Guide to the 1983 Mental Health Act

For nearest relatives of detained service users
Introduction

This booklet is for anyone who is the nearest relative for a person (described in this booklet as a patient) who is detained under the 1983 Mental Health Act (MHA).

It tells you about the main sections of the MHA. It also explains what being nearest relative means and what rights and responsibilities come with the role.

If you have any comments about this booklet or any suggestions on how to make it better please contact:

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How does the Mental Health Act work?

The main sections of the Mental Health Act (MHA) are used either to bring someone from their home into hospital or to detain someone who is already in hospital as an 'informal' or 'voluntary' patient. This is often called being 'sectioned'.

The next part of this booklet briefly explains the six most common sections.

**Section 2**

This section lasts up to 28 days. Two doctors and an Approved Mental Health Professional (AHMP) have to agree that the person needs to be in hospital. Section 2 gives the care team time to assess the patient and put together a treatment plan.

While on a Section 2 a Responsible Clinician (a senior doctor) will be in charge of the patient's care and treatment. The section does not have to last the full 28 days if the Responsible Clinician decides it is no longer needed. The patient will be told what their rights are by a nurse on a ward. He or she can appeal against the section.
**Section 3**
This section lasts up to six months and is mainly for treatment. Two doctors and an Approved Mental Health Professional (AMHP) have to agree that the person needs to be in hospital. While on a Section 3 a Responsible Clinician (a senior doctor) will be in charge of the patient's care and treatment. The section does not have to last the full six months if the Responsible Clinician decides it is no longer needed. The patient will be told what their rights are by a nurse on a ward. He or she can appeal against the section.

Some people leave hospital with their Section 3 being suspended, so they go home under what is called a Community Treatment Order (CTO). Someone under a CTO can be brought back to hospital if there are concerns about them or they breach conditions which have been set. Examples of conditions are that the patient has to carry on taking medication or has to let their care coordinator visit them.

**Section 4**
Section 2 and Section 3 both need two doctors to see the person before he or she is sectioned. It is not always easy to get a second doctor at short notice. In an emergency an AHMP can bring someone to hospital under Section 4 with only one doctor having seen them. This section only lasts up to 72 hours and will normally be followed by Section 2 or Section 3.
**Section 5(2)**
If possible the care team prefer to work with a patient without them being on a section. Sometimes a person will be admitted to hospital without being on a section. If he or she wants to leave and the care team think this is not appropriate the patient needs to be assessed for Section 2 or Section 3. Assessments take time to arrange and Section 5(2) is sometimes used to stop the patient discharging themselves. Section 5(2) only lasts up to 72 hours and is normally done by a doctor on the patient's ward or the duty doctor.

**Section 5(4)**
It is not always possible to quickly get a doctor to see a patient to assess them for Section 5(2). If no doctor is around a registered nurse can stop someone leaving by using a Section 5(4). This section only lasts up to six hours and ends when a doctor arrives on the ward.

**Section 136**
The MHA gives police officers the power to detain someone in a public place and take them to a 'place of safety'. In this Trust the place of safety is, where possible, a suite attached to hospital wards on the main sites. If Section 136 is used the person should be assessed as soon as possible by a doctor and an AMHP. This section only lasts up to 72 hours.
Who is the nearest relative?

The main powers in the MHA are given to doctors and AMHP, who decide whether someone is 'sectioned' or not. The MHA also gives important legal rights to the person who is called the 'nearest relative'. The 'nearest relative' may not be the same person as the patient's 'next of kin'. The next of kin for anyone admitted to hospital is usually a family member or friend chosen by the person themselves. The nearest relative is decided in a different way.

In the MHA (Section 26) there is a list of people eligible to be the nearest relative. When someone is placed under Section 2 or 3 the AMHPs involved in the decision needs to go through the list. The person who is at the top of the list or highest on the list is the nearest relative.

The list in Section 26:

- Husband or wife or civil partner
- Oldest son or daughter
- Oldest parent
- Oldest brother or sister
- Oldest grandparent
- Oldest grandchild
- Oldest aunt or uncle
- Oldest niece or nephew
Note that if two people (of any sexual orientation) live as a couple for more than six months they count as each other's nearest relative (even if they are neither married or in a civil partnership).

Note also that if someone on the list lives with the person being sectioned or provides care for them it is possible for them to go to the top of the list.

If someone (neither a relative or partner) lives with someone for more than five years he or she may be identified as a nearest relative.

There are a number of other factors which the AMHP needs to consider before making a decision. Examples are if someone lives outside the UK or if two people are separated.

Sometimes the decision is not an easy one to make. If, as friend or relative of the patient, you are not clear as to why or how the decision has been made please ask the ward staff. Organisations such as Rethink or MIND may be able to help.
What rights do nearest relatives have?

For information

If an AMHP has decided to place someone under Section 2 (see page 3) he or she must inform the nearest relative within a reasonable time that they have done this. When someone is put on Section 2 a nurse on the ward will give them information about the section. At the same time the nurse will ask the patient if he or she wants their nearest relative to be sent information about the section. If the patient does not want their nearest relative to be told the Trust will respect their wishes.

For consultation

If an AMHP is deciding whether to place someone under Section 3 (see page 4) he or she must attempt to decide who is the nearest relative and - unless it is not reasonably practical or would involve unreasonable delay - get that person's views on the plan to use Section 3. If the nearest relative objects to the section the only way it could go ahead would be if the County Court 'displaces' (removes) the nearest relative from their role.

