

Mental Health Act 2016

Chief Psychiatrist Policy

Management of complaints and right to a second opinion

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General

A complaint is any expression of dissatisfaction or concern, by or on behalf of a patient or group of patients, regarding the provision of a health service.

Complaints and feedback mechanisms allow authorised mental health services (AMHSs) to identify areas for improvement, with the goal being to improve patient outcomes. Complaints and feedback processes also strengthen the accountability of staff, and provide oversight in the administration of AMHSs, which increases patient and public confidence.

Human Rights

Respect for human rights is fundamental to supporting the recovery of people living with mental illness. The *Human Rights Act 2019* requires proper consideration be given to human rights factors when contemplating a decision that may affect or limit a human right. To ensure the safety and wellbeing of all individuals, there are provisions in the *Mental Health Act 2016* that may impact or be considered a limitation on an individual's human rights. Adhering to the *Mental Health Act 2016* requirements (including its principles), and documenting the rationale for decisions and actions, is critical in demonstrating that a decision is reasonable and justified under the *Human Rights Act 2019*.

Scope

This Policy is mandatory for all AMHSs. An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the *Mental Health Act 2016* **must** comply with this policy.

This Policy applies if a patient or someone on the patient's behalf, such as a nominated support person, family, carer or other support person, wishes to make a complaint about any aspect of the patient's treatment or care. This may include a complaint about the quality or standard of mental health treatment or care, or an alleged failure to provide appropriate treatment and care by an AMHS or particular staff member. This policy also provides guidance regarding the application of section 290 of the *Mental Health Act 2016* and the right to obtain a second opinion if an AMHS has been unable to resolve a complaint about the provision of treatment and care to a patient.

Staff should work collaboratively and in partnership with individuals in their care to ensure unique-age related, cultural and spiritual, gender-related and religious needs are

recognised, respected and followed to the greatest extent practicable. Staff should also discuss a consumer's individual complexities, diagnosis, functional capacity and support needs that may be relevant or impact treatment and care. This should include the timely involvement of appropriate local supports and a recovery-oriented focus.

This Policy **must** be implemented in a way that is consistent with the objects and principles of the *Mental Health Act 2016*.

This policy is issued under section 305 of the *Mental Health Act 2016*

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Chief Psychiatrist, Queensland Health

1 May 2024

Policy

1 Hospital and Health Service review of care

A patient or interested person for the patient may raise concerns regarding the patient's treatment and care with their treating team. Early engagement by health practitioners with the patient or interested person to understand their views, wishes and preferences and where appropriate review aspects of the patient's treatment and care is best practice. Independent Patient Rights Advisers (IPRAs) may assist individuals by facilitating a supported discussion with the treating team when a patient or interested person raises concerns about their treatment and care.

Additionally, the treating team may also engage other health practitioners in care reviews on their own initiative where required, for example to seek a second opinion about diagnostic, medication or risk management matters.

A review of care initiated in these circumstances may include, for example:

- consultation with other health practitioners,
- assessment or reviews of treatment aspects by health practitioners external to the treating team,
- specific assessments e.g., cultural assessments or physical health opinions,
- Ryan's Rule processes where there are concerns related to the patient's condition getting worse or not improving as expected.

While these early engagement processes may assist with resolving concerns before a complaint is lodged, where requested, a patient or interested person should be supported to make a complaint using the local Hospital and Health Services (HHS) procedures as per [section 2](#).

2 Management of complaints

Key points

Complaints **must** be received, acknowledged and assessed in accordance with established HHS procedures or, for a private sector AMHS, in accordance with the hospital's complaints management procedures.

IPRAs and AMHS staff **must** provide assistance to patients and their support persons in making a complaint, if requested. IPRAs may assist individuals to understand the internal HHS complaints procedures and external complaint options.

- Where a patient requires specific help to make a complaint, such as with the assistance of an interpreter, personal guardian, support person or community visitor, every reasonable effort **must** be made by the AMHS to organise the appropriate support.

In assessing any complaint, regard **must** be given to the right of a patient or interested person to request a second opinion about their treatment and care. This can be supported through local processes in the first instance. If an AMHS has not been able to resolve a complaint, [section 3](#) of this policy provides more detail regarding the right of a patient or interested person to request a second opinion under *section 290* of the *Mental Health Act 2016*.

The *Hospital and Health Boards Act 2011* provides that there should be openness to complaints from users of the public sector health services and a focus on dealing with the complaints quickly and transparently. This legislated principle applies only to public AMHSs. However, the National Safety and Quality Health Service Standards Clinical Governance Standard requires that all health services have complaint management systems which encourage and support reporting of complaints and timely resolution.

Documentation relating to complaints **must** be recorded in the relevant complaint management system for the Health Service.

