine if the decision was communicated immediately, in accordance with the Act. We found that when there was documentation to support that the decision was communicated to an

appropriate party, this communication occurred within one day.

73. As part of its decision, the Board may require an action to be taken. Examples of the actions that may result from the decision are:

- changing the involuntary status of the patient;
- whether the patient needs a substitute decision maker; and,
- assigning a substitute decision maker.

74. When requiring an action to be taken, Section 30(9) of the Act requires the Board to issue an order as to what action any party must take, and the date by which the action must be taken. There was one decision in our sample where the Board required the involuntary status of the patient to be changed and for the patient to be discharged from the psychiatric facility immediately. In this instance all known appropriate parties were notified immediately.

Recommendation

75. The Mental Health Review Board should maintain documentation to support that all appropriate parties have been informed of its decisions.

MONITORING AND REPORTING

Summary of Findings

76. The Board did not track or monitor: applications received, hearings held, and cancelled hearings.

77. The Board did not report annually to the Minister of Health and Wellness on applications received, hearings held and cancelled hearings.

Lack of monitoring by the Board

78. As noted throughout this report, there were many instances when documentation was not available for key dates such as when applications were received, or when parties had been notified of hearings or decisions. We interviewed the Chairperson of the Board and were informed that while e-mails containing some of this information were retained during our scope period, these dates were not formally tracked or monitored to ensure compliance with the Act.

79. We also noted that many applications completed by involuntary patients did not result in hearings because they were cancelled. A listing of cancelled hearings, and the reason for the cancellation, was not maintained by either Health PEI or the Board. We inquired as to why hearings are cancelled and were informed that the involuntary patient may:

- be released;
- be changed to voluntary status; or
- choose to follow their treatment plan as an involuntary patient.

80. It is important the Board track and monitor these key dates to determine if it is meeting the legislated timelines set out in the Act. This monitoring could also identify trends and issues with applications that may require

further investigation, such as reasons for cancellations.

transparency which is important given the impact the Board has on those it serves.

Recommendation

81. The Mental Health Review Board should formally track and monitor the dates for when applications were received, hearings were held, as well as cancelled hearings including the reason for the cancellation.

82. The Board supports a vulnerable population who are cared for in provincially-run psychiatric facilities. These facilities are administered by Health PEI, under the authority of the Minister of Health and Wellness (the Minister); therefore, we expected the Board to report to the Minister annually on how they are fulfilling their legislated requirements. We expected this report to include statistics on operations undertaken by the Board during the fiscal year, such as: the number of applications received, hearings held and decisions made, and the number of cancelled hearings. We also expected information indicating whether the Board was meeting the timelines established in the Act to be reported to the Minister.

No reporting on Board operations

83. We found that the Board did not provide any reporting to the Department of Health and Wellness due in part because there is currently no requirement for the Board to report. We found that in some provinces the Mental Health Review Boards (or equivalent organization) are legislated to report annually to the Minister responsible for health services. Regular reporting would allow the Board to demonstrate accountability and

Recommendation

84. The Mental Health Review Board should report annually to the Department of Health and Wellness on the number of:

- **applications received;**
- **hearings held; and**
- **cancelled hearings.**

CONCLUSIONS

85. Health PEI did not maintain documentation that demonstrated involuntary patients were informed of their rights.

86. The Mental Health Review Board did not always hold hearings and communicate decisions in accordance with the *Mental Health Act*. Due to a scope limitation described in **Appendix B**, we are unable to determine the prevalence of this issue within the entire audit population and we have qualified our conclusion on this objective.

87. The Board did not track or monitor: applications received, hearings held and cancelled hearings.

88. The Board did not annually report to the Minister of Health and Wellness on applications received, hearings held and cancelled hearings.

