


MENTAL HEALTH ACT (MHA) 1983

Guardianship Under the Mental Health Act and Emergency Admission and Detention Under the Mental Health Act 1983

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REVIEWED BY	Mariana Philipova	
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OVERVIEW OF THE MENTAL HEALTH ACT 1983 IN RELATION TO THE SERVICES PROVIDED BY THE HOME

Bendigo Nursing Home does not provide service to people who have some form of mental disorder, except for people who have non-aggressive form of Dementia. However, there are older people in the community who have some form of Dementia as a result of which, these people are unable to take care of themselves, most commonly known as self-neglect. Examples of that include when people with Dementia forget to eat, drink, wash, and history of falls or are unable to walk. In these instances, people may be placed at our home to ensure that they are not at risk of malnutrition, dehydration and their personal needs are met.

It is also possible that a service user in our home is for example depressed and refuses to eat and drink. In this instance the service user's GP must be contacted and it is possible then that the GP and a social worker may decide to have the service user 'Detained under the Mental Health Act 1983' to a hospital where the individual will be provided, usually against the persons will / wish, with fluids and nutrition intravenously and admitted to a ward that provides treatment to people with mental disorders. After the hospital it is possible that the individual requires 'after care' and be placed in our home.

The Mental Health Act (MHA) is designed to protect the rights of people in England and Wales who are assessed as having a 'mental disorder'. This is a general term used in the act to describe any disorder or disability of the mind, including dementia or suicidal tendencies.

This factsheet looks at the parts of the Mental Health Act that cover the process of 'being sectioned', challenging a section, guardianship and after-care services. The person with dementia and their nearest relative must be informed of their rights and what is happening in relation to the Mental Health Act.

The sections of the Mental Health Act

The MHA consists of over 100 parts, called sections. The following sections are the most relevant to people with dementia and their carers:

Section 2 – Detention for assessment in hospital

If health professionals think that a person with dementia is behaving in a way that places their health at risk or is a danger to themselves or others, they can be detained in hospital under section 2 of the act so that they can be assessed. This process is often known as 'being sectioned'.

A person can initially be detained in hospital for assessment for a maximum of 28 days. An approved mental health professional (AMHP) and the person's nearest relative both have the legal power to have someone admitted to hospital under a section of the Mental Health Act (see 'The key roles' section for an explanation of these roles). However, it is very unusual for a nearest relative to do this. Every local authority has a duty to provide a trained team of AMHPs specifically to carry out this role.

Two doctors must then agree to the section and sign medical recommendations stating why someone can only be treated in a psychiatric hospital. One of these doctors must

have special experience in working with people with a mental disorder. The second should normally be someone who knows the person, such as their GP. The doctors must assess the person within five days of each other. The AMHP or nearest relative must then admit the person to hospital within 14 days of when the medical recommendations were signed. A person who is in hospital under a section is not allowed to leave the hospital and will be closely supervised.

Section 3 – Detention for treatment in hospital

Section 3 of the act allows someone to be detained in hospital for treatment, initially for up to six months. After this time, the section may be renewed for a further six months, and then for a year at a time. Detention for treatment can take place if the person is already detained under section 2 for an assessment or if it is clear at the outset that the person will not accept treatment voluntarily.

Either an approved mental health professional or the person's nearest relative can apply for someone to be sectioned and admitted to hospital (see 'The key roles', section, for an explanation of these roles). However, the AMHP cannot admit someone to hospital under section 3 if the nearest relative doesn't agree to this. The process is the same as for detaining someone for a mental health assessment under section 2 (above), except that the doctors must confirm there is appropriate treatment available for the person in hospital. Treatment might include psychological therapies (such as problem-solving therapy and [cognitive behavioural therapy](#) (CBT)), specialist mental health nursing [medication](#) and care.





Section 117 of the MHA – After-care services

Local authorities and the NHS have a joint duty to make arrangements for the care and support of someone who has previously been detained for treatment under section 3 of the MHA and who is in need of after-care services. This support is not means-tested (the person will receive it regardless of their financial situation). It must be provided free of charge and includes care in the person's own home or paying for care home fees.

Sometimes, the local authority may decide that a person is no longer eligible for after-care support under section 117 and will have to start paying for their own care.

Challenging a section

A section can be challenged in four ways. The options for the person being sectioned are outlined below:

-  Ask the health professional in charge of their care (the responsible clinician) to discharge them.
-  Ask for the hospital manager to discharge them. The manager will hold a meeting (called a hearing) with the people in charge of the hospital and other hospital staff. There is no time limit for when this hearing should be held.
-  Talk to the nearest relative. The nearest relative can discharge them, however they must give written notice to the hospital and the discharge can be overridden by the doctor on medical grounds.
-  Apply to a First-tier Tribunal if they are in England or a Mental Health Tribunal in Wales. Staff on the hospital ward, an independent mental health advocate or the hospital's Mental Health Act administrator, can help put people in touch with a solicitor to represent them at a First-tier Tribunal hearing. The Law Society of England and Wales also has a list of solicitors who are accredited to represent people at these hearings – see 'Useful organisations'.

