

## Nearest Relative

This information page looks at the role of the nearest relative. This is a term used in the Mental Health Act. It covers who someone's nearest relative would be, what the nearest relative's rights are and other important information. You may find it useful if you care for someone with a mental illness who is under the Mental Health Act. You might also find it useful if you yourself are under the Mental Health Act.

The 'nearest relative' is a legal term used in the Mental Health Act.

- It is not the same as the next of kin. The next of kin has no rights under the Mental Health Act.
- The nearest relative has some rights when someone is, or may be, detained under the Mental Health Act (this is sometimes called 'being sectioned' or 'being held under section').
- Nearest relatives can ask for an assessment to decide if their relative should be detained under the Mental Health Act. They can also request that their relative is discharged from hospital.
- If someone does not feel their nearest relative is the right person for the role, they can apply to the County Court for them to be removed or changed.
- The nearest relative does not have the right to be told everything about the person who is in hospital. This depends on whether their relative allows for information to be shared.

## Glossary

Some information in this information page is quite technical. This glossary gives an explanation of some of the phrases and words that are used:

**Approved mental health professional (AMHP):** This is a specialist mental health professional, who could be a social worker, nurse or therapist. They can make decisions of whether to detain someone under the Mental Health Act. They give a non-medical perspective when detention is being considered.

**Community Treatment Order (CTO):** A CTO is made so that someone can leave hospital to be treated in the community. A doctor has the power to return that person back to hospital if necessary.

**Hospital Managers:** Hospital Managers have responsibilities for ensuring that the Mental Health Act is properly used, for example making sure that information is given to detained patients. They can also make decisions about whether a patient should be detained, by holding a hearing.

**Independent Mental Health Advocate (IMHA):** The IMHA can help patients make decisions about their care and treatment. They are independent of other hospital staff. Everyone detained under the Mental Health Act has the legal right to see an IMHA.

**Leave:** If someone is detained under the Mental Health Act in hospital, then they are not able to leave the ward freely. Any leave away from the ward has to be authorised by a doctor and is known as 'section 17 leave'. Leave may be given gradually. For example someone may first be allowed leave for one hour, with this slowly being increased over a number of weeks.

**Section 2 of the Mental Health Act:** Section 2 (s2) allows a person to be admitted to hospital for an assessment of their mental health and to get any necessary treatment. It lasts for a maximum of 28 days.

## What is the Mental Health Act 1983?

The Mental Health Act 1983 sets out when someone with a mental disorder can be placed in a psychiatric hospital for a certain period of time. This is often known as being detained or being sectioned. This is so that they can be assessed and given treatment, and is only used when that person has put their own or someone else's health and safety at risk. The Act gives the person's NR some important rights which can be used.

## Who is the nearest relative?

The nearest relative (NR) is defined under the Mental Health Act. It is important to remember that the NR and the 'next of kin' can be two different people. The next of kin is usually a relative or close friend chosen by someone soon after they are admitted to any sort of hospital. The next of kin will usually be told about the patient going into hospital (with the patient's consent). The next of kin has no legal powers under the Mental Health Act. Section 26 of the Mental Health Act sets out a list of people who can be the NR. The approved mental health professional (AMHP) will look at the personal circumstances of the person who may be detained and decide which of his or her partner or close relatives is highest on the list.

## What are the nearest relative's rights?

The nearest relative's (NR) rights are:

To get information: The approved mental health professional (AMHP) must let the NR know within a reasonable time if his or her relative is to be detained under section 2 of the Mental Health Act.

To consultation The AMHP must speak with the NR before someone can be detained for treatment under section 3, unless it is would be difficult to do this from a practical perspective or if it would cause a long delay.

If the NR objects, guardianship or detention under section 3 cannot go ahead, unless the County Court removes the NR. This is known as 'displacement'.

There may be times when it is possible but not a good idea to tell the NR of an admission for assessment (section 2) or to consult the NR about an application for treatment (section 3). It may not be a good idea to tell the NR because it would have a negative impact on the patient. For example it could cause:

- emotional distress.
- deterioration in their mental health.
- physical harm.
- financial or other exploitation.

If a NR is to be consulted about an application for a section 3, but their relative does not want information to be shared about them, the NR should get enough information to allow them to do what the Mental Health Act asks them to do.

## Right to Information on Admission and Discharge

The hospital managers are under a duty to give particular information to a patient who has been detained under the MHA such as details of the provisions under which the patient is detained and rights of applying to a Mental Health Tribunal for discharge. This information should also be given to the nearest relative unless the patient objects. This requirement is set out in section 132 of the MHA.