RECOMMENDATIONS*	AUDITEE'S RESPONSE
<p>Recommendation 28 Health PEI should inform patients detained for an involuntary psychiatric assessment of their right to be released after 72 hours in accordance with the <i>Mental Health Act</i>. Documentation should be maintained that patients were informed of this right.</p>	<p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need to inform patients detained for involuntary assessment of their right to be released after 72 hours in accordance with the <i>Mental Health Act</i>.</p> <p>The following actions responding to this recommendation have been implemented to date:</p> <p>The new <i>Mental Health Act</i> specifies that the medical practitioner or nurse practitioner is responsible for informing patients of their rights, including the right for release after 72 hours. This is part of the standardized order set used by practitioners for involuntary treatment.</p> <p>Health PEI provided educational sessions to the psychiatry team on their responsibilities under the new Act. These sessions were also available to other HPEI practitioners. MH&A provided an education package summarizing changes under the new Act to all HPEI practitioners when the Act came into effect.</p> <p>The Cerner acute care documentation system includes a mandatory checkbox to indicate that staff have informed patients of their rights.</p> <p>The following actions responding to this recommendation are under way:</p> <p>MH&A will share updated documentation for practitioners to provide when informing them of their rights. The Director of Acute and Complex Care will coordinate the updated documentation and work with the MH&A Medical Director for distribution to practitioners.</p> <p>Health PEI Mental Health and Addictions (MH&A) has updated documentation informing patients of their rights, which will be provided on admission to an inpatient mental health unit. The Director of Acute and Complex Care will work with the acute care nurse managers to monitor distribution. The Director of Acute and Complex Care will work with the acute care nurse managers to monitor distribution. The Director of Acute and Complex Care will also provide the documentation to all Health PEI hospital administrators for use if patients are detained for involuntary assessment when not on a MH&A unit.</p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
	<p>MH&A has created a new Administrative Support Worker/Coordinator position that will be responsible for following up with units once notification of involuntary status is received to ensure that the documentation has been provided.</p> <p>MH&A will post patients' rights in common areas and lobbies of all acute inpatient mental health units and in hospital emergency departments. The Director of Acute and Complex Care will be accountable for ensuring that posters are in place.</p> <p>Timeline: December 2024</p>
<p>Recommendation 32</p> <p>Health PEI should have documented policies and procedures to inform involuntary patients admitted to a psychiatric facility of the following:</p> <ul style="list-style-type: none"> • the functions of the Mental Health Review Board; • the manner in which a matter can be referred to the Mental Health Review Board; and • their rights as outlined in the <i>Mental Health Act</i>. 	<p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need for documented policies and procedures to inform involuntary patients admitted to a psychiatric facility of the noted information.</p> <p>The following actions responding to this recommendation are under way:</p> <p>The MH&A Planning and Operations division will document a procedure outlining the process for informing involuntary patients of the noted information.</p> <p>MH&A has created a new Administrative Support Worker/Coordinator position that will be responsible for developing and monitoring the implementation of this procedure.</p> <p>Timeline: New position posting: December 2024</p>
<p>Recommendation 36</p> <p>Health PEI should inform involuntary patients of their right to retain and instruct legal counsel in accordance with the <i>Mental Health Act</i>.</p>	<p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need to inform involuntary patients of their right to retain and instruct legal counsel in accordance with the <i>Mental Health Act</i>.</p> <p>The following actions responding to this recommendation have been implemented to date:</p> <p>The new <i>Mental Health Act</i> specifies that the medical practitioner or nurse practitioner is responsible for informing patients of their rights, including the right to counsel. This is part of the standardized order set used by practitioners for involuntary treatment.</p> <p>Health PEI provided educational sessions to the psychiatry team on their responsibilities under the new Act. These sessions were also available to other HPEI practitioners. MH&A provided an education package summarizing changes under the new Act to all HPEI practitioners when the Act came into effect.</p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
	<p>The following actions responding to this recommendation are under way:</p> <p>MH&A will share updated documentation for practitioners to provide when informing them of their rights. The Director of Acute and Complex Care will coordinate the updated documentation and work with the MH&A Medical Director for distribution to practitioners.</p> <p>Health PEI Mental Health and Addictions (MH&A) has updated documentation informing patients of their rights, which will be provided on admission to an inpatient mental health unit. The patients' copy of their rights will include their right to retain and instruct legal counsel in accordance with the Mental Health Act. The Director of Acute and Complex Care will work with the acute care nurse managers to monitor distribution. The Director of Acute and Complex Care will also provide the documentation to all Health PEI hospital administrators for use if patients are detained for involuntary assessment when not on a MH&A unit.</p> <p>The new Administrative Support Worker/Coordinator will be responsible for following up with these units once notification of involuntary status is received to ensure that the documentation has been provided.</p> <p>MH&A will post patients' rights in common areas and lobbies of all acute inpatient mental health units and in hospital emergency departments. The Director of Acute and Complex Care will be accountable for ensuring that posters are in place.</p> <p>Timeline: December 2024</p>
