

# Role of the Nearest Relative

October 2016

## Introduction

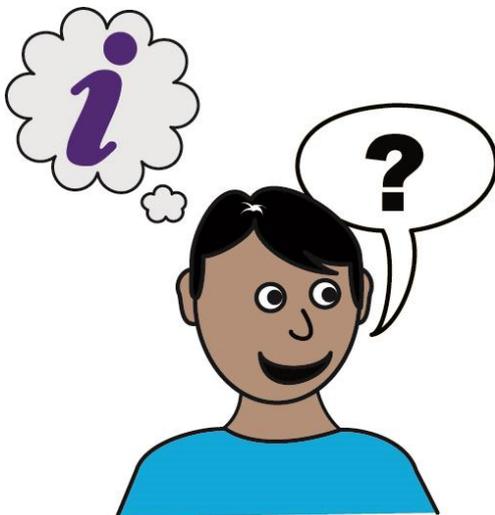
This guide gives information on what it means to be a patient's nearest relative. When someone is detained in hospital under certain sections of the Mental Health Act, one member of their family – their 'nearest relative' – has special rights and responsibilities.

This is an important safeguard for people who are affected by the Mental Health Act.

## What are my rights as nearest relative?

You have a really important role to play in making sure your relative's voice is heard, and their rights are protected, if they are detained in hospital under the Mental Health Act. You have a number of powers and rights that nobody else has.

## Right to information



You have the right to be told certain information about your relative, including:

- why your relative has been detained in hospital
- your relative's rights while in hospital
- if your relative's section is renewed or changed
- if your relative is going to be discharged.

You must also be given copies of any written information that is given to your relative. However, your relative has the right to request that information about their care and treatment is not shared with you. They can also object to you being given copies of any written information they receive.

## Right to discharge



You have the right to discharge your relative from hospital. To do this, you first need to inform the hospital managers in writing. You then need to wait 72 hours before discharging your relative, as the **responsible clinician** has the right to stop you if they think your relative could be a danger to themselves or others.

You may have the right to apply to the Mental Health Review Tribunal for Wales if your application to discharge your relative is refused by the hospital managers.

### Hospital managers

This is an independent team of people in a hospital who make sure that the requirements of the Mental Health Act are properly applied. They have certain important responsibilities and can make decisions about your relative's detention – for example, they hear applications for discharge and decide whether or not to approve discharge of your relative.

### Responsible clinician

This is the approved clinician in charge of your relative's care and treatment while in hospital. They do not have to be a doctor, but will be the most appropriate person to help your relative.

## **Right to ask an IMHA to contact your relative**

You have the right to ask for an independent mental health advocate (IMHA) to see your relative, but it will be up to your relative whether they accept support from them (see Who can help my relative speak up when I am not there?).

## **Right to delegate**

If you do not want to be the nearest relative, you can give your powers to someone else, as long as that person agrees. You also need to write to the hospital managers to let them know.

## **How will hospital help my relative?**

Being in hospital should help your relative get the support and treatment they need to recover and feel well enough to go home.

## **Assessment**



The professionals working with your relative will assess what type of mental health problem they are experiencing and what treatment they may need to help them.

This can involve answering some questions and talking to staff about the way your relative has been feeling and what has been happening in their life. Sometimes this can seem strange and confusing, but they will be asking your relative questions to try and find the best way to help them. They might also be offered treatment while they are being assessed.

## Treatment

Different people need different treatments, even when they seem to experience similar mental health problems.

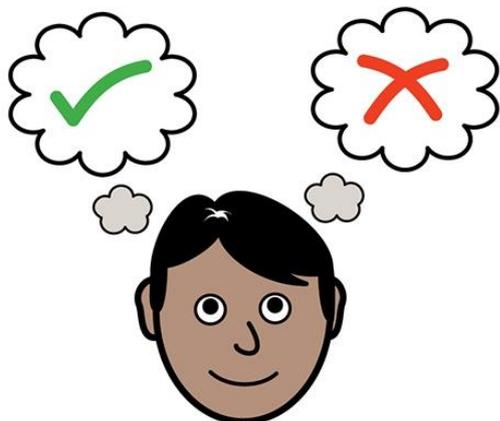
Your relative can only be treated for their mental disorder under the Mental Health Act if appropriate medical treatment is available. This means it must be suitable for them as an individual and it must also be actually available at the time. It should also be the best, evidenced based, option available. Your relative may be offered a choice between treatments.

