

Rights of Family, Carers and Other Support Persons

A patient's family, carers and other support persons play a crucial role in supporting patients when they are unwell, and throughout all stages of treatment, care and recovery. Support persons are recognised throughout the *Mental Health Act 2016* and are afforded a number of important rights and responsibilities. Supporting and assisting patients promotes recovery-oriented mental health services, which is an overarching theme embodied in the Act.

What do the principles say about support persons?

The principles of the Act provide that:

To the greatest extent practicable, family, carers and other support persons of a person who has a mental illness are to be involved in decisions about the person's treatment and care, subject to the person's right to privacy.

What role do support persons play?

The Act expressly states the role of support persons, namely:

- to contact the patient while they are undergoing treatment and care
- to participate in treatment decisions
- to receive information about the patient's support, care, treatment, rehabilitation and recovery, and
- to arrange other support services for the patient, such as respite care, counselling and community care facilities.

Family, carers and support persons also have a number of responsibilities, including:

- to respect the patient's dignity and humanity
- to consider the opinions and skills of health practitioners who provide treatment and care to the patient, and
- to co-operate with reasonable programs of assessment, treatment, care, support, rehabilitation and recovery of the patient.

Who are nominated support persons?

A person may appoint one or two persons to be a 'nominated support person' for the patient. This appointment is made in advance, to support the person if they become an involuntary patient.

Nominated support persons are given specific rights under the Act, namely:

- A nominated support person must be given all notices about the patient that are required under the Act.
- A nominated support person may discuss confidential information about the patient's treatment and care.
- A nominated support person may represent, or support the person, in any hearings of the Mental Health Review Tribunal.
- A nominated support person may request a psychiatrist report if the person is charged with a serious offence.

A person can revoke the appointment of a nominated support person if the person has capacity.

While having a nominated support person is beneficial to a patient, authorised mental health services should recognise and engage with all support persons in the patient's best interests.

What rights do support persons have?

Nominated support persons, family, carers and other support persons have a number of rights, including the right to:

- visit a patient at any reasonable time, provided the person is not excluded from visiting the patient (if the visit may adversely affect the patient)
- arrange for a health practitioner to visit and examine a patient, and consult with an authorised doctor about the patient's treatment and care
- arrange for a legal adviser to visit the patient
- communicate with a patient by post, phone or electronic communication device, unless prohibited by the administrator as being detrimental to the patient or others
- request a second opinion on behalf of a patient, and
- request a copy of the *Statement of Rights*.

What communication with support persons is required?

Whenever the Act requires practitioners to explain or discuss a matter with a patient, the practitioner must also explain or discuss the matter with family, carers and support persons.

If the person has a nominated support person, the discussion must occur with the nominated support person.

If the person does not have a nominated support person, the discussion must occur with one of the patient's family, carers or other support person.

This communication is required, for example, when a recommendation for assessment or treatment authority is made, and in deciding the nature and extent of treatment and care to be provided under a treatment authority.

However, this requirement does not apply if:

- the patient requests, at a time when the patient has capacity, that the communication not take place
- the person is not readily available or willing for the communication to take place (for example, the person is not willing to visit the patient in hospital or cannot be contacted by phone), or
- the communication with the person is likely to be detrimental to the patient's health and wellbeing (for example, the person has previously disrupted the patient's treatment and care resulting in the patient's condition deteriorating).

The *Guide to Patient Rights under the Mental Health Act 2016* outlines all circumstances where this communication must take place.

How do the confidentiality provisions of the Hospital and Health Boards Act 2011 apply?

The requirement to keep patient information confidential is addressed in the *Hospital and Health Boards Act 2011*.

Information may be disclosed under the *Hospital and Health Boards Act 2011* if:

- the patient consents to the disclosure, or
- the disclosure of the information is for the care or treatment of the patient, or
- the information is communicated by a health professional to a person who has a sufficient personal or professional interest in the health and welfare of the person.

These exceptions allow a person's family, carers and other support persons to receive information about a patient.

As consent cannot be given if a person is very unwell and lacks capacity, a practitioner may use one of the above exceptions to communicate information to support persons. Judgement is used by practitioners in determining whether to disclose such information.

How do Independent Patient Rights Advisers fit in?

Independent Patient Rights Advisers are engaged by Hospital and Health Services to advise patients and support persons of their rights under the Act. They play an important role in liaising between clinical teams, patients and support persons. Patients, family, carers and other support persons can request to speak to an adviser at any time.