<p>Recommendation 42 Health PEI should record in the involuntary patient's file when the patient is informed of their rights under the <i>Mental Health Act</i>.</p>	<p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need to record in the involuntary patient's file when the patient is informed of their rights under the <i>Mental Health Act</i>.</p> <p>The following actions responding to this recommendation have been implemented to date:</p> <p>There is a check box within Cerner, the acute care documentation system, that documents that the patient has been informed of their rights.</p> <p>The following actions responding to this recommendation are under way:</p> <p>Conducting chart audits to monitor appropriate completion of this box will be part of the responsibilities of the new Administrative Support Worker/Coordinator role.</p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
	<p>MH&A will also incorporate a mandatory checkbox in the new Behavioural Health Module within Cerner that is being implemented to provide more streamlined and appropriate documentation for MH&A patients.</p> <p>Timeline: Checkbox: In place Monitoring: Ongoing New module: December 2025</p>
<p>Recommendation 43 Health PEI should prominently display the notice of patients' rights in all psychiatric facilities in accordance with the <i>Mental Health Act</i>.</p>	<p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need to prominently display notice of patients' rights in all psychiatric facilities in accordance with the <i>Mental Health Act</i>.</p> <p>The following actions responding to this recommendation are under way:</p> <p>MH&A will post patients' rights in common areas and lobbies of all acute inpatient mental health units and in hospital emergency departments. The Director of Acute and Complex Care will be accountable for ensuring that posters are in place.</p> <p>Timeline: December 2024</p>
<p>Recommendation 55 The Mental Health Review Board should hold hearings and make decisions within the timeframes required by the <i>Mental Health Act</i>.</p>	<p>The Board makes every reasonable effort to hold hearings and issue decisions within the timeframes established within the relevant legislation.</p> <p>Prior to this audit, the Board had established set weekly hearing dates in collaboration with Health PEI for both the Prince County Hospital and Hillsborough Hospital, which have assisted in allowing these timeframes to be followed, and have reduced the demands of scheduling on staff, psychiatrists, and the Board.</p> <p>Timeline: Implemented</p>
<p>Recommendation 56 The Mental Health Review Board should maintain documentation to support when it receives an application.</p>	<p>The Board now maintains electronic documentation in all cases to support when it receives an application, which is saved as part of the hearing record.</p> <p>Timeline: Implemented</p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
<p>Recommendation 57 The Mental Health Review Board should work with Health PEI to ensure that applications from involuntary patients, or anyone on the patient's behalf, are provided to the Mental Health Review Board in a timely manner.</p>	<p><u>Mental Health Review Board</u> The Board received applications in a timely manner, as a result of the establishment of weekly hearing dates and related changes to the process followed by staff and the Board. Timeline: Implemented</p> <p><u>Health PEI</u> Health PEI appreciates and accepts the findings of the Auditor General regarding the need for Health PEI to work with the MHRB to ensure applications are provided to the Board in a timely manner.</p> <p>The following actions responding to this recommendation have been implemented to date:</p> <p>MH&A has assigned an administrative assistant with the responsibility of ensuring that all applications from involuntary patients are provided to the Mental Health Review Board in a timely manner pending the hiring of the new Administrative Support Worker/Coordinator.</p> <p>The following actions responding to this recommendation are under way:</p> <p>MH&A has created a new Administrative Support Worker/Coordinator position that will be responsible for coordinating processes related to the Mental Health Review Board hearings. This includes timely submission of applications, organization of appeal board hearings, gathering of appropriate patient documentation for appeal board hearings and ensuring appeal board hearing decisions are documented, in addition to a letter for the patient or family regarding the appeal board decision.</p> <p>All information related to the Mental Health Act appeal board hearings will be captured in the recording mechanism/spreadsheet by the Administrative Support Worker/Coordinator.</p> <p>Timeline: Interim administrative support in place New position posting: December 2024</p>
<p>Recommendation 67 The Mental Health Review Board should develop a process with Health PEI to identify all appropriate parties for involuntary patient hearings.</p>	<p><u>Mental Health Review Board</u> The current <i>Mental Health Act</i> identifies the parties to a proceeding at Section 30(3), and establishes a clear process for providing a notice of hearing to the relevant parties. As noted, this information is preserved as part of the hearing record. Timeline: Implemented</p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
	<p><u>Health PEI</u></p> <p>Health PEI appreciates and accepts the findings of the Auditor General regarding the need for Health PEI to develop a process with the MHRB to identify all appropriate parties for involuntary patient hearings.</p> <p>The following actions responding to this recommendation are under way:</p> <p>MH&A will work with the Mental Health Review Board to establish a process for identifying appropriate parties to attend hearings. The new Administrative Support Worker/Coordinator will be responsible for ensuring consistent implementation of this process.</p> <p><u>Timeline:</u> Draft process: December, 2024 Implementation & monitoring: January, 2025</p>
<p>Recommendation 68</p> <p>The Mental Health Review Board should maintain documentation to support that all appropriate parties identified were provided notice of hearings within the timeframe required by the <i>Mental Health Act</i>.</p>	<p>As noted, the Board is required to maintain a hearing record pursuant to Section 34(2) of the current <i>Mental Health Act</i>, which will contain copies of the applicable notices of hearing.</p> <p><u>Timeline: Implemented</u></p>
<p>Recommendation 75</p> <p>The Mental Health Review Board should maintain documentation to support that all appropriate parties have been informed of its decisions.</p>	<p>The Board provides all decisions electronically, and as such maintains a record of delivery of those decisions to the applicable parties.</p> <p><u>Timeline: Implemented</u></p>
<p>Recommendation 81</p> <p>The Mental Health Review Board should formally track and monitor the dates for when applications were received, hearings were held, as well as cancelled hearings including the reason for the cancellation.</p>	<p>The Board is in agreement with this recommendation, and has already undertaken to track cancelled hearings through the creation of a hearing record for the cancelled hearing.</p> <p><u>Timeline: Implemented</u></p>

