



MENTAL HEALTH RIGHTS, DETENTION & AFTERCARE

Nearest Relative & Family Involvement

Understanding the legal role, confidentiality, family support and the future Nominated Person reform.

The key idea

A Nearest Relative is a specific legal role under the Mental Health Act. It is not simply the same as next of kin, a partner, emergency contact or the family member who is emotionally closest to the person.

What is a Nearest Relative?

Under the Mental Health Act 1983, **Nearest Relative** is a legal term. The Act identifies who holds the role according to statutory rules; it is not simply chosen by staff and it is not automatically the person listed as next of kin.

A legal role

The Nearest Relative can have particular rights and powers relating to admission, information, discharge and Tribunal proceedings. Which powers apply depends on the patient's legal status and circumstances.

Nearest Relative is not 'next of kin'

'Next of kin' is commonly used in healthcare as an informal contact description. The Mental Health Act's Nearest Relative is different and can sometimes be somebody the patient would not personally have chosen.

Family closeness does not decide it

The person who knows somebody best, provides most of their care or is their emergency contact is not necessarily their Nearest Relative under the Act.

Why does the distinction matter?

Confusing the two roles can create misunderstandings about who has statutory powers, who must be consulted in particular situations and who is entitled to receive certain information.

Current law

This guide describes the Nearest Relative framework currently operating in **England in September 2026**. The Mental Health Act 2025 creates a future Nominated Person system, but that replacement is not yet treated here as operational.

How is the Nearest Relative identified?

Section 26 of the current Mental Health Act sets out a statutory hierarchy of relatives. The rules can be affected by matters such as relationship, age, residence and caring arrangements, so identifying the correct person can sometimes be more complicated than following a simple family-tree list.

The Act provides the rules

Professionals should establish the Nearest Relative using the statutory framework rather than asking the patient simply to name a next of kin.

Can the role change?

Yes. Changes in family circumstances can affect who falls within the statutory rules. The courts can also alter who performs the role in circumstances provided for by the Act.

Displacement

The county court can make an order **displacing** a Nearest Relative and appointing another person to exercise the functions where statutory grounds are met.

Why might displacement be considered?

The Act includes grounds connected with matters such as a Nearest Relative being unable or unsuitable to act, or unreasonably exercising or refusing to exercise certain functions. Individual cases can be legally complex.

Get specialist advice

Where the identity or suitability of a Nearest Relative is disputed, specialist mental-health legal advice can be particularly useful.

What can the Nearest Relative do?

The Nearest Relative is not the patient's general decision-maker. Instead, the Mental Health Act gives the role particular functions in defined situations.

Applications for admission

The current Act gives the Nearest Relative powers relating to applications for certain admissions or guardianship. In practice, many applications are made by an Approved Mental Health Professional.

Consultation

For a Section 3 application made by an AMHP, the current framework includes a significant consultation role for the Nearest Relative, subject to the statutory rules and exceptions.

Information

The Act creates specific circumstances in which information must or may be given to the Nearest Relative. These statutory rights sit alongside ordinary confidentiality law.

Discharge

The Nearest Relative has a discharge power in relation to certain patients. This is subject to formal notice requirements and, in some cases, the responsible clinician can issue a barring report where the statutory risk test is met.

The role has limits

Being the Nearest Relative does not mean controlling the person's treatment, accessing all medical records, consenting to every decision or automatically receiving every piece of confidential information.

Nearest Relative and discharge

One of the best-known Nearest Relative functions is the power to order discharge for certain patients under the Mental Health Act.

Formal process

The discharge power is a statutory process rather than an informal request to the ward. Notice must be given in accordance with the Act and regulations.

Can discharge be stopped?

For certain detained patients, the responsible clinician can prevent a Nearest Relative discharge from taking effect by making the required report that the statutory risk criteria are met.

Tribunal route

Where a Nearest Relative's discharge order has been barred in circumstances covered by the Act, the Nearest Relative can have a route to apply to the Mental Health Tribunal.

Not every legal status is the same

Nearest Relative discharge powers do not operate identically for every Mental Health Act status. Forensic and restricted-patient arrangements, for example, have additional legal rules.

Ask about the exact section

Before relying on a discharge power, establish the patient's precise legal status and seek current advice about the process and time limits.

Family involvement is broader than the legal role

A person's family, partner, friends and carers can be important to their care even if none of them is the statutory Nearest Relative. Good involvement should be person-centred and should consider what support the patient wants.

Families can provide information

Patient confidentiality does not prevent professionals from **listening** to information from relatives or carers. Families may have useful information about changes in behaviour, risks, communication, medication or what usually helps.

Listening is different from disclosing

A professional can often receive information from a family member without revealing confidential information about the patient in return. These are two different information-sharing questions.

General information can still help

Even where patient-specific information cannot be shared, services can usually provide general information about mental-health conditions, how services operate, crisis contacts and support available to carers.

The patient's wishes matter

Where possible, professionals should discuss with the patient who they want involved and what information they are comfortable being shared. Preferences can be specific rather than simply 'share everything' or 'share nothing'.

Support networks can be individual

The most helpful person may be a partner, friend, sibling, parent, adult child, chosen family member or another trusted person. Their supportive role does not depend on being the statutory Nearest Relative.