Unless the patient objects, the hospital managers also have a duty to inform the nearest relative when a patient who is detained under the MHA is being discharged.

## Section 2: Admissions: the right to be informed

When an AMHP makes an application to detain a person under section 2 of the MHA, the nearest relative cannot prevent the application being made. However, the MHA states that an AMHP must take such steps as are 'practicable' to inform the nearest relative where a person is admitted (or is going to be admitted) to hospital under section 2.

## Section 3 Admissions: the right to be consulted

The MHA states that where admission under section 3 is being considered, the AMHP must consult the nearest relative unless this is not 'reasonably practicable' or would involve unreasonable delay. It also states that if the nearest relative objects to the application being made then the AMHP cannot make the application. The admission under section 3 cannot then go ahead unless the nearest relative is displaced. (The nearest relative can also prevent an application under section 7 MHA for guardianship).

**To ask for assessment:** The NR can request that social services carry out a Mental Health Act assessment.

Some families have found this right helpful in a crisis, if there have been problems with getting someone help and they are very unwell, or at risk to themselves or others. An example letter is set out at the end of this factsheet which you can use to request this. You can also make a verbal request. The local authority has to give written reasons to the NR if they decide not to admit the person into hospital after an assessment.

**To apply for admission:** The NR can ask hospital managers to detain a person under section 2 or 3, or in an emergency. This could be useful if two doctors say that the person should be detained but the AMHP disagrees.

It may be easier to ask the social services department to make an assessment first, before applying to the hospital managers.

**To discharge:** The NR can discharge someone from detention under sections 2 or 3, or a Community Treatment Order (CTO). However this is not possible if the person has been detained after a judge or magistrate has made a court order.

The Responsible Clinician (the professional responsible for someone's care and treatment) is able to stop the discharge in certain circumstances.



## Powers Concerning Discharge of the Patient

A nearest relative has the power to discharge her or his relative from detention under section 2 or section 3. The nearest relative must give the hospital managers 72 hours' notice and the notice of discharge has to be served in writing on an 'authorised person' at the hospital. Within this period, the clinician responsible for the patient's care and treatment (the 'Responsible Clinician' or 'RC'), may issue what is called a 'barring certificate', preventing the nearest relative from discharging the patient for the next six months. If a barring certificate is issued, the nearest relative has 28 days to make an application to the Mental Health Tribunal for discharge.

It is important that the notice of discharge is served on the person authorised by the hospital managers to receive such notice. In a case where a notice was handed to a receptionist, the courts ruled that the 72-hour period did not start until the notice was received by the authorised person. If a nearest relative is unsure who the authorised person is, it is best to contact the Mental Health Act Administrator at the hospital.

The nearest relative also has the power to apply to the Mental Health Tribunal for discharge in respect of a patient who has been detained by a criminal court under section 37 of the MHA but the right only arises after the first six-month period of detention.

**To delegate the role to someone else:** The NR can pass over their rights to someone else by writing to the chosen person and to the Hospital Managers. This is known as 'delegating' their rights. An example letter is set out at the end of this factsheet which can be used for this.

If you are thinking about delegating the NR role to someone else, you could contact an AMHP from the local authority for help.

**Planning for Aftercare:** Unless the patient objects, the NR must be given the opportunity to become involved in any planning of the patient's care and services for after she or he leaves hospital. A patient detained under section 3 (or by the courts under section 37) has a right to receive free aftercare services from the local authority under section 117 of the MHA.

**Treatment:** A patient who is detained under the MHA can be treated without consent. There is no power under the MHA for the nearest relative to intervene in a patient's treatment whilst admitted under section. If the nearest relative is unhappy about the treatment being given to their relative, they should initially discuss this with the Responsible Clinician. If they are still unhappy, they can make a formal complaint using the hospital's complaint procedure.

For those complaining in England, if complaining to the hospital fails to produce a satisfactory outcome, then it is possible to contact the Care Quality Commission at:

Care Quality Commission National Correspondence  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA.

Tel: 03000 616161.  
Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk).  
Website: [www.cqc.org.uk](http://www.cqc.org.uk)

## To contact the Independent Mental Health Advocacy service

People detained under the Mental Health Act can get support from an Independent Mental Health Advocate (IMHA). This includes those under a Community Treatment Order for supervised community treatment.

An IMHA service should visit and talk to the patient if the NR asks them to. However, patients can refuse to see an IMHA and do not have to accept help from one if they do not want it. Patients or the NR can still get help from a solicitor if there is an IMHA involved.

### **Further information:**

***If you require any further information with regards to your right as a Nearest Relative, please complete the enquiry form on the 'Contact Us' page and someone will get back to you.***