RECOMMENDATIONS*	AUDITEE'S RESPONSE
<p>Recommendation 84 The Mental Health Review Board should report annually to the Department of Health and Wellness on the number of:</p> <ul style="list-style-type: none"> • applications received; • hearings held; and, • cancelled hearings. 	<p><u>Mental Health Review Board</u> The Board is an independent administrative tribunal established pursuant to the <i>Mental Health Act</i>, which does not provide for any such reporting. In the event that it is considered advisable for the Board to report to the Department or any other person, this should be specifically defined in the <i>Mental Health Act</i> or associated regulations. <u>Timeline: Not applicable.</u></p> <p><u>Department of Health and Wellness</u> We cannot support Recommendation 84 for the following reasons: The Mental Health Review Board is a quasi-judicial independent body which adjudicates the actions taken by the state so it is not appropriate for the Board to report to the state. This issue was debated at length by the Legislative Assembly in November 2023 during Second Reading of the new <i>Mental Health Act</i> and legislators chose not to include the reporting requirement for this reason. As noted in your report, this approach is adopted by several jurisdictions. The number of applications received, hearings held, and cancelled hearings does not equate to accountability and transparency. The number of applications, hearings and cancellations may decline or increase given the new legislation provides clarity with respect to the processes involved respecting voluntary and involuntary admissions.</p>

