Nearest Relative

The Nearest Relative is a term defined under the Mental Health (Care and Treatment) (Scotland) Act (2003), and the Act lists who the nearest relative is for a patient under Part 17 (254).

It is important to be aware that the nearest relative and the patient's 'next of kin' can be two different people. The next of kin is usually a relative or close friend chosen by someone soon after they are admitted to any sort of hospital, and the next of kin has no legal powers under the Act.

The nearest relative can have several rights under the Mental Health Act. These include:

- Right to information
- Right to consultation
- Right to ask for assessment
- Right to apply for admission
- Right to be involved at discharge
- Right to contact the Independent Mental Health Advocacy Service

The nearest relative can have a right to be told about:

- Renewal of a patient's detention
- Extension of a Compulsory Treatment Order
- Transfer from one hospital to another

Under the Mental Health (Scotland) Act (2015), the nearest relative has some listed rights if the patient does not have a Named Person. This includes a right to initiate applications or appeals to the Tribunal if a patient does not have the capacity to do so themselves.

Forensic Network

5. Different Types of Carers in Law

Primary Carer

The primary carer is the person who provides most of the care and support to the patient. If a patient has more than one carer, they must decide who the primary carer is, as there can only be one identified primary carer under the Mental Health (Care and Treatment) (Scotland) Act (2003). Under the Act the primary carer has certain rights, such as the right to be notified by hospital management when a patient they support is going to be transferred to another hospital under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer), they also have the right to be informed at least seven days beforehand. The Mental Health (Scotland) Act 2015 gives the primary carer rights to initiate applications or appeals to a Mental Health Tribunal if a patient does not have the capacity to do so themselves and does not have a Named Person.

Listed Initiator

The Mental Health (Scotland) Act 2015 introduces a limited right, when the patient has no Named Person, for a 'listed initiator' (primary carer, nearest relative, guardian or welfare attorney) to apply or appeal to the Mental Health Tribunal if the patient does not have capacity to do so on their own behalf. The patient's primary carer and nearest relative cannot act as a listed initiator if the patient has made a written declaration precluding them from doing so. The patient needs to be capable of making such a declaration, and this needs to be witnessed.

Named Person

A Named Person can help to protect an individual's interests if they have to be given care or treatment. Anyone aged 16 or over can choose their own Named Person so long as a witness can certify that they understand the effect of choosing a Named Person, and they have not been under any undue influence. The Named Person is not necessarily the primary carer or nearest relative and has to be informed and consulted about aspects of the individual's care.

The Named Person has the right to:

- Be involved when important decisions are being made about the patient's care or treatment, such as being detained in hospital or being considered for a Compulsory Treatment Order (CTO).
- Be told about important changes, for example if a short-term detention is ended.
- Receive copies of information and records that are given to the patient, including details about treatment that goes against an Advance Statement.
- Apply to the Mental Health Tribunal for Scotland, appeal decisions, and speak or provide evidence at hearings.
- Agree to two medical examinations taking place at the same time when the patient is unable to give their own consent. (This is also required for a CTO application.)
- Ask the Local Authority and/or Health Board to assess the patient's care and support needs.

Anyone can be a Named Person if they:

- Are aged 16 or over
- Understand what the role involves and agree to take it on
- Confirm their agreement in writing, with the form properly signed and witnessed

Under the Mental Health (Scotland) Act 2015, a Named Person is no longer assigned by default, meaning that an adult patient will only have a Named Person if they choose to have one (this does not apply to patients under the age of 16).

The Named Person should not be someone who has any responsibility for providing the individual's care, e.g. the patient's GP, responsible medical officer, mental health officer or community psychiatric nurse. This is because the Named Person must be able to make decisions independently about what he or she thinks is in the individual's best interest, and this might be in conflict with what the care team think.

There have been difficulties with both patients and named persons being upset by the confidential material that has been sent to the named person by the Tribunal. Legally this is correct practice, but patients have complained that they did not realise their Named Person would be sent information - for example, about an index offence - and named persons have been very distressed to read this. It is important that a patient is supported to understand the role of a Named Person, and that the Named Person understands the responsibilities of the position.

The Named Person is entitled to free legal advice and representation at Mental Health Tribunals.