

Understanding Involuntary Treatment

INFORMATION SHEET 13
PUBLICATION DATE: SEPTEMBER 2011

Mental Health Line

24 hours a day

7 days a week

1800 011 511

This information sheet is one of a series of information sheets.

At times, mental health problems or disorders may result in symptoms and behaviour that lead to these rights being taken away or restricted for a period of time. This may result in a person being treated for their illness without their consent, in two ways, either in hospital or in the community. This is referred to as involuntary treatment and involves the person having treatment and progress notes documented and kept in a confidential medical record. A 'nominated primary carer' can request information from the treating team about the patient's (consumer's) progress, medication and discharge plan.

Why are people sometimes treated without their consent?

It is only when there is no safe alternative available, that people are sometimes treated without their consent or against their will. All such involuntary treatment is regulated by the Mental Health Act 2007, which states that involuntary treatment should only occur when a person's condition seriously impairs their judgement and is causing serious problems, such as disturbed mood, abnormal experiences or disturbed behaviour, and there is no other available way of preventing serious harm occurring to the person themselves or to another person. However, many people do agree to receive treatment voluntarily. The service endeavours to work collaboratively with the person and their family whenever possible. Involuntary treatment does not stop a person from being involved in their mental health care.

Who decides whether someone will be treated without their consent?

A doctor/GP, the police, an ambulance officer, a court, or an Accredited Person can arrange for your family member to be transported to hospital for assessment without their consent. Once at the hospital, following assessment by two doctors (at least one of whom is a psychiatrist), if involuntary treatment is assessed as being necessary and appropriate, the person will be admitted. If the person does not become sufficiently well by the time of the next Mental Health Review Tribunal hearing, the doctor will present at that hearing, with the patient (consumer) present, seeking an Order for their ongoing involuntary care. The Mental Health Review Tribunal is empowered to make legal decisions based on medical evidence, about whether involuntary treatment is fair and reasonable, and determine a maximum duration for this. The person may be discharged earlier if they become well sooner than expected, or can be made voluntary prior to the next Tribunal hearing, and therefore need not attend further hearings.

What is the family's role?

A family member, carer or friend can provide either verbal or written information to the mental health staff or directly to the Tribunal. This can include information relevant to the person's illness and its impact on their life and others close to them. Families sometimes worry that if they cooperate with, or are seen openly talking to mental health staff, they will be blamed by their relative for the admission, and their relationship will be adversely affected. Sometimes people admitted to hospital without their consent do feel confused or angry and may respond by challenging those around them. However as time passes, people often understand why their family/carers provided information to mental health staff or the Tribunal. If you are concerned about how your relative is responding to you following an admission or a Community Treatment Order [CTO], please contact one of the staff in the treating team to discuss the situation.



Health
Sydney
Local Health District

& Bankstown

What happens at a Mental Health Review Tribunal Hearing?

The Mental Health Review Tribunal is a specific legal body that has powers under the Mental Health Act. The Tribunal reviews all the documents, medical evidence and other information presented, and considers whether an Order should be made for the person to continue to be treated under the Mental Health Act. The hearings are usually held fortnightly at each of the hospitals, or via telephone or video conferencing. The Psychiatrist and other treating team members make requests to the Tribunal based on their assessments and available information. The Social Worker will seek the views of both the person and their family/carers on treatment and financial matters for the Hearing. The 'nominated primary carer' and possibly other family members/carers can attend the hearing.

If you would like to attend the Tribunal Hearing, contact the treating team. The duration of a hearing varies, but normally takes about 20 - 30 minutes for each person. The following people are present:

- The Tribunal Panel: A Tribunal panel comprises a lawyer, a psychiatrist and a third person with suitable qualifications or experience. The Tribunal's role is to decide if the person will be discharged or remain in hospital for treatment (this can be for a maximum initial period of up to three months). If a clear decision cannot be made at the time of the Hearing, the matter can be 'adjourned' for up to two weeks.

The Tribunal can also make a Community Treatment Order (CTO) if the person is to be discharged and requires involuntary ongoing health service follow-up and medication in the community. If the Tribunal makes an order for the person to remain in hospital, they also consider the person's ability to manage their financial affairs. If the person is unable to look after themselves financially, the Tribunal may appoint the 'NSW Trustee and Guardian' to take control of their financial affairs. The NSW Trustee and Guardian is an independent statutory authority legally appointed under the NSW Trustee and Guardian Act 2009, to protect and administer the financial affairs and property of people deemed unable to make financial decisions for themselves. [For more detail on CTO's please see Information Sheet No. 14 "Understanding the Mental Health Act"]

- The Person with the Mental Illness: The person is provided with information on their legal rights and entitlements prior to the Hearing. They will have the opportunity to speak to the Tribunal and may be asked if they will remain in the hospital voluntarily. If the person is too unwell, the Hearing can proceed in their absence.
- A Doctor: Information for the ongoing treatment and care of the person is presented by the Doctor. This may be supplemented by reports from other members of the treating team.
- A Legal Aid Lawyer (or the person's own lawyer): They will interview the person prior to the Hearing in order to present their wishes and directions. If the person does not want to utilise the lawyer, the lawyer still remains in the hearing to ensure the legal rights of the patient are upheld.
- Family & Carers: Family and carers will be notified of the Tribunal Hearing. The 'nominated primary carer' has specific rights under the Mental Health Act 2007 in regard to attending hearings, as well as expressing their concerns. If the person does not object, other family members and close friends have the opportunity to speak to the Tribunal or may provide information in writing, which can be submitted 'in confidence' if desired. Families are encouraged to attend hearings and are welcome to information on their rights.

Can a Tribunal's decision be appealed?

Yes. When the Tribunal makes an Order the person will be informed of their right to 'Appeal' and the process involved. An Appeal can be put before the NSW Supreme Court which is responsible for the legal protection of the rights of patients who are subject to mental health orders in NSW. [For more detail please see Information Sheet No. 14 "Understanding the Mental Health Act"]

Can the person be discharged from hospital prior to the end of an Order?

Yes. If the treating doctor considers the person's condition to have improved sufficiently, they may be discharged from hospital at any time, or continue to be treated as a voluntary patient in hospital.