Treatment might include nursing care, medication, talking to doctors or psychologists, taking part in activities that can help your relative feel better or learning new skills.

It can also involve treating their physical health if it is part of, or supports, treatment for their mental health problem, such as for self-harm injuries.

## Consent

Your relative must always be asked whether they agree (consent) to proposed treatment while in hospital.



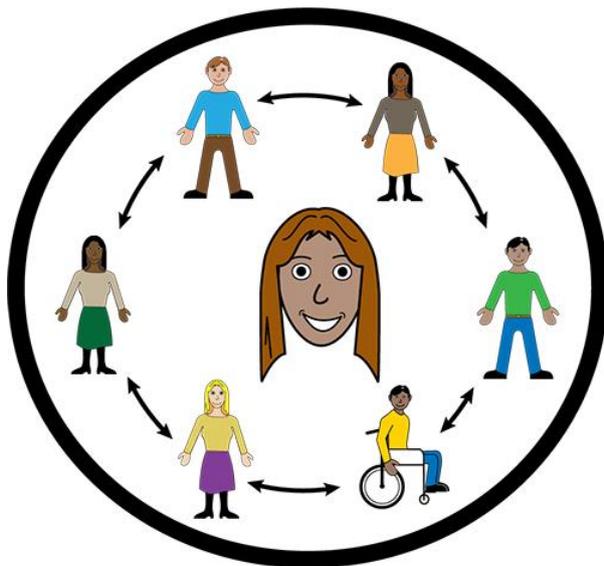
In order to consent, your relative must have been given enough information about:

- the proposed treatment
- what it will achieve
- possible side effects
- what will happen if they are not given the treatment and
- any alternatives.

However, it is important to be aware that the Mental Health Act allows a person to be treated without consent if they are detained. This can only happen if the treatment is for their mental health problem **and** it is prescribed by the approved clinician in charge of the treatment. This will usually be the responsible clinician.

There are special rules in relation to medication, electroconvulsive therapy (ECT) and neurosurgery, and special rules that apply when a person lacks capacity to consent to treatment. Your relative can ask an IMHA or their care team for more information about these.

### **How will my relative be involved in decisions about their care and treatment?**



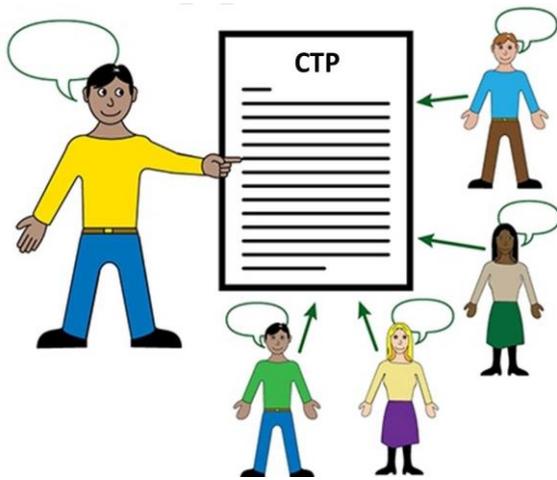
Your relative is at the centre of their care and treatment and should be given all the relevant information to make informed decisions about their treatment options. There are a number of people who are responsible for making different decisions about your relative's care and treatment.

### **Care co-ordinator**

A care co-ordinator must be appointed as soon as possible following your relative's admission to hospital. If your relative was receiving support from secondary mental health services before they were admitted, they will already have a care co-ordinator.

A care co-ordinator may be a:

- social worker
- nurse
- occupational therapist
- psychologist
- doctor
- dietician
- physiotherapist
- speech and language therapist



While your relative is in hospital their care co-ordinator will work with them (and, if they wish, their family and friends) to draw up a care and treatment plan (CTP). This will be designed to meet their individual needs and the outcomes they would like to achieve.

A CTP will cover one or more of the following:

- finance and money
- accommodation
- personal care and physical wellbeing
- education and training
- work and occupation
- parenting, or caring relationships
- medical and other forms of treatment
- social, cultural or spiritual needs

A CTP should record the services to be provided and the action needed to achieve each of the outcomes your relative has agreed. This will include when treatment or services will be provided and by whom.

Their care co-ordinator will be responsible for overseeing the co-ordination of your relative's care and treatment and for reviewing the plan. If your relative already has a CTP, it should be reviewed within 72 hours of their admission and updated as needed.