Where details of a complaint relate to a patient's ongoing treatment and care, Health Services **must** ensure that there are processes in place to support the sharing of relevant information about the status or history of a complaint with staff currently involved in the patient's treatment and care.

2.1 Notifying the Chief Psychiatrist

Key points

A primary function of the Chief Psychiatrist is to protect the rights of patients and ensure compliance with the *Mental Health Act 2016*.

The AMHS administrator **must** notify the Chief Psychiatrist of complaints relating to significant non-compliance with the *Mental Health Act 2016* and for specified critical incidents.

The Chief Psychiatrist has powers under the *Mental Health Act 2016* to investigate these matters.

- Investigative powers also exist under the *Hospital and Health Boards Act 2011* and *Private Health Facilities Act 1999*.

Further information is provided in the *Chief Psychiatrist Policy - Notification to Chief Psychiatrist of Critical Incidents and Non-Compliance with Act*.

This Policy applies whether or not a complaint has been made about a matter.

3 Right to request a second opinion – application of section 290 of the *Mental Health Act 2016*

Section 290 of the *Mental Health Act 2016* provides patients and interested persons a right to request a second opinion about a patient's treatment and care **if an AMHS has been unable to resolve a complaint**.

The right to request a second opinion under the *Mental Health Act 2016* ensures there is accountability and oversight for the clinical decision-making by authorised doctors. It provides a safeguard for mental health patients to ensure that complaints are followed up and can be escalated to the Chief Psychiatrist if they are not adequately resolved. The right to request a second opinion also aims to strengthen the confidence that patients and patients' support persons have in the quality of mental health services.

Wherever possible, discussion **must** have occurred between the patient and/or their interested person, and the treating team. The AMHS administrator or clinical director **must** also have attempted to resolve any complaint about a person's treatment and care.

Any complaint about a patient's treatment and care **must** first be dealt with in accordance with the relevant HHS's complaints management processes and this policy.

- For private sector AMHSs, action **must** be taken in accordance with the hospital's complaint management procedures.

Key points

The patient, or an interested person for the patient, may request the AMHS administrator to obtain a second opinion from another health practitioner about the patient's treatment and care.

- A health practitioner also includes another psychiatrist.

The administrator **must** make arrangements to obtain the second opinion:

- from a health practitioner who is independent of the patient's treating team, and
- in the way required under this Policy.

The patient, or interested person for the patient, **must** be kept informed of steps taken to arrange a second opinion and the outcome of the second opinion.

[Attachment 1: Flowchart - Process for obtaining a second opinion under section 290 of the Act](#) outlines how a request for a second opinion should be managed to ensure compliance with this Policy.

3.1 Documentation

A request for second opinion **must** be documented in a timely manner in the patient's health records and include:

- any specific concerns about treatment and care provided to the patient, or
- any other matter expressed by the patient or interested person for the patient.

3.2 Administrator obligations and timeframe

The administrator **must** ensure that necessary arrangements are made for a second opinion to be obtained.

Timeframes for obtaining a second opinion will vary on a case-by-case basis (due to factors such as complexity of issue requiring a second opinion, AMHS size and availability of clinicians). However good practice is for a second opinion to be obtained within **seven (7) days** of the request being made. The administrator should advise the patient or interested person within what timeframe they can reasonably expect the second opinion to be completed and communicate in a timely manner with the patient or interested person if there are delays in obtaining the second opinion. This should also be documented in the patient's health record.

3.3 Credentialing and expenses

A second opinion may be obtained from another health practitioner who is either within the AMHS or external to it.

The requirement for section 290 of the *Mental Health Act 2016*, is that the health practitioner **must** be independent of the patient's treating team.

Key points

If a health practitioner external to the AMHS is engaged:

- the credentialing process for the practitioner (where required) **must** be undertaken by the AMHS, and
- the AMHS requesting the second opinion **must** pay all reasonable expenses incurred by the health practitioner engaged to provide the second opinion.
 - E.g. travel and accommodation costs.

Arrangements for obtaining a second opinion in a private sector AMHS should be made according to local processes and procedures.

3.4 Health Practitioner obligations

The request for a second opinion about a patient's treatment and care **must** be sufficiently clear on the particulars of the request.

Key points

The health practitioner providing the second opinion **must**:

- When documenting the opinion, include a statement that explains the nature of their independence from the patient's treating team,
- respond to the concerns outlined in the request,
- consider any other matters they believe relevant to the patient's treatment and care, and
- after examining the patient, provide an independent and professional opinion on these matters.

The health practitioner providing the second opinion **must** document the opinion in the patient's health records and advise the treating team, and the patient or interested person, of the opinion.