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To apply for admission

The MHA does allow the patient's nearest relative to place someone on Section 4, Section 2 or Section 3, providing two doctors (or in the case of Section 4 one doctor) are recommending this. This is a very rare thing to happen and the MHA Code of Practice states that an AHMP rather than the patient's nearest relative is almost certainly the best person to apply for admission.

To discharge from section

The nearest relative of a patient detained under Section 2 or 3 or a Community Treatment Order has the right to discharge him or her from section. This can be done by writing to the Trust's Hospital Managers at the MHA Office. The addresses of these offices are in the patient's rights leaflet (which was sent to you unless the patient objected).

This discharge is not automatic as the MHA gives the patient's Responsible Clinician up to 72 hours to consider the discharge. He or she can block discharge but only if their view is that the patient will be a danger to themselves or others if discharged from hospital.
If discharge from Section 3 is blocked, the nearest relative has a right
to request a Mental Health Tribunal. The MHA Office will then send
the nearest relative information about how to ask for a Tribunal. If
discharge from either Section 2 or 3 is blocked a Hospital Managers'
Hearing will be arranged to consider the patient's case. In this Trust
the people conducting this hearing are known as Associate Hospital
Managers.

**Attending hearings**

Managers' hearings and Tribunals are also held when a patient
appeals against a section. The nearest relative does not have an
automatic right to attend hearings or Tribunals. It is up to the patient
themselves to decide. If the nearest relative is not invited to attend
the care coordinator will make sure the views of the nearest relative
are put to the Managers' hearing or Tribunal.
For information about care and treatment

In general the rights of a nearest relative to be involved in the care and treatment of a patient depend on the patient giving their consent.

The nearest relative's view about, for example, what medication should be given or not given to the patient are important. However, the nearest relative has no legal right to say what medication should be given to the patient or to veto medication the team feels is in the patient's best interests.

If the treatment plan for the patient directly involves the nearest relative in a caring role he or she should normally be consulted. An example is if the patient is being given weekend or overnight leave to stay with their nearest relative.

For information about discharge and aftercare

The MHA says, if possible, the nearest relative should be told when a patient is ready to leave the hospital but this needs the patient to give their consent. If the nearest relative plays an important part in the aftercare plan this might delay the discharge of the patient.
To complain

If the nearest relative has concerns about how the MHA has been used they can raise their concerns with the Care Quality Commission. Their address is:

Care Quality Commission
The Belgrave Centre
Stanley Place
Talbot Street
Nottingham
NG1 5GG

If the nearest relative has concerns about the care and treatment of a particular person he or she can use the Trust’s complaints procedure on the back page.
Common questions about the nearest relative

What if someone does not want to be the nearest relative?

It is possible for the nearest relative to delegate their responsibilities to someone else. This could be another person on the list (see page 6) or any other person. This can be done in letter form and must be signed by the existing nearest relative and by the person who has agreed to take on the role. The letter must be then sent to the MHA Office for the area where the patient is detained.

Can the identity of the nearest relative change?

Sometimes this can happen. One example is where the nearest relative goes to live in another country. This means the next person on the list becomes the nearest relative. Another example is where the patient has a son or daughter who reaches the age of 18. If there is no one higher on the list that person becomes the nearest relative.

What does displacement mean?

This is where a court of law decides that the current nearest relative should no longer be so. There are several reasons why this decision might be made. The most common reason is if an AMHP wants to place someone under Section 3 but thinks the nearest relative is 'unreasonably objecting' to this plan. If the court does displace that person the new nearest relative will probably be another family member or an AMHP. Another reason for displacement is if the court decides that the nearest relative is not 'suitable' to act in the role. Patient themselves can also start the process.
What does the Bristol Case mean?

This was a case where the patient did not have a very good relationship with their sister who was her nearest relative. The patient did not want her sister to be consulted before she was placed under Section 3 because of the distress it would cause her. The Judge looked at the meaning of the words in the Mental Health Act and decided it gave some flexibility to an AMHP not to inform (Section 2) or consult (Section 3) the nearest relative.

What if the patient does not have a nearest relative?

It is possible for a county court to appoint someone as the nearest relative. This could be anyone the court thinks is suitable and who agrees to take on the role.
Notes

This page is for you to write down information about the person under Section.

- Name of section
- Date section began
- Date section ends
- Name of person's Responsible Clinician (senior doctor)
- Name of ward doctor
- Name of person's primary nurse
- Name of person's care coordinator (if they have one)
- Dates of Tribunal or Managers' hearing (if one has been arranged)
- Date of pre-discharge meeting (if one has been arranged)
- Ward name and telephone number
- Visiting times
Options available
If you’d like a large print, audio, Braille or a translated version of this leaflet then please ask us.

Useful contact details
SLaM Switchboard: 020 3228 6000
SLaM 24hr Information Line - Advice on how to access SLaM Services: 0800 731 2864
Contact our Patient Advice and Liaison Service (PALS) for help, advice and information:

T: 0800 731 2864
W: www.pals.slam.nhs.uk
E: pals@slam.nhs.uk

Complaints
If you are not happy about something but not sure if you want to make a formal complaint you can speak to a member of staff directly. Alternatively you can contact the PALS Office on freephone 0800 731 2864. If you decide you want to make a formal complaint this can be done by contacting the Complaints Department:

Complaints Department, Maudsley Hospital,
Denmark Hill, London SE5 8AZ

T: (020) 3228 2444/2499
E: complaints@slam.nhs.uk
W: www.slam.nhs.uk

www.tfl.gov.uk/journeyplanner
For the quickest way to plan your journey anywhere in greater London use journey planner:
020 7222 1234 (24hrs)