A step-by-step guide to care and treatment planning can be found here:

[http://www.hafal.org/pdf/Care\\_and\\_Treatment\\_Planning\\_1.pdf](http://www.hafal.org/pdf/Care_and_Treatment_Planning_1.pdf)

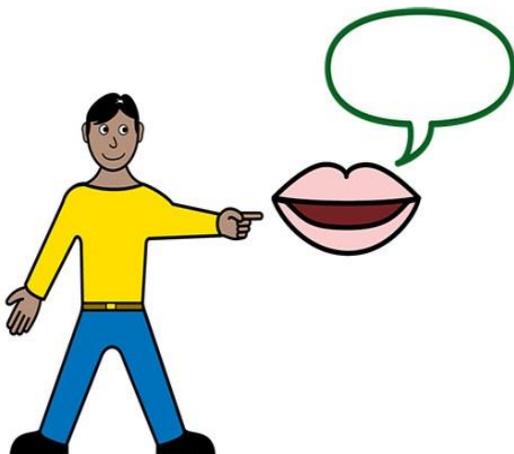
### **How will I be involved in decisions about my relative's care and treatment?**

You should be involved in discussions about your relative's care and treatment and the drawing up of their care and treatment plan, unless your relative objects.

### **Who can help your relative speak up about what they want?**

While in hospital, your relative is entitled to help and support from an independent mental health advocate (IMHA).

They must be told about the support an IMHA can provide when first admitted to hospital. A member of the ward staff, your relative's responsible clinician or an approved mental health professional (AMHP) can give your relative information about getting an IMHA.



An IMHA is there to support your relative and no one else. They can help your relative express their views about their care and treatment, and make sure your relative's voice is heard.

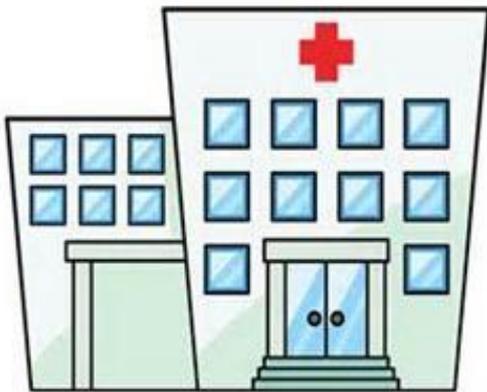
Their role is to help your relative understand any medical treatment they are given or might be given, as well as the reasons and legal basis for it.

Your relative should have access to a phone which they can use to contact and talk to an IMHA in private.

IMHAs are there to help your relative understand:

- their rights under the Mental Health Act
- the rights other people (such as you) have
- the parts of the Mental Health Act which apply to them
- any conditions or restrictions during their stay (for example, about leave of absence from hospital)
- any medical treatment they are receiving or might be given, including:
  - the reasons for that treatment or proposed treatment
  - the legal basis for providing that treatment
  - the safeguards and other requirements of the Mental Health Act which apply to that treatment.

### **How long will my relative have to stay in hospital?**



The length of time your relative can be kept in hospital depends on which section of the Mental Health Act they are detained under. Your relative will be given written information about how long they can be detained when they are admitted to hospital.

### **How does my relative get discharged from hospital?**

There are several ways of getting discharged once a person has been detained under the Mental Health Act.

## **Your relative can ask the hospital managers to consider discharging them.**

Your relative can request a meeting with them and ask to be discharged.

## **Your relative can ask their responsible clinician to discharge them.**

Their responsible clinician must do this if the legal reasons for detaining your relative no longer apply. This could be because their mental health has improved so that they no longer need to be kept in hospital for assessment or treatment.

## **Your relative can apply to the Mental Health Review Tribunal for Wales to be discharged**

The Tribunal cannot look at the reasons why your relative was detained in the first place – it will only look at how they are now and whether they should still be under section or discharged.

Your relative will be able to get free advice and representation from a solicitor to help them with their application and during the hearing.

It does not matter what money they have coming in, what savings they have or whether they own their home.

They can apply to the Tribunal each time they are put on a section or their section is renewed.

You should be told 7 days before your relative is due to be discharged from hospital, unless your relative does not want you to be told.

## **What are my rights if my relative is discharged from hospital onto a community treatment order or guardianship order?**

If your relative is discharged to receive care and treatment in the community under a community treatment order (CTO) or a guardianship order, you continue to have a role to play as their nearest relative.

You have similar rights to information and to discharge your relative as you do when your relative is detained in hospital.