The patient's treating team **must** consider the opinion and discuss it with the patient or interested person for the patient.

3.5 Outcomes following second opinion

The patient's authorised doctor **must**, to the extent practicable, provide the patient or interested person who initiated the request for the second opinion with appropriate information about the outcome regardless of the setting (i.e., whether the patient has been discharged or not). Documentation of the outcome should also be provided to the patient and/or interested person.

If a second opinion suggests that a patient should be receiving different treatment or care, the health practitioner who prepared the second opinion **must** consult with the patient's treating team, to resolve the appropriate course of action.

If a resolution cannot be reached, the relevant clinical director of the AMHS **must** be contacted for advice.

Administrators and clinical directors may also contact the Chief Psychiatrist for advice as necessary.

3.5.1 Repeated requests for a second opinion

The administrator may make a decision to limit requests for a further second opinion **regarding the same issue** when:

- The patient and/or interested person has made repeated requests for a second opinion and the administrator has determined that the intent of the request has been met.

The administrator **must** communicate this decision to the patient and/or interested person and document the decision in the patient's health record. Where appropriate, the administrator should also advise the Chief Psychiatrist of this decision.

3.6 Escalation to the Chief Psychiatrist

If provision of a second opinion and the AMHS response to it does not resolve the patient's or interested person's concerns, the matter may be escalated to the Chief Psychiatrist via email to MHA2016@health.qld.gov.au for consideration.

Escalation to the Chief Psychiatrist can only occur with endorsement of the relevant clinical director and where all other avenues for resolution are exhausted.

4 Further information

Definitions and abbreviations

Term	Definition
AMHS	Authorised Mental Health Service - a health service, or part of a health service, declared by the Chief Psychiatrist to be an AMHS. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the <i>Mental Health Act 2016</i> for persons subject to involuntary treatment and care.
CIMHA	Consumer Integrated Mental Health and Addiction application – the statewide clinical information system and designated patient record for the <i>Mental Health Act 2016</i> .
Clinical Director	A senior authorised psychiatrist who has been nominated by the administrator of the AMHS to fulfil the clinical director functions and responsibilities.
Health practitioner	A ‘health practitioner’ is a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including for example a psychiatrist or social worker.
HHBA	<i>Hospital and Health Boards Act 2011</i> .
Hospital and Health service	Public health services in Queensland are provided through 16 Hospital and Health Services (HHS). These are statutory bodies established under section 17 of the <i>Hospital and Health Boards Act 2011</i> and the principal providers of public sector health services in Queensland.
Interested person	An interested person for a patient includes: <ul style="list-style-type: none"> • the patient’s NSP; or • another individual who has a sufficient interest in the person. <p>The <i>Information Sharing Between mental health staff, consumers, family, carers, nominated support persons and others</i> document provides information on sharing information with people who have a “sufficient interest” in the consumers health and welfare.</p>
IPRA	Independent Patient Rights Adviser as defined under s293 of <i>Mental Health Act 2016</i> .
NSP	Nominated support person - a family member, carer or other support person formally appointed by a patient to be their NSP. NSP rights include: <ul style="list-style-type: none"> • must be given all notices about the patient that are required under <i>Mental Health Act 2016</i>

	<ul style="list-style-type: none"> • may discuss confidential information about the patient’s treatment and care • may represent, or support the person, in any hearings of the Mental Health Review Tribunal, and • may request a psychiatrist report if the person is charged with a serious offence.
Patient	<ul style="list-style-type: none"> • An involuntary patient, or • A person receiving treatment and care for a mental illness in an AMHS, other than as an involuntary patient, including a person receiving treatment and care under and Advance Health Directive or with the consent of a personal guardian or attorney.
Support person/s	Includes, a NSP (a family member, carer or other support person formally appointed by a patient to be their NSP) or, if the person does not have a NSP, a family member, carer or other support person

Referenced policies and resources

This policy other related resources can be found on the Queensland Health Mental Health Act 2016 website at: www.health.qld.gov.au/mental-health-act

Chief Psychiatrist policies

[Patient Records](#)

[Notification to Chief Psychiatrist of Critical Incidents and Non-Compliance with Act](#)

Mental Health Act 2016 forms and resources

[Information Sharing – Between mental health staff, consumers, family, carers, nominated support persons and others](#)

[Mental Health Act 2016 Statement of Rights for patients of mental health services](#)

[Ryan’s Rule | Clinical Excellence Queensland | Queensland Health](#)

Legislation

[Mental Health Act 2016](#)

[Human Rights Act 2019](#)

[The Hospital and Health Boards Act 2011](#)

[Private Health Facilities Act 1999](#)

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Attachment 1: Flowchart - Process for obtaining a second opinion under section 290 of the Act

