APPOINTMENT / DISPLACEMENT OF NEAREST RELATIVE
Section 29 Mental Health Act 1983

Doncaster council policy adopted by the Trust

Contents

Page

1. Introduction

Relatives have an important role to play in the care of individuals who may require assessment and treatment under the Mental Health Act 1983 (MHA).

Section 26 of the MHA defines 'relative' and 'nearest relative' for the purpose of the Act. It is important to remember the nearest relative for the purpose of the Act may not be the same person as the patient's next of kin. The identity of a nearest relative can also change with the passage of time for example, the patient enters into marriage and civil partnership.[1]

Under the MHA 83 the nearest relative has legal responsibilities to safeguard the patient's interests and to help to ensure the compulsory powers of the MHA are used appropriately. However, where it is thought that the nearest relative is exercising their power unreasonably, an application to the County Court may be made to displace a nearest relative.

The identification of nearest relative can be a complex process and should be undertaken by the Approved Mental Health Professional (AMHP).

2. Purpose

The purpose of this policy is to provide clear practice guidance to assist AMHP's when an application to the County Court is being considered to appoint and / or displace a nearest relative.

3. Scope

An application to displace a nearest relative may be made by the patient, any relative of the patient, anyone with whom the patient was residing (or if the patient is an inpatient in hospital at the time of the application, the person with whom they were last residing prior to the admission); Therefore, this policy applies to all AMHP's employed by Doncaster Metropolitan Borough Council who may be required to undertake this piece of work.

Note: it is each individual AMHP's responsibility to ensure they familiarise themselves with this policy and receive sufficient training about section 29 of the MHA to undertake this role.

4. Legal Framework

Section 29 of the MHA 1983 provides that an application to the County Court to appoint or displace a nearest relative can be made on the grounds that:

> a) the patient has no nearest relative within the meaning of the MHA 1983, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is.

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1 For automatic changes of nearest relative and exception from normal rules for Children and Young People please see MHA Reference Guide [section 2.18-2.24]

b) the nearest relative of the patient is incapable of acting as such by reasons of mental disorder or other illness.

c) the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or a guardianship application in respect of a patient.

d) The nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient under this part of the MHA 1983, or is likely to do so; or

e) that the nearest relative of the patient is otherwise not a suitable person to act as such.

4.1 Where there is no Nearest Relative

The Code of Practice states that where an AMHP discovers, when assessing a patient for possible detention in hospital or under Guardianship (or at any other time), that the patient appears to have no nearest relative, the AMHP should advise the patient of their right to apply to the County Court for the appointment of a person to act as their nearest relative. **If the patient lacks capacity to decide to apply themselves, the AMHP should apply to the County Court on the patient's behalf [2].**

5. Procedure

Before making an application to displace the nearest relative the AMHP should consider other ways of achieving the same ends, including:

- whether the nearest relative will agree to delegate their responsibility as nearest relative to someone else; [3] or
- providing or arranging support for the patient (or someone else) to make an application for themselves. This could include the support from an IMHA.

6. Delegation of the Performance of Functions by the Nearest Relative

The rights of nearest relative to delegate their functions to someone else can be exercised at any time. However, where the delegation of the function of nearest relative is being considered the AMHP's need to be aware that there are some exceptions to this rule.

The nearest relative may not delegate the functions of the nearest relative to:

- the patient.

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2 Section 5.5 of the Code of Practice.
3 [section 32(2)(e) MHA 1983 and Regulation section 24 of the Mental Health (Hospital) (England) 2008.

- a person who, under section 26(5) MHA 1983, is not eligible to be the patient's nearest relative; and
- a person who would currently be the nearest relative, were it not for an order of the court displacing them under section 29 (unless that order was given on the grounds that, at the time, no nearest relative could be identified).[4]

To delegate the function of the nearest relative to another suitable person, the nearest relative is required to give formal written notice of this authorisation, (template to be used see appendix 1). Once the notice is of authorisation is completed, a copy must be given to the proposed nearest relative and the hospital managers, where the patient is detained. The local authority will also require a copy where a patient is subject to Guardianship. Any delegation should be recorded in the patient's records both on NHs and Social Care recording syste and a copy of the authorisation should be given to Doncaster Mental Health Act Office.

Note:

1. the authorisation can be revoked at any time, in writing, by the original nearest relative.
2. The delegated function of the nearest relative ends automatically on the death of the person who made it or if that person ceases to be the nearest relative for any other reason
3. The delegation also lapses on the death of the person to whom the function has been delegated.[5]

7. Displacing the Nearest Relative - Practical Guidance

Where it appears to the AMHP that there are grounds to displace a nearest relative, the case should be brought to the attention of the AMHP Team Manager and / or the Head of Service and DMBC's legal team as a matter of priority.