### **Community treatment order**

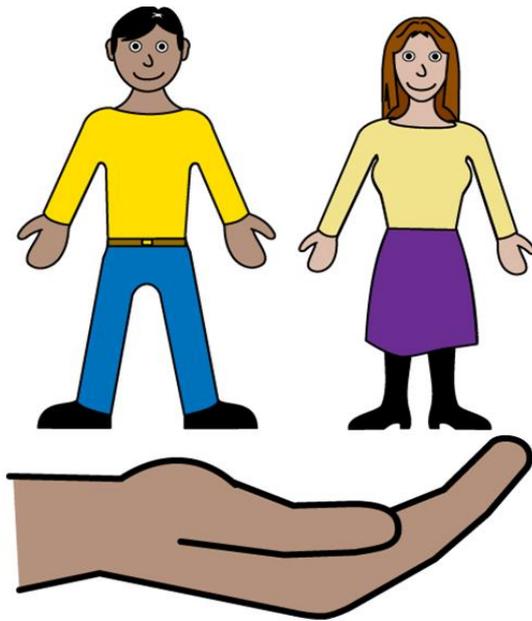
This is where someone is treated in the community for their mental health problem instead of staying in hospital, but they must follow certain conditions and their responsible clinician can return them to hospital and give them immediate treatment if necessary.

### **Guardianship**

This is where someone called a 'guardian' is appointed to help someone live as independently as possible in the community, instead of being detained in hospital. Someone would be placed under guardianship if their mental health problem meant that it would be difficult for them to avoid danger or people taking advantage of them. The guardian has the power to make certain decisions about the person subject to the guardianship order and to make conditions that they will be asked to keep to.

## How will the hospital keep my relative safe?

Feeling safe is really important in helping your relative to get well, so the hospital should have anti-bullying and safeguarding policies to protect your relative from any potential physical or verbal abuse.



When your relative is admitted to hospital, staff should carry out a risk assessment. This is done to help keep your relative and others as safe as possible.

Your relative should be asked about any risks they feel they may pose to their own safety or the safety of others, and agree with staff how best to manage these risks. This information should be included in your relative's care and treatment plan.

If your relative behaves in a way that puts their or others' safety at risk, the hospital may use a range of measures to keep them safe. In limited situations, these may include observation, rapid tranquilisation, seclusion or restraint.

### Observation

Increased levels of observation may be used if your relative is at risk of self-harm or suicide, such as:

- staff checking on your relative, sitting with and talking to them at regular intervals
- your relative being kept within sight of a staff member at all times
- in the most extreme circumstances, your relative remaining within arm's length of a staff member.



If observation is used, your relative should be told why, its purpose, how long it is likely to last, and what needs to happen for it to be stopped. It should only be used after other less intrusive options have not worked.

## **Rapid tranquilisation**

This refers to the use of medication to calm or lightly sedate a person to reduce the risk of them harming themselves or others. It may include oral medication or injections. Medication should only be used in this way when other therapeutic interventions have not worked to contain your relative's behaviour, and not as a substitute for adequate staffing.

## **Seclusion**

This involves being taken to a room away from other patients. The room may or may not be locked. If your relative is in a hospital or unit that uses seclusion, there should be a designated seclusion room that:

- is private from other patients, but allows staff to observe and communicate with your relative at all times
- is safe and secure, and does not contain anything that could cause harm to your relative
- is quiet, but not soundproofed
- is well insulated and ventilated
- has access to toilet and washing facilities.

Seclusion should only be used as a last resort and for the shortest time possible.

## **Restraint**

This involves health professionals preventing a person from hurting themselves or another person and could include holding them.

It should not cause pain, and must only be used in an emergency and as a last resort.

The hospital should have policies on the use of observation, seclusion, rapid tranquilisation and restraint. They must never be used as a form of punishment for not following the rules.

### **Will I be told when restrictions have been used?**

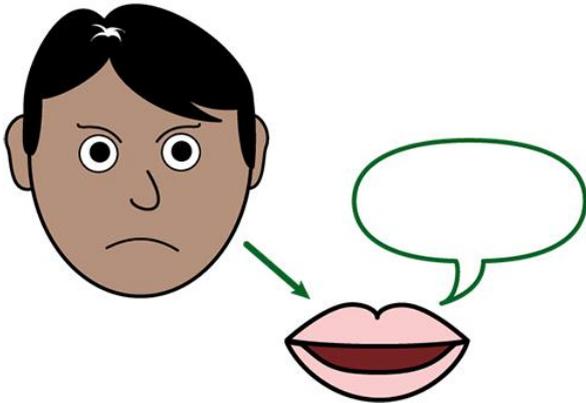
Normally yes, unless your relative has asked that you are not told.

