

# CARERS & THE MENTAL HEALTH ACT 2007

## NOTIFICATION TO CARERS OF CERTAIN EVENTS AFFECTING THE CONSUMER

A consumer can allow carers access to their private health information in the same way that any patient may. However, in situations where a patient has denied access, a designated carer and a principal care provider may still be advised on the following matters:

- Absence of the patient without permission from a mental health facility or failure to return from leave.
- Reclassification of admission as a voluntary patient
- Date and time of the Mental health inquiry – [Form 2](#)
- Discharge from the mental health facility
- Application for a Community Treatment Order
- Variation of a Community Treatment Order
- Application to revoke a Community Treatment Order
- Decision by treating team that no further Community Treatment Orders will be sought.
- Where a warning has been issued to the patient regarding a breach of their Community Treatment Order
- Where a breach notice or breach order has been issued to the patient for non-compliance with the Community Treatment Order
- Applications to the Tribunal for medical treatments (e.g., ECT, surgery or special medical treatment).
- Any proposed transfer to another facility before it occurs, except in the case of an emergency.

## WHAT INFORMATION CANNOT BE PROVIDED TO CARERS?

Certain medical information cannot be provided to carers without the express permission of the consumer. For example:

- Diagnosis
- Treatment (other than medication)
- Results or details of tests and assessments
- Details of any conversations between doctors and consumers.

## WHAT A CARER CAN DO

1. Request that the patient be admitted to a mental health facility for assessment.
2. Apply for a Community Treatment Order. Note that the applicant will need to liaise with the treating team to arrange a Treatment Plan.

3. Apply for the patient to be discharged from the mental health facility.
4. Submit an appeal to the Tribunal if a request for discharge has been refused or a response has not been provided by the treating team within three working days of the application.
5. Request a visit from an Official Visitor.
6. Request information about medication that is being given to the patient.

## INFORMATION FROM CARERS

Clinicians must consider information from carers, such as observed behaviour, which may assist in forming an opinion about the need for involuntary care. This information may be relevant to a decision to further detain the patient or to discharge.

Carers can provide information regarding their personal observations but cannot provide medical records or other private health information without the patient's consent.

## DISCHARGE AND RECOVERY PLANNING

Clinicians should provide the following information to both carers and consumers as part of discharge and recovery planning:

- The availability of patient support groups, community care groups near the MHF, including the services provided by the groups, and how to contact them.
- Outpatient consumer or other services available at the MHF
- Describing the purpose and method of obtaining CTOs
- Describing other similar follow-up services, as may be available near the MHF.

Clinicians must also consult with agencies/services (for example, accommodation providers, NDIS) that are relevant to carers, the consumer, or any dependents of the consumer.

## CARER INVOLVEMENT IN TRIBUNAL HEARINGS

- Tribunal hearings are less formal than a court hearing however, like a court, the Tribunal must make decisions based on evidence and according to legal criteria.
- The subject person must be given a fair hearing and is entitled to be given proper notice of the hearing, to know the evidence that will be put forward and to have an opportunity to be heard and to ask questions.
- Hearings may provide an opportunity for carers to discuss treatment and care, including any support that may be given to the subject person.
- Hearings are open to the public and carers are usually able to attend. Carers can relate a broad range of issues to the Tribunal, to the treating team or to the case manager.
- Where carer attendance is not possible, perhaps because the subject person has requested it, the Tribunal can take evidence separately or involve carers by telephone.

- Carers may also provide written evidence, including letters, to the Tribunal. If such evidence is provided to the Tribunal and it is significant to the decision that the Tribunal is considering, then the content of the letter must be disclosed to the consumer and their lawyer, so the consumer has an opportunity to respond.
- If the carer does not wish the subject person to be provided with the letter or submission, a preliminary hearing can be held with the carer and the subject person's legal representation where the Tribunal will decide whether the evidence should be disclosed to the subject person. Such evidence may be withdrawn by the carer if the Tribunal decides that the evidence cannot be withheld.

## TIPS FOR CARERS

- Establish ongoing contact with the Mental Health Facility and be actively involved. Ensure the team know you wish to be consulted. Principal care providers should be automatically involved and consulted by treating teams.
- The most effective method of staying informed is to have the consumer's consent (when they are well) or to be nominated as a designated carer. When the consumer is well, consider arranging for the consumer to make a statutory declaration or to provide a written consent for you to have access to the consumer's files. These consents should be supervised by a lawyer.
- Note that the form to nominate a designated carer also has the option of excluding persons from any carer position for the consumer. If a person is excluded, the treating team can override that exclusion only if they feel it is in the best interest of the consumer.
- It is easier for the treating team to manage communication via one family member if possible. If you can nominate a person to represent the broader family unit, it will streamline communication.

For help in understanding some of the terms used in this summary, the Mental Health Commission recommends the following resource on carers rights created by Mental Health Carers NSW:

<https://www.mentalhealthcarersnsw.org/carers-rights/>

You may also like to read through the relevant legislation - [Mental Health Act 2007](#)