Note: The AMHP undertaking this piece of work will be guided and support throughout this process by the DMBC legal Team.

7.1 Nominated Person

If the application is made by an AMHP, they should, if possible, nominate someone who is acquainted with the patient to be the acting nearest relative. Wherever practicable the patient should be consulted regarding their preference or any concerns they may have regarding the person the AMHP is proposing to nominate. The AMHP should also seek the agreement of the proposed nominee prior to an application being made and presented to the Court.

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4 MHA Reference Guide 2008, para. 2.15 -2.16
5 MHA Reference Guide 2008, para. 2.34-2.35

If there is no suitable person who is willing to be nominated, the AMHP should nominate the Director of Social Services Director of Adult Social Services.

Where the appointment of a Nearest Relative is being sought (because none exists) it is good practice for the AMHP to seek legal advice and consider making an application to appoint a nearest relative to ensure that the patient's rights in and / or out of hospital are protected.

The existing nearest relative will usually be made a defendant to the application and will be provided with a copy of the Court application, which will include the AMHP's statement (which may refer to the fitness of the defendant to act as the nearest relative). The nearest relative should be advised to seek his/her own legal representation.

If the patient is concerned that any information given to the Court on their views on the suitability of the nearest relative may have implications for their own safety, an application can be made to the court seeking its permission not to make the current nearest relative a party to the proceedings. The reasons for the patient's concerns should be set out clearly in the application[6] (section 5.21 of the Code of Practice).

7.2   The Application

When seeking a section 29 order from the Court the following information will be required:

- An report of the person's social circumstances providing the evidence to support the application, including:

    - The AMHP's name and Professional Qualifications
    - Short history of involvement with the patient
    - Why the person should be detained under the Act (or accepted into Guardianship) and risk to and/or from the person.
    - Actions of the Nearest Relative, including a history of objection (if any)
    - The proposed care plan for the patient
    - A statement of agreement from the proposed Nearest Relative, or a reference in the Approved Mental Health Professional statement as to why a nominated person has not been proposed.
    - A report by a medical practitioner. In usual circumstances, this report would be provided by a doctor approved under section12(2) of the MHA 1983, as the Court will seek to be satisfied that the medical examination has been undertaken by a practitioner experienced in the assessment of an 'unsound mind' confirming medical diagnosis and treatment plan.

Once the relevant documentation is completed the DMBC legal team will lodge the application with the Court.

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6 MHA Code of Practice para. 5.21

7.3 Displacement of Nearest Relative Order Granted

Where the Court grants an Order to displace the nearest relative the application under section 3 or Guardianship can then be made.

No application for admission or treatment under section 3 may be made by an AMHP without first consulting with the Nearest Relative unless the AMHP considers that such consultation is not reasonably practicable or would involve unreasonable delay (section 11(4).

If the patient is currently detained under Section 2 of the MHA, and Nearest Relative 'unreasonably' objects to a Section 3 application, the application to court must be made before the expiry of the 28 days of the Section 2. The court does have the power to extend the Section 2 to enable the formalities of a section 3 application to be completed.

Please Note: The AMHP and the doctors have 7 days from the date the Order is granted to reassess the patient and complete the application.

7.4 Duration of Displacement

The County Court can specify any length for the duration of an Order. However, if clarification is not given then the Order will expire at the point that the patient ceases to be liable to be detained under section 3 or subject to Guardianship, or if not subject to either of these then after three months.

Only a County Court, or another Court on appeal can legally vary or discharge an order appointing an acting Nearest Relative.[7]

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7 Mental Health Act 1983. Section 29(5) & Section 30

Delegation of Performance of Functions of Nearest Relative

Addressee:

Date:

Client/Patient Name:

I: ………………………………… Being nearest relative of: ………………

Hereby authorise: ………………………………... of address: ………………

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to perform the functions of the nearest relative with regard to the Mental Health Act 1983, as amended by the Mental Health Act 2007, in accordance with Regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

I wish this arrangement to remain in force until such time as it is revoked by me in written form.

Signed: …………………………   Date: ………

        Name of Nearest Relative

 To: Name and Address of
                Hospital Managers

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……………………………………………
……………………………………………

Name and Address Approved Mental Health Professional

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Name and Address of Delegated Nearest Relative

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A copy to be retained by nearest relative.