*Recommendation numbers refer to the paragraph numbers.

AUDIT STANDARDS, OBJECTIVES, SCOPE AND SCOPE LIMITATIONS

STANDARDS

This independent assurance report was prepared by the Office of the Auditor General of Prince Edward Island. Our responsibility was to provide objective information and independently conclude on whether Health PEI maintained documentation to demonstrate that involuntary patients were informed of their rights in accordance with Section 32 of the *Mental Health Act*, and whether the Mental Health Review Board held hearings and communicated decisions in accordance with the *Mental Health Act* as well as monitored and reported on applications received, hearings held and cancelled hearings.

Work conducted for this audit was performed to a reasonable level of assurance in accordance with the Canadian Standards on Assurance Engagements (CSAE) 3001- Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook- Assurance.

The Office of the Auditor General of Prince Edward Island applies the Canadian Standard on Quality Management which requires our office to design, implement and operate a system of quality management, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with independence and other ethical requirements of the Rules of Professional Conduct of the Chartered Professional Accountants of Prince Edward Island and the Code of Conduct of the Office of the Auditor General of Prince Edward Island. Both the Rules of Professional Conduct and our Office's Code of Conduct are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behavior.

OBJECTIVES AND CRITERIA

Objective 1: To assess whether Health PEI maintained documentation to demonstrate that involuntary patients were informed of their rights in accordance with Section 32 of the *Mental Health Act*.

Criteria:

- 1.1 Health PEI maintained documentation to demonstrate that involuntary patients were informed of their rights in a language they understood, when the patient was able to comprehend the information.
- 1.2 Health PEI prominently displayed notice of patient's rights in all wards and public reception areas of psychiatric facilities.

Objective 2: To assess whether the Mental Health Review Board held hearings and communicated decisions in accordance with the Mental Health Act.

Criteria:

- 2.1 The Mental Health Review Board held a hearing and made a decision with 10 days of receipt of the application in accordance with section 29(1) of the *Mental Health Act*.
- 2.2 The Mental Health Review Board gave three days' notice of the hearing to the appropriate parties per Section 29 of the *Mental Health Act*.
- 2.3 The Mental Health Review Board gave appropriate parties notice of the decision made and issued orders as to what action any party had to take and the date by which the action had to be taken per Section 30(9) of the *Mental Health Act*.

Objective 3: To assess whether the Mental Health Review Board monitored and reported on applications received, hearings held and cancelled hearings.

Criteria:

- 3.1 The Mental Health Review Board monitored:
 - applications received;
 - hearings held; and
 - cancelled hearings
- 3.2 The Mental Health Review Board reported annually to the Department of Health and Wellness on:
 - applications received;
 - hearings held; and
 - cancelled hearings

Audit criteria for this engagement were developed primarily from legislation and best practice.

In accordance with our regular audit process, we obtained the following from management of Health PEI and the Mental Health Review Board:

- confirmations of managements' responsibility for the subject matter;
- acknowledgment of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the audit report is factually accurate.

SCOPE AND APPROACH

The scope of our audit included analysis and testing of records for the period April 1, 2021 to March 31, 2023. We examined documentation outside of that period as necessary.

Our approach included:

- interviews and correspondence with Health PEI management and staff, and the Mental Health Review Board;
- a sample of 28 involuntary patients, selected from a total of 1031 involuntary patient discharges between April 1, 2021 and March 31, 2023;
 - 13 involuntary patients held for psychiatric assessment; and,
 - 15 involuntary patients admitted to a psychiatric facility
- a sample of 20 hearings, out of a total of 40, held between April 1, 2021 and March 31, 2023;
- analysis and detailed testing of involuntary patient files; and
- a review of the Mental Health Review Board decision reports of hearings held.

It is important to note that our observations and conclusions relate only to the management practices of Health PEI and the Mental Health Review Board and consequently, our comments and conclusions do not pertain to the practices or performance of any third parties.

SCOPE LIMITATION

To conclude on whether the Mental Health Review Board held hearings and communicated decisions in accordance with the *Mental Health Act*, we had planned on using applications submitted to the Board during our audit scope period as our audit population.

We found that the Board did not retain all applications received during the audit scope period, but it did maintain records of all decisions made. All decisions did not give us a complete audit population as it would only include applications that went to a hearing, since a hearing must be held before a decision is made.

If a hearing was not held, there would not have been a decision made, and the application would not be included in the population.

Despite this limitation, we expected to be able to move forward by using the 40 decisions made during our audit scope period as the audit population and we proceeded to select a sample of 20 decisions to perform our audit testing. However, we were unable to obtain sufficient documentation for 10 of our 20 sample items as shown in **Exhibit 4** of the report. For the sample items that we were able to test, we noted instances of non-compliance, but as a result of this scope limitation we cannot report on the prevalence of the non-compliance within our sample.

DATE OF REPORT

We obtained sufficient and appropriate audit evidence on which to base our conclusions on November 22, 2024, in Charlottetown Prince Edward Island.

