



JK19

Resources for Carers, Young Carers and Staff:

7. Hospital Admissions and the Mental Health Act

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1. Hospital Admission

Although most mental health problems are successfully managed in the community, some people need a stay in hospital. People are admitted to hospital either **informally** or **under a section of the Mental Health Act (1983)**. An informal patient can leave the hospital at any time and their movements are not generally restricted.

If you are the **nearest relative**, you also have rights under the Mental Health Act (the nearest relative is not necessarily the next of kin). For example, if you are worried that the person you care for is becoming seriously ill and might need hospital care, you can ask that they have a **Mental Health Act assessment** which may lead to admission to hospital (please see 'Mental Health Crisis' section of the Information Pack or see the separate leaflet).

You can also ask that they are **discharged from hospital** (unless the person you care for requests otherwise). Before discharge from hospital, family and carers should be involved with the care team in drawing up what is known as a '**discharge plan**'. The plan should include a **relapse prevention plan** which makes sure everyone knows what to do if the person's mental health gets worse.

Children and young people under the age of 18 are **encouraged to visit** their relative in hospital and should be offered a private space. There may be times when visits are limited but this will be explained to you by staff. Children aged under 16 years must be **accompanied by a responsible adult** at all times during the visits.

A small number of sectioned patients return to the community under **Community Treatment Orders (CTO)** which lay down certain conditions and allow a recall to hospital.

2. Hospital Admission under the Mental Health Act

If someone is **unwilling** to go into hospital and is considered to be **at risk to themselves or others**, a decision could be taken to use special legal powers known as '**sections**' to detain them in hospital. These powers are set out under various sections of the Mental Health Act (MHA) and are usually applied when staff working with the person believe that there is no better alternative.

When someone is taken into hospital under the Mental Health Act, medical permission to leave the ward (called **section 17 leave**) is needed and they may be expected to take medication and engage in treatment.

There are **seven** main sections of the Act, although there are others that cover different situations. For more information on the MHA, you can speak to your care for person's Care Coordinator.

3. Sections of the Mental Health Act (1983)

The main sections of the Mental Health Act are:

Section 2	Up to 28 days	This section lasts for up to 28 days. Two doctors and an Approved Mental Health Professional (AMHP) decide when to put someone on section 2. A senior doctor, known as a Responsible Clinician (RC), will be in charge of their care and treatment.
Section 3	Up to six months	This lasts for up to six months. Two doctors and an AMHP decide when to put someone on section 3 – and a RC will be in charge of their care and treatment. The main purpose of section 3 is to allow more time to treat someone effectively for their mental health problem.
Section 4	Up to 72 hours	This lasts up to 72 hours. If someone comes to hospital under section 4, it means the AMHP assessing them was very concerned about them and needed to act quickly. Section 4 means only one doctor saw them and is usually followed by a section 2 or section 3.
Section 5(2)	72 hours	If someone comes into hospital without being on a section, they are an informal or voluntary patient. If they want to leave, but this is not considered safe or appropriate, doctors can use section 5(2). It lasts for 72 hours, and gives doctors time to make a decision on further care, for example, under section 2 or 3. Section 5(2) is sometimes called a 'doctor's holding power'.
Section 5(4)	Up to six hours	If a nurse thinks that it is not safe or appropriate for someone to leave hospital but a doctor is not available to apply section 5(2), the nurse can stop a patient leaving by placing them under a section 5(4). This power lasts for up to six hours, ending when a doctor assesses the patient. This is sometimes called a 'nurse's holding power'.
Section 136	-	A small number of people are brought to hospital under section 136, a power that can be used by a police officer if they are concerned about the way someone is behaving in a public place. The assessment suites where people are seen are referred to as 'place of safety' or 'section 136' suites.
Community Treatment Order (CTO)	-	Some patients under section 3 and other sections can leave hospital and carry on receiving treatment in the community. A patient on a CTO needs to keep to particular conditions and may have to go back into hospital if there are concerns about them. A CTO lasts for up to six months and can be renewed.