The person can try all the options available to them at the same time to challenge a section decision.

What happens when a section expires?

If the section is not renewed or replaced by another section, the person can discharge themselves from hospital. However, a doctor or nurse can detain someone trying to leave, if they feel they should stay in the hospital until another assessment is made. The hospital always has a duty to make sure patients' needs will be met in the community after they are discharged.

Guardianship




The Mental Health Act also allows for individuals called 'guardians' to be appointed to help someone live as independently as possible in the community. They can make some decisions on behalf of people with a mental disorder. These decisions must be the least restrictive and made in the person's best interests.

A guardianship order is not the same as a hospital section made under the Mental Health Act. Doctors should consider whether guardianship is more appropriate than detaining someone in hospital. Guardianship orders and sections are similar in that people who are the subject of a guardianship order may have decisions made for them that they might not agree with. The guardian must always act in the person's best interests.

Guardianship can be arranged if an approved mental health professional or the person's nearest relative applies for it, and the person's situation meets the same requirements of a section (see 'Section 2 – Detention for assessment in hospital', above). An approved mental health professional cannot make an application for a guardianship order if the nearest relative does not agree that it should happen.

In most cases the local authority is named as the guardian, but a friend or relative may be appointed. A guardianship order cannot proceed if the nearest relative objects to it.

A guardian has three powers:

-  *they have the right to decide where the person lives, for example: in the community or a care home.*
-  *they can require the person to attend specified places for medical treatment, work, education or training*
-  *they can demand that a doctor, Approved Mental Health Professional (AMHP) or other specified person is able to visit the person where they live.*

Except for the residence power, the guardian cannot legally force a person to do something they don't want to do. The success of being a guardian therefore depends a lot on the quality of the relationship with the person. The residence power allows a guardian to take the person to the place they are specified to live in if they will not go there voluntarily.



The guardian cannot authorise medical treatment and has no control over a person's money or property. A guardianship order initially lasts for six months and can be renewed for a further six months and then annually.

Objecting to a guardianship order

If the nearest relative objects to a guardianship order when it is being applied for, the order will not go ahead. Once an order has been made and a guardian has been appointed, the nearest relative can object to a guardianship order, if they do not think that it is necessary.

The tribunal can decide to either end the guardianship order or not to end it, or they can make certain other orders.



Guardianship must end if:

-  *at the time the tribunal considers the case, the person no longer has a mental disorder*
-  *the guardianship order is not necessary for the welfare of the person or for the protection of others.*

Lasting powers of attorney and deputies, and the Mental Health Act

The Mental Health Act does not stop people appointed as attorneys through a lasting power of attorney (LPA) or deputies (who may be appointed by the Court of Protection if no LPA has been made) from making decisions about welfare or property and affairs for a person without capacity.

However, they cannot:

-  *give consent for the person to have certain mental health medical treatments, as identified in the Mental Health Act*
-  *make decisions about where a person should live if that person has a guardian appointed to them.*

A person can still create a lasting power of attorney and a deputy can be appointed when the Mental Health Act is being used to detain them, or a guardian has been allocated.

Detaining someone under a section of the Mental Health Act or depriving them of their liberty under the Mental Capacity Act, DoLS

The Mental Capacity Act 2005 aims to protect people who do not have the mental ability to make decisions about their health and welfare and/or property and financial affairs. There may be occasions when a person who does not have mental capacity does not qualify to be detained under the Mental Health Act but needs to be deprived of their liberty in order to receive appropriate care and treatment. In such circumstances, under the Mental Capacity Act a hospital or care home must get formal authorisation. This is known as a Deprivation of Liberty Safeguards (DoLS) authorisation. (more in DoLS PP)

The key roles

Nearest relative

The nearest relative is generally the person who comes first in the following list: husband, wife or civil partner; son or daughter; father or mother; brother or sister; grandparent; grandchild; uncle or aunt; nephew or niece; someone (not a relative) that the person has lived with for at least the last five years.

Independent mental health advocate

A person detained in hospital under the act has the right to access an independent mental health advocate, to explain their rights and how they can challenge a section. Advocates have access to the person's medical records and operate independently from the hospital.

Approved mental health professional

A professional who has had special training to help people in relation to the Mental Health Act. They might be a social worker or mental health professional (such as a community psychiatric nurse).

POLICY

Nursing Treatment and Care Guardianship Under the Mental Health Act 1983

1. Bendigo Nursing Home believes in providing high quality health care based upon individual's needs and wishes as recorded in an individual service user plan for each resident of the home who is subject to a guardianship order. Each plan should be determined by a full needs assessment and should be drawn up in full partnership between the home and the service user in full accordance with the Mental Health Act 1983.

2. Guardianship Policy

The home understands that the purpose of guardianship, as defined in Section 7 of the Mental Health Act 1983, is to enable those with mental health problems to receive care in the community where it cannot be provided without the use of compulsory powers.






Under this framework the home will work with each service user, with a minimum of constraint, to achieve as independent a life as possible within the community.