AUDIT TEAM

Auditor General:	Darren Noonan
Assistant Auditor Generals:	Sheri Griffin Jennifer Bowness
Principal:	Justin Ellis
Directors:	Sarah Taylor Julianna Chiu
Auditors:	Kaitlyn Lord Katie Widdifield

CHANGES TO THE MENTAL HEALTH ACT
FEBRUARY 1, 2024

	Legislation Section	Legislation in effect during our audit scope period April 1, 2021 – March 31, 2023	Legislation Section	Legislation enacted on February 1, 2024
Involuntary patients held for a psychiatric assessment	13	<p>Release after detention period if not admitted</p> <p>(4) If, after seventy-two hours detention, a person has not been</p> <p>(a) confirmed as admitted to the psychiatric facility as an involuntary patient under subsection (1) or as a voluntary patient under subsection (2); or</p> <p>(b) released by a psychiatrist under subsection (3), the administrator shall ensure that the person is promptly informed that the person has the right to leave the place of assessment, subject to any detention that is lawfully authorized otherwise than under this Act.</p>	8	<p>Actions by psychiatrist</p> <p>(5) On the completion of an involuntary psychiatric assessment of the person or the expiry of 72 hours after apprehension, whichever occurs first, the psychiatrist shall</p> <p>(a) admit the person to a psychiatric facility as a voluntary patient or an involuntary patient, where the criteria for voluntary or involuntary admission, as the case may be, under Part 3 are met;</p> <p>(b) make a community treatment order in respect of the person, where the criteria in subsection 18(1) are met; or</p> <p>(c) immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act.</p> <p>Release by administrator</p> <p>(6) Where a psychiatrist has not taken action under subsection (5) within 72 hours of the person being detained in a psychiatric facility, the administrator shall immediately release the person from detention, subject to any detention that is lawfully authorized otherwise than under this Act.</p>

CHANGES TO THE MENTAL HEALTH ACT
FEBRUARY 1, 2024

	Legislation Section	Legislation in effect during our audit scope period April 1, 2021 – March 31, 2023	Legislation Section	Legislation enacted on February 1, 2024
Providing Involuntary patients with their rights	32	<p>(1) The administrator of a psychiatric facility shall, as soon as reasonably possible after the admission of a patient to the facility</p> <p>(a) provide to the patient a written outline of the functions of the Review Board and the manner in which a matter can be referred to the Review Board; and</p> <p>(b) advise the patient of the right</p> <p>(i) to communicate with members of the patient’s family or with his or her guardian or other person having responsibility for managing his or her affairs, and</p> <p>(ii) to retain and instruct counsel.</p>	16	<p>(1) A voluntary patient or an involuntary patient of a psychiatric facility has a right to and shall not be denied</p> <p>(a) access at any time to the patient’s legal counsel, including through a private meeting in person or by other means;</p> <p>(b) access at any time to clergy, an elder or other spiritual representative;</p> <p>(c) reasonable access to a telephone to make or receive calls;</p> <p>(d) reasonable access to materials or tools necessary to exchange written correspondence;</p> <p>(e) reasonable access to written correspondence sent to the patient;</p> <p>(f) reasonable access to a representative, including through a private meeting in person or by other means; and</p> <p>(g) where applicable, reasonable access to visitors during scheduled visiting hours</p> <p>(2) The administrator shall ensure that, in respect of a patient’s right to retain and instruct legal counsel and rights under subsection (1),</p> <p>(a) a patient is informed of these rights as soon as is reasonably practicable, in a language and form the patient understands and;</p> <p>(b) notice of these rights is prominently displayed in all wards and public reception areas in the psychiatric facility.</p>

CHANGES TO THE MENTAL HEALTH ACT
FEBRUARY 1, 2024

	Legislation Section	Legislation in effect during our audit scope period April 1, 2021 – March 31, 2023	Legislation Section	Legislation enacted on February 1, 2024
Providing involuntary patients with their rights (cont'd)			16 (cont'd)	(3) The administrator shall ensure that each patient in a psychiatric facility is provided with written information about the functions of the Review Board and the process for making an application for review.
Timeframe for a hearing to be held and a decision made	29	(1) On receiving an application under section 28, the Review Board shall within ten days of its receipt hold a hearing and make a decision on the application.	30	(1) A panel shall hear and determine an application as soon as is reasonably possible, and in any event, not more than 10 clear days after receipt of the referral under section 28.
Timeframe for notice of hearing	29	(2) The Review Board shall give three days notice of the hearing of the application to every party and to every person who is entitled to be a party and to any person who, in the opinion of the Review Board, may have a substantial interest in the application.	30	(2) Within two clear days of receipt of the referral of the application under section 28, the chairperson of the panel shall give notice of the hearing to the parties of the application which shall (a) state the date, time place and purpose of the hearing; (b) include a copy of the application; and (c) advise that each party may (i) make representations to the panel either in person or in writing, and (ii) submit evidence relevant to the application by a date to be set out in the notice.