4. Mental Capacity and Lasting Power of Attorney

The **Mental Capacity Act** (2005) provides a legal framework for acting and making decisions on behalf of a person, aged 16 or over, who does not have the mental capacity to make a decision for him or herself. This includes people with dementia, a learning disability, head injuries or mental health problems. If a carer or young carer is looking after someone who lacks the capacity to make decisions, the Mental Capacity Act allows decisions to be made in the individual's best interests.

A **Lasting Power of Attorney** (LPA) is a way of giving someone you trust the legal authority to make decisions on your behalf if you lack mental capacity at some time in the future.

The Court of Protection can appoint a **Deputy** if they deem that you lack capacity to make decisions. There are two types of deputy; property & financial affairs and personal welfare. A deputy is authorised to make decisions on your behalf if you do not have the capacity to make them yourself. This may be applicable to individuals with a serious brain injury or illness, dementia or a learning disability.

Lack of capacity cannot be considered merely on a **diagnosis** of a medical condition, appearance, behaviour or age. The Mental Capacity Act instead sets out a **clear test** for assessing a whether a person **lacks capacity to make a particular decision at a particular time**. It is a “**decision specific**” and **time-specific** test which should have the **best interests** of the person at its heart.

There is a non-exhaustive **checklist** of factors that decision-makers must work through in deciding what is in a **person's best interests**. Carers have a right to be **consulted** concerning a person's best interests. If a person has a written **advance statement** about their wishes, this must also be considered.

The Act deals with two situations where a designated decision-maker can act on behalf of someone who lacks capacity:

- **Lasting Powers of Attorney (LPAs)** – The Act allows a person to appoint an attorney to act on their behalf, if they should lose capacity in the future.
- **Court Appointed Deputies** – The Act allows the Court of Protection to appoint deputies to take decisions on welfare or financial matters. Deputies cannot refuse consent to life-sustaining treatment.

5. Advance Decision

The Mental Capacity Act includes provisions for people to make Advance Decisions to **refuse specific treatment** if they should lack capacity in the future. An Advance Decision is **legally binding**.

6. Power of Attorney

If the person you care for might lose their mental capacity in the future, it is worth considering **Lasting Power of Attorney (LPA)** whilst they still have mental capacity.

There are two kinds of LPA:

- The power to manage all their **property and financial affairs**.
- The power to make decisions regarding **health and welfare**.

There is a fee to register each kind of LPA with the Court of Protection. It is advisable to use a solicitor to set up a Power of Attorney. Power of Attorney forms can be accessed by contacting the Office of the Public Guardian online at www.gov.uk/power-of-attorney/making-lasting-power, or telephoning 0300 456 0300.

7. Useful Resources

Information and leaflets are available to download from www.shsc.nhs.uk/need-help/help-for-carers-and-relatives/carers-resources.

The following resources for carers and young carers are available:

1. Advocacy
2. Carers' and Young Carers' Charter
3. Carers' and Young Carers' Assessments
4. Carers' and Young Carers' Checklist
5. Community Teams
6. Confidentiality and Information Sharing
7. Hospital Admissions and the Mental Health Act
8. How to Get Involved
9. Mental Health Crisis
10. Understanding Mental Health Conditions and Medication
11. Useful Contacts Leaflet
12. Information Pack

Further information can be found on www.shsc.nhs.uk/need-help/help-for-service-users/helpful-publications.

The original Useful Resources were designed in partnership with carers and young carers. The Trust worked collaboratively with Sheffield Young Carers, Sheffield Carers Centre and Chilypep to deliver this leaflet and we would like to acknowledge their hard work, advice and support. The resources were updated in 2019 to ensure accuracy of information.

For further information, contact:

- Sheffield Young Carers on 0114 258 4595 or www.sheffieldyoungcarers.org.uk
- Sheffield Carers Centre on 0114 272 8363 or www.sheffieldcarers.org.uk
- Carers Trust on 0300 772 9600 or www.carers.org

Or alternatively, contact your local SHSC team to get more information.



This document was accurate as of October 2019.