Involuntary Admission to Hospital

The NSW Mental Health Act 2007 establishes the legal framework within which care and treatment is provided for people in NSW who experience a mental illness or mental disorder. Most importantly it sets out the procedures that relate to involuntary admissions, i.e. where someone is taken to hospital and treated against their wishes. The Act contains two definitions that are important to understand if you, a friend or family member are admitted to hospital as an involuntary patient. They are the definition of a 'mentally ill person' and a 'mentally disordered person.' The reference to a ‘risk of serious harm’ to the safety of the person concerned (or others) is included in the definitions to justify involuntary treatment.

A mentally ill person:

In deciding whether someone is a mentally ill person the following criteria must be considered:
- does the person have a ‘mental illness’ as defined by the Act (see next paragraph)
- is there a risk of serious harm to self or others (this includes physical harm, as well as harm to reputation, relationships, finances, self-neglect and neglect of others such as the person’s children)
- has the person’s continuing condition (including any likelihood of deterioration) been considered
- can the person be appropriately cared for in a less restrictive environment (e.g. at home rather than in hospital)?

Mental illness
The Act defines mental illness in the following way. It is a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence of any one or more of the following symptoms:
- delusions.
- hallucinations.
- serious disorder of thought.
- severe disturbance of mood.
- sustained or repeated irrational behaviour indicating the previous symptoms.

A mentally disordered person:
In deciding whether someone is a mentally disordered person the following criteria must be considered:
- is the person behaving irrationally
• is this behaviour placing the person or others at risk of serious physical harm
• can the person be appropriately cared for in a less restrictive environment
  (e.g. at home rather than in hospital)?

**Taking a person to hospital against their wishes**
This most commonly occurs when a medical practitioner completes a Schedule 1 Certificate, stating that the person is either 'mentally ill' or 'mentally disordered'. This is why the process is often called 'scheduling'.

Authorised ambulance officers, accredited mental health professionals, police and magistrates can also require someone to go to hospital for a mental health assessment.

When a person has been ‘scheduled’ they will often be taken to hospital by friends and family members. However, at times it may be necessary for mental health staff, ambulance or police officers to become involved. In these cases, to ensure the safety of everyone involved, the Act permits limited searches, the use of sedation, restraint, and reasonable force. It is not envisaged that these measures will be used routinely, but only when necessary.

**After arriving at hospital**
The person must be:
• given a form explaining their legal rights
• examined by a doctor within 12 hours

If the doctor finds the person is:
• not 'mentally ill' nor 'disordered' they must be discharged
• either 'mentally ill' or 'disordered' a further examination is conducted, usually by a psychiatrist.

In some cases a third examination by a psychiatrist may be required.

**Being detained as a mentally disordered person:**
When someone is detained as a mentally disordered person they:
• can be detained for up to 3 days (not including weekends and public holidays)
• must be examined by a doctor every 24 hours
• must be discharged when no longer considered mentally disordered
• can be detained for three periods within 1 calendar month.

**Being detained as a mentally ill person:**
When someone is detained as a mentally ill person they:
• must be seen by a legally qualified member of the Mental Health Review Tribunal (who generally visits the hospital on a fortnightly basis to hold 'Mental Health Inquiries')
• must be legally represented at the hearing
• must have the assistance of an interpreter when necessary
• should come to the hearing in street clothes wherever possible
• must be discharged by the hospital if no longer mentally ill.
What can the Mental Health Inquiry decide?
It is the Tribunal member’s role at the initial Inquiry is to listen to the evidence and then decide whether or not someone is a ‘mentally ill person’ and requires further inpatient treatment.

The Tribunal member can:
- adjourn the hearing for up to 14 days
- order that the person be detained in hospital for a period of up to 3 months
- discharge the person
- defer the person’s discharge for up to 14 days
- discharge the person on a Community Treatment Order*
- discharge the person into the care of their ‘primary carer’.

Who is a primary carer?
The Mental Health Act 2007 introduced the concept of a ‘primary carer’ to ensure that those with a ‘close and continuing relationship’ with a patient are notified of some of the important events relating to the person’s care, e.g. their initial detention, Tribunal’s Inquiry and any transfer to another mental health unit. The Act also requires that a primary carer be consulted about a patient’s discharge.

For patients under 18 the primary carer will generally be a parent. However, those over 18 can nominate a primary carer of their own choosing or exclude specific people from being given information. That nomination or exclusion will usually stand unless there are reasonable grounds for believing that it places either the patient or the nominated person at risk of serious harm.

Where the patient does not nominate anyone, the primary carer can be nominated by the treating team from certain people listed in the Mental Health Act, generally either a spouse, a close friend or relative.

Mental Health Review Tribunal
If the hospital wishes to extend a person’s involuntary stay beyond the time set by the single member of the Tribunal at the Inquiry it must apply to the full bench of the Tribunal, which is a panel of 3 people. They will listen to the evidence and decide whether the person is still a ‘mentally ill person’ who is in need of further involuntary inpatient treatment.

Like the original ‘Inquiry’, the Tribunal at a ‘Review’ can:
- order that the person continue to be detained in hospital
- discharge the person
- defer the person’s discharge for up to 14 days
- discharge the person on a Community Treatment Order.*

The full bench of the Tribunal also makes decisions about other issues that affect involuntary patients, including whether a person should:
- be given ECT (Electro-Convulsive Therapy)
- have their financial affairs managed by the Protective Commissioner.
* A Community Treatment Order is a legal order made by the Mental Health Review Tribunal. It sets out the terms under which a person must accept medication, therapy, rehabilitation or other services. These orders are intended to allow those who might otherwise be detained in hospital to get the treatment, care and support they need in a less restrictive setting than a hospital.

For further information
Mental Health Advocacy Service (02) 9745 4277
Mental Health Review Tribunal www.mhrt.nsw.gov.au
NSW Institute of Psychiatry www.nswiop.nsw.edu.au
Mental Health Information Service 1300 974 991

Telephone Interpreter Service 131 450

If English is not your first language please call the Mental Health Information Service through the Telephone Interpreter Service (TIS). This service is free to non-English speaking Australian citizens or permanent residents. TIS have access to interpreters speaking more than 120 languages and dialects.

Mental Health Resource Centre

The Resource Centre contains material that promotes a better understanding of mental health issues. New books and DVDs are purchased on a regular basis and visitors are welcome to come in and browse.

Members of MHA, CAG and ARAFMI may check-out resources on loan. The length of the loan is 3 weeks. Membership costs between $10 - $30 per individual per annum. Please note that most of the reference books are not available for loan.

You will find the Resource Centre Booklist on our website: www.mentalhealth.asn.au for further information contact 1300 794 991.

Disclaimer
This information is for educational purposes. As neither brochures nor websites can diagnose people it is always important to obtain professional advice and/or help when needed. The listed websites provide additional information, but should not be taken as an endorsement or recommendation.

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