CHANGES TO THE MENTAL HEALTH ACT
FEBRUARY 1, 2024

	Legislation Section	Legislation in effect during our audit scope period April 1, 2021 – March 31, 2023	Legislation Section	Legislation enacted on February 1, 2024
Parties to an application	29	<p>(3) In every application to the Review Board, the applicant, the patient and the administrator are parties.</p> <p>Public guardian</p> <p>(4) In an application for authority to give treatment in a case where a substitute decision-maker or the public official empowered with the duty of public guardianship has refused consent on the patient’s behalf, the substitute decision-maker or the said public official is also a party.</p> <p>Added parties</p> <p>(5) The Review Board may add as a party any person who, in the opinion of the Review Board, has a substantial interest in the matter under review.</p>	30	<p>Parties</p> <p>(3) The following persons are parties to an application:</p> <ul style="list-style-type: none"> (a) the patient or person who is subject to a community treatment order, as the case may be; (b) the administrator, where applicable; (c) the substitute decision-maker, where applicable; (d) the responsible psychiatrist, where applicable; (e) a person who, in the opinion of the panel, has a significant interest in the application.
Timeframe for a decision to be communicated	30	<p>(9) After making a decision on the issue which has been investigated and heard, the Review Board shall forthwith notify the parties of the Board’s decision and shall issue an order as to what action any party must take and the date by which the action must be taken.</p>	34	<p>(1) Within three clear days following the conclusion of its review, the chairperson of the panel shall provide</p> <ul style="list-style-type: none"> (a) to each party, the decision of the panel, in writing, together with reasons in support of the decision; and (b) to the chairperson of the Review Board, a copy of the decision of the panel, in writing, together with reasons in support of the decision, and a record of all evidence presented to the panel.

Dear _____,

You have been admitted to the Acute Mental Health Inpatient Unit as an involuntary patient under the **Mental Health Act**. This admission was initiated by your physician because of concerns for your own safety or the safety of others.

Shortly after your admission, a psychiatrist will complete an assessment to determine if you have a mental disorder that requires hospitalization for the safety of yourself and/or others.

The treatment staff at this hospital will do their best to help you, but we all realize that staying here is against your wishes. Therefore, it is my responsibility to make sure you know that the **Mental Health Act** gives you specific rights.

You are entitled, if you want, to apply to the Mental Health Review Board. The Review Board is an independent group of three people (physician, lawyer, and layperson), to which a patient (or someone on behalf of the patient) may appeal if they believe there has been a wrong or unfair action.

The most common request that the Review Board is asked to consider is to be released from hospital. However, the Review Board can also consider such areas as: who should make decisions for you: what communication rights you have; and even issues around treatment. A person may apply to the Board regarding the following areas:

- involuntary admission
- renewal of involuntary certificate
- certificate of leave
- communication rights
- transfer to another facility or place
- change from voluntary to involuntary status
- certificate of incapacity (to consent)
- choice of substitute decision-maker
- capacity to manage one's own affairs

To appeal to the Review Board, a person asks the facility's staff for an application (Form 12).

The law has clear rules about review. For instance, a total of ten (10) days (from when one receives an application) is allowed for the Review Board to hold a hearing and make a decision.

Three (3) days advance notice of the hearing date must be provided to all parties attending the hearing, and they may be present evidence and be represented by lawyers, if they want. After the hearing, the Board makes a decision, and everyone – the patient, the doctor, and the facility staff must abide by that decision.

If you want to know in more details how the Review Board works, you may ask your facility's staff for information about Sections 27-30 of the **Act**.

You also have the right to communicate with your family, or with guardian or other person who manages your affairs. That means that – (as long as it is reasonable) you are entitled to:

- make and receive phone calls
- write and receive letters
- have visitors during scheduled visiting hours
- meet with guardian or other agent

There is a notice posted on the unit of our facility so that patients and also their families or other representatives are aware of patient rights. You should feel free to ask a staff person to explain these to you. If you have questions after that, you should let the staff know your concerns. If necessary, the supervisor will speak with you. If your concerns are still not resolved, the supervisor could arrange an appointment with me, the facility's administrator.

I understand that this is a difficult time for you, but I hope that your stay in our facility can be helpful.

Director, Mental Health Acute and Complex Care
Hillsborough Hospital

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