Confidentiality and information sharing

The Mental Health Act does not create a general right for relatives or carers to receive all information about a patient. Outside information that the Act specifically requires to be given, ordinary confidentiality principles continue to apply.

Diagnosis and clinical details

A relative or carer cannot ordinarily be given a patient's diagnosis or other confidential personal information merely because they are family. Consent or another lawful basis for disclosure is needed.

When can information be shared without consent?

There are circumstances where disclosure can be lawful without consent, including where another legal duty applies or where sufficiently serious risks justify disclosure in the public interest. Decisions should be proportionate and based on the circumstances.

Confidentiality is not secrecy

The need to protect confidential information should not be used as a reason to ignore serious information offered by families or carers, or to avoid giving them appropriate general support and guidance.

Information supplied by families

Relatives and carers can also reasonably expect sensitive information they provide to professionals to be handled appropriately. Services should be clear about whether information may be recorded or shared with the patient and about any limits to confidentiality.

Ask for clarity

Families can ask: **What can you listen to from me? What can you tell me? What needs the patient's consent? And are there circumstances where you may have to share what I tell you?**

When the patient does not want family involved

Some people do not want particular relatives or carers involved in their care. There can be many reasons, including privacy, difficult relationships, estrangement, abuse or simply personal preference.

Respecting the patient

Where the patient has capacity to make decisions about sharing their confidential information, their wishes carry significant weight. Being related to somebody does not create an automatic entitlement to their clinical information.

But the Nearest Relative role may still exist

Under the current Mental Health Act, a statutory Nearest Relative can still exist even where the patient does not want that person involved. This is one reason the distinction between statutory rights and ordinary family involvement is important.

Safety concerns matter

Where involvement of a particular relative could expose the patient to abuse, coercion or other harm, professionals should take those concerns seriously and consider safeguarding and the legal options available.

Changing the statutory role

Current law provides routes for the county court to displace a Nearest Relative in specified circumstances. Legal advice can help where a patient believes the statutory person is inappropriate or unsafe.

Future reform responds to this problem

A major aim of the future Nominated Person system is to give patients greater choice over who carries this statutory representative role.

The future Nominated Person

The **Mental Health Act 2025** creates a new Nominated Person framework intended to replace the current Nearest Relative system once the relevant provisions are brought into force.

Greater patient choice

The new model is designed around a person being able to nominate someone they trust, rather than the statutory role being determined primarily through the existing family hierarchy.

What will the role do?

The 2025 Act transfers a range of functions currently associated with the Nearest Relative to the future Nominated Person, including functions connected with admission, consultation, discharge and Tribunal processes.

The Act removes the old framework

When the relevant provisions commence, Schedule 2 of the 2025 Act provides for sections 26 to 30 of the 1983 Act - the current Nearest Relative framework - to be omitted and replaced by the new arrangements.

Why isn't this PDF using the new system already?

Passing an Act and bringing each provision into force are separate steps. The Mental Health Act 2025 is being implemented in phases, so resources must check commencement before describing a reform as an existing right.

Current versus future

As at this resource's review date, the practical guidance in the preceding pages uses the **current Nearest Relative framework**. The Nominated Person is presented here as a future reform.

Supporting somebody in hospital

You do not need to hold a statutory role to offer valuable support. What is helpful will vary according to the person's wishes, relationships and circumstances.

- Ask the person how they would like you involved rather than assuming.
- Offer to help them write questions for ward rounds or meetings.
- Share relevant observations with staff, especially changes the team may not have seen.
- Ask what general information and carer support the service can provide.
- Respect that the person may want some conversations or decisions to remain private.
- Encourage access to an IMHA or specialist solicitor where Mental Health Act rights are involved.
- Raise safeguarding concerns where you believe the person or somebody else may be at risk.

Family support and patient autonomy can coexist

Good involvement is not about transferring control from the patient to relatives. It is about using supportive relationships while keeping the person's rights, wishes and voice central.

If you feel shut out

It can be difficult for relatives when professionals cannot disclose patient-specific information. You can still ask the team to listen to your concerns, explain what general information they can provide, clarify confidentiality boundaries and signpost you to carer support.

Practical questions to ask

- Who is the person's current legal Nearest Relative and how was this identified?
- What rights or powers does the Nearest Relative have in this particular situation?
- Is the person detained, informal, on a CTO or subject to another legal status?
- Has the patient said who they want involved in their care?
- What information has the patient agreed can be shared?
- What information can family or carers provide to the team even if staff cannot disclose information back?
- Are there safety or safeguarding reasons why a particular relative should not be involved?
- Is specialist advice needed about displacement, discharge or a Tribunal application?
- Has the future Nominated Person reform actually commenced before relying on it?

A useful distinction

Ask separately: **Who has the statutory Mental Health Act role? Who does the patient actually want involved? What information can lawfully be shared? And who can offer practical or emotional support?**

About this resource

This PDF provides general educational information about the Nearest Relative and family involvement under the Mental Health Act in England. Individual rights depend on legal status and circumstances. It is not individual legal advice.

Information reviewed: 24 September 2026

References & further information

Mental Health Act 1983. Current statutory framework, including the Nearest Relative provisions and relevant admission, discharge and Tribunal functions.

Mental Health Act 1983 Code of Practice. Statutory guidance on the Nearest Relative, involving carers and families, confidentiality and information sharing.

HM Courts & Tribunals Service. *