

2007 Amendments to the Mental Health Act 1983

The New Legal Right to Advocacy:

Independent mental Health Advocates (IMHAs)

As from April 2009, under the 2007 Act, there is a legal duty to provide independent mental health advocates (IMHA) for 'qualifying' patients.

What is the Mental Health Advocate (IMHA)?

Mental Health Advocates work alongside patients and/or their carers who are involved with mental health services. They can tell them their rights and other information, and support them to get their point of view across. Independent Mental Health Advocates should be independent of any person who is professionally concerned with the patients care or medical treatment in any way. Advocates will be trained for the job and subject to regulations.

Who qualifies for an IMHA?

People will qualify for IMHA if:

- They are liable to compulsory treatment under the powers of the Act, except those on emergency short-term section.
- They are on supervised community treatment
- They are 'informal' or 'voluntary' patients who are discussing the possibility of serious treatment such as neurosurgery for mental disorder or ECT for patients under 18 years.

What will IMHA's do?

An IMHA will help patients in obtaining information about and understanding:

- The provisions of the legislation and their legal position
- Any conditions or restrictions that apply
- Medical treatment

An IMHA will also help a patient in obtaining information about and understanding his/her rights and how to exercise those rights. They aim to empower people to participate in decisions made about their care and treatment.

For example, by supporting them to:

- Take part in the care planning process
- Apply to mental health review tribunals and managers' meetings, prepare for them and understand the decisions made
- Discuss appropriate after care
- Access other support and services
- Raise concerns about their experience/care

What extra rights will IMHAs have that other advocates don't have now?

To assist with supporting patients, IMHAs will be able to:

- Visit and interview a patient in private
- Visit and interview any person who is concerned with his/her medical treatment
- Require the production and inspection of any relevant records relating to the detention of treatment in any hospital or registered establishment or to any after-care services under section 117
- Require the production and inspection of any relevant social services authority records which relate to the patient

Will an IMHA be able to access all patient's records?

1. An IMHA will only be able to look at records where the patient has capacity and gives consent.
2. if the person holding the records considers it is appropriate and necessary that the IMHA sees them.
3. if the patient lacks capacity, the production and inspection of records cannot conflict with a decision of a done, a deputy or a decision by the Court of Protection (Mental Capacity Act 2009).

How do patients get referred to IMHA?

Referrals to IMHAs can come from anyone. IMHAs have a duty to respond to requests to visit a patient received from

- patient
- nearest relatives
- responsible clinicians
- approved mental health professionals

IMHAs must comply if the request is reasonable.

Patients can refuse to have an IMHA.

Who should tell patients about IMHAs?

A duty is placed on hospital managers, responsible clinicians and social services (in the case of guardianship) to inform patients about the advocacy service and to take all steps practicable to ensure they understand what is available to them and how they can obtain help.

When should patients be told about IMHAs?

1. Patients have to be told about the IMHA service as soon as practicable after they qualify for the service.
2. The information has to be given orally and in writing.
3. copies of the information about the IMHA service and how it can be contacted should be given to nearest relatives, unless the patient specifically requests otherwise.

Does having an IMHA affect your other rights?

The involvement of an IMHA does not affect a patient's right (nor the right of their nearest relative) to seek advice from a lawyer nor does it affect any entitlement to legal aid.

The right to IMHA does not prevent people (patients or nearest relatives) from making use of other people or advocated, or indeed self-advocating (a general goal within advocacy), but other advocates will not have the same rights and duties as IMHAs.

Additional Information

For more information about advocacy contact:

- Advocacy Resource Exchange

www.advocacyresource.net

- Action 4 Advocacy

www.actionforadvocacy.org.uk

- Older People's Advocacy

Alliance www.opaal.org.uk

If you wish to discuss the changes, please contact:

Keith Evans, Senior Manager – Mental Health

Email: keith.evans@cheshirewestandchester.gov.uk

Tel: 01244 972990

By post: Keith Evans, Senior Manager – Mental Health, 3rd Floor, Goldsmith House, Hamilton Place, Chester CH1 1SE