

Act amending the Patients' Rights Act and the Biobank Act (health care and research – persons without competence to give consent).

1. Chapter 4 A. Health care for patients without competence to give consent who object to health care, etc.

Section 4A-1. Purpose

The purpose of the provisions of this chapter is to provide necessary health care in order to prevent significant harm to health and to prevent and limit the use of force.

Health care shall be provided in such a way as to ensure respect for the individual's physical and mental integrity, and shall as far as possible be in keeping with the patient's right to self-determination.

§ 4A-2. Scope and extent of the provisions

This chapter shall apply when health personnel provide health care to patients over 16 years of age who lack competence to give consent, cf. Chapter 4, and who object to the health care.

The examination and treatment of mental illness without the patient's own consent may however only be carried out pursuant to the Act of 2 July 1999 No. 62 relating to Mental Health Care.

§ 4A-3. Right to provide health care to which the patient objects

Before health care may be provided to which the patient objects, attempts must have been made to gain the patient's confidence, unless such attempts are obviously pointless.

If the patient maintains his objection, or if the health personnel know that the person concerned is very likely to maintain his objection, an administrative decision may be made regarding health care if

- a) failure to provide health care may lead to significant harm to the patient's health, and
- b) the health care is deemed to be necessary, and
- c) the measures are proportionate to the need for health care.

Even if the conditions laid down in the first and second paragraphs are fulfilled, health care may only be provided when, after an overall assessment, this clearly appears to be the best solution for the patient. When assessing whether to provide such health care, importance shall be attached, *inter alia*, to the degree of objection and to whether the patient may in the near future be expected to regain competence to give consent.

§ 4A-4. Implementation of health care

If the conditions of section 4A-3 are fulfilled, health care may be carried out by force or by means of other measures in order to circumvent the patient's objection.

The patient may, *inter alia*, be admitted to a health institution and detained there if this is necessary for implementation of the health care.

If the conditions of the Act are fulfilled, warning systems with technical devices and restraining measures such as belts and the like may also be utilised.

The health care shall be continuously assessed and discontinued as soon as the conditions of the Act are no longer fulfilled. Particular importance shall be attached to whether the health care proves not to have the desired effect, or to have unforeseen negative effects.

§ 4A-5. Administrative decisions regarding health care to which the patient objects

Administrative decisions regarding health care pursuant to this chapter shall be made by the health personnel who are responsible for providing the health care. Such decisions may only be made for up to one year at a time.

If the health care entails a serious intervention for the patient, administrative decisions shall be made by such health personnel as are mentioned in the first paragraph, after consultation with other qualified health personnel. When assessing what constitutes a serious intervention for the patient, account shall be taken, *inter alia*, of whether the measure entails an invasive procedure, use of prescription medicines and the degree of objection. If the patient objects to the health care being implemented by means of admission to or detention in a health institution, or objects to the use of restraining measures, the intervention shall always be regarded as serious.

Administrative decisions regarding examination and treatment cover the nursing and care that are necessary to carry out the examination and treatment. If the main purpose of the health care is nursing and care, a special administrative decision shall be made to this effect.

Where possible, information shall be obtained from the patient's next-of-kin as to what the patient would have wished, before administrative decisions pursuant to section 4A-5, first and second paragraphs, are made.

§ 4A-6. Notification

As soon as possible, the patient and the patient's next-of-kin shall be notified of administrative decisions made pursuant to section 4A-5. Subsequent notification to the patient is nevertheless sufficient if notification will entail a risk of it not being possible to carry out the health care.

The notification shall provide information regarding the right to appeal the decision and to express an opinion in the case.

A copy of the notification shall be sent to the person who has the superior professional responsibility for the health care. A copy of administrative decisions

pursuant to section 4A-5 shall also be sent to the board of health supervision at county level.

§ 4A-7. Appeals

Administrative decisions regarding health care pursuant to section 4A-5 may be appealed to the county board of health supervision by the patient or the patient's next-of-kin.

The provisions of section 7-3 shall apply correspondingly to appeals pursuant to this section.

The time limit for lodging an appeal with the county board of health supervision is three weeks from the date the person concerned learned or should have learned of the decision.

§ 4A-8. Review and subsequent monitoring

The county board of health supervision may of its own motion review administrative decisions that are made pursuant to section 4A-5.

If a health care decision pursuant to this chapter is not appealed and the health care continues, the county board of health supervision shall of its own motion, when three months have elapsed since the decision was made, assess whether there is still a need for the health care.

§ 4A-9. Application of the Public Administration Act

The Public Administration Act shall apply in so far as it is appropriate for administrative decisions pursuant to section 4A-5, subject to the special provisions laid down in this chapter.

§ 4A-10. Judicial review

Administrative decisions in appeal proceedings pursuant to section 4A-7 which entail admission to and detention in an institution, or health care of a duration exceeding three months, may be brought before a court by the patient or the patient's next of kin pursuant to the provisions of Chapter 33 of the Act of 13 August 1915 on Civil Procedure. The same applies to decisions made by the county board of health supervision regarding health care that entails admission and detention, or that is of a duration exceeding three months, cf. Section 4A-8.

§ 4A-11. Regulations

The Ministry may make further rules regarding the implementation of health care pursuant to this chapter and regarding administrative procedures, including the

requirements that shall be set with regard to documentation of administrative decisions regarding health care.