### **What can I do if I feel my relative is not safe?**

You should talk to hospital staff if you are worried about your relative's safety. You can also ask an IMHA to talk to your relative.

## Giving feedback

### Complaint



There are a number of things you can do if you are not satisfied with how your relative has been treated in hospital. The best course of action for you will depend on what exactly has happened.

Often a problem can be sorted out by speaking informally with the person involved.

If the problem cannot be resolved informally, you can raise a concern with the health board, which must have a written policy that explains how they deal with concerns

Your relative's IMHA can also help them raise a concern or, if they no longer have an IMHA, they can ask their local Community Health Council to help. For more information see [www.wales.nhs.uk/ourservices/directory/communityhealthcouncils/](http://www.wales.nhs.uk/ourservices/directory/communityhealthcouncils/)

A concern should be reported within 12 months of the incident, though it may still be investigated if it is raised after 12 months, if there was a good reason for the delay.

If you're not happy with the health board's response, you can make a complaint to the Public Service Ombudsman for Wales. See [www.ombudsman-wales.org.uk/](http://www.ombudsman-wales.org.uk/)

If your complaint is about the way your relative was treated by a particular nurse, doctor or other professional, you can make a complaint to their regulatory body.

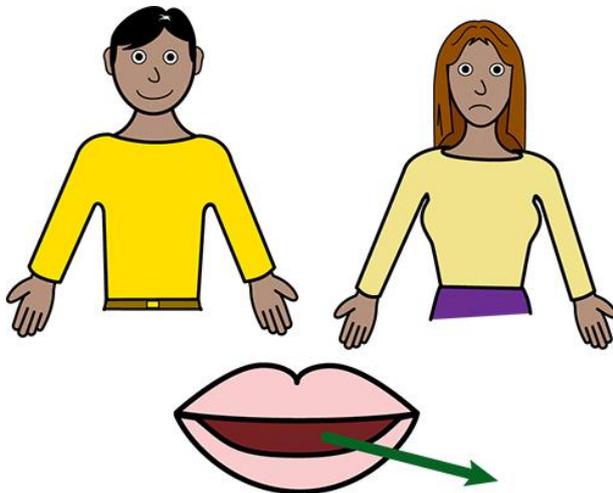
**Doctors, including psychiatrists:** the General Medical Council [www.gmc-uk.org/](http://www.gmc-uk.org/)

**Nurses:** the Nursing and Midwifery Council [www.nmc.org.uk/](http://www.nmc.org.uk/)

**Occupational or speech and language therapists, psychologists, dieticians and physiotherapists:** the Health and Care Professions Council [www.hcpc-uk.co.uk/](http://www.hcpc-uk.co.uk/)

**Social workers:** the Care Council for Wales [www.ccwales.org.uk/](http://www.ccwales.org.uk/)

## Comment

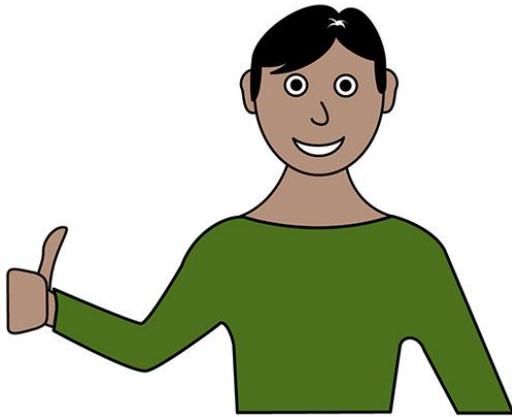


If you do not want to formally raise a concern or complaint, but you want someone official to know your relative had a bad experience in hospital, you can tell Healthcare Inspectorate Wales (HIW). HIW monitors and inspects all health services in Wales.

Although they do not investigate individual complaints, HIW want to hear about experiences of poor care, as this helps them make informed decisions about when, where and what services they inspect.

If you think the Mental Health Act has not been used properly, you can contact the Mental Health Review Service. This service is run by HIW and is responsible for checking people are lawfully detained and well cared for under the Act. Go to [hiw.org.uk](http://hiw.org.uk) for more information.

## Compliment



You can also give positive feedback about your relative's care and treatment to their care team, IMHA, Community Health Council or HIW at any time.

Complaints and compliments are both helpful for services.

With special thanks to Simon Meadowcroft from Betsi Cadwaladr University Health Board and other members of the Accessible Information Advisory group.

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