3. The following is applicable in the home:




a) When considering an application for guardianship, the home must be satisfied that any procedures instituted by social services departments are no more than the minimum necessary to ensure the proper use of guardianship and that guardianship is being used in a positive and flexible manner for a particular service user.

b) The home requires a comprehensive care plan (drawn up under the Care Programme Approach (CPA)) which identifies the services needed by the service user and who will provide them. The care plan should include care arrangements, suitable accommodation, treatment and personal support. It should also indicate which of the powers under the Act are necessary to achieve the plan. If no powers are required then a guardianship should not be necessary.

c) Key elements of the CPA should include:







-  depending on the service user's level of capacity, his or her recognition of the authority of, and willingness to work with, the home
-  details of support for the home as guardian
-  an assessment of suitable accommodation to help meet the service user's needs
-  access the day to day care, treatment and support
-  effective co-operation and communication between all persons concerned in implementing the care plan.

4. The home understands its powers as a guardian under the Act to include the following.

-  The power to require a service user to live at the home (although this does not provide the home with legal authority to detain a service user physically).
-  The power to require a service user to attend specified places for medical treatment, occupation, education or training (although, if a service user refuses to attend, the Act does not authorise the home to use force to secure such attendance, nor does the Act enable medical treatment to be administered in the absence of the service user's consent).
-  The power to require access to the service user to be given at the home to persons detailed in the Act (such as mental health or social care professionals).

5. The home recognises that if a service user consistently resists the exercise of the home's powers as a guardian then it can be concluded that guardianship in this home may not be the most appropriate form of care for that person and that the guardianship order should be reviewed.



6. *It is the home's policy that each service user under guardianship should:*

-  *be monitored regularly by local social services or mental health services*
-  *receive, both orally and in writing, relevant aspects of the information that hospital managers are required to give to detained patients under section 132 of the Mental Health Act 1983*
-  *be made aware of his or her right to apply to a mental health review tribunal and have a named officer of the local authority to give any necessary assistance to the service user in making such an application*
-  *have detailed records kept by the home relating to the person under guardianship*
-  *have a review towards the end of each period of guardianship*
-  *be discharged from guardianship as soon as it is no longer required.*

POLICY

Emergency Admissions and Detention Under The Mental Health Act 1983

1. Bendigo Nursing Home accepts emergency placements but such placements:

-  do not imply the right for a service user to stay in the home once the emergency is over
-  do not commit the service user or home to the placement once the emergency is over.

2. *All service users placed in the home as an emergency measure should be fully assessed once the emergency is over and relocated if the care provided here is not appropriate to their needs, or if the service user is considered inappropriate to the setting, or to existing service users.*

The home reserves the right to refuse admission or placement to any service user who it feels would be inappropriately placed in the home, or for whom the home does not have the required skills, resources or provision.

3. Policy on Emergency Placements

In the event of emergency admission the home will pursue the following:

- a) Service users placed in an emergency should be fully assessed and relocated if the care provided is not appropriate to their needs
- b) When an emergency placement is made, the home undertakes to inform the service user within 48 hours about key aspects, rules and routines of the home, and to meet all other admission criteria within five working days

c) Service users on respite / emergency / short-term placements or intermediate care/rehabilitation placements, and those in long-term placements, should occupy separate premises including communal day space, facilities and equipment, unless benefits for both groups can be demonstrated.

4. The home complies fully with the following provisions of the Mental Health Act 1983 as follows.

a) Section 4 — Admission for Assessment in Cases of Emergency. This section is used when there is an emergency application for admission for assessment from the community. The criteria are as follows.

☞ If it is of urgent necessity for the service user to be admitted and detained in hospital under s.4 and for reasons given under s.2. There must be evidence of:

✚ the existence of a significant risk of mental or physical harm to the service user or to others; and / or

✚ the danger of serious harm to property; and / or

✚ the need for physical restraint of the service user.

☞ The application is made by the nearest relative or approved social worker. Either should have seen the service user within the past 24 hours. This is to ensure that this section is only used in genuine emergencies and where there is no time to seek a second medical opinion.

☞ Only one medical recommendation is required. If possible this should be done by someone with knowledge of the service user. The doctor must confirm that:

✚ it is of urgent necessity for the service user to be admitted and detained under s.2; and

✚ waiting for a second doctor to confirm the need for admission under s.2 would cause undesirable delay.

☞ The service user must be admitted within 24 hours of the examination, or the application, whichever is earlier.

b) This section lasts for 72 hours from the time of admission.

c) With reference to the Mental Health Act 1983 it is the policy of this home that an applicant cannot seek admission for assessment under s.4 unless:

☞ the above criteria for admission for assessment are met

☞ the matter is of urgent necessity and there is not enough time to get a second doctor to give a second medical recommendation

☞ the emergency is a genuine emergency and is not being used for administrative convenience

☞ an emergency arises where those involved cannot cope with the mental state or behaviour of the service users; to be satisfied that an emergency has arisen, there must be evidence of:

☞ the existence of a significant risk of mental or physical harm to the service user or to others; and/or

☞ the danger of serious harm to property; and/or

☞ the need for physical restraint of the service user.

Wherever the home expects that these criteria are possible a second doctor should be made available so that those considering the placement do not have to consider using s.4 in circumstances other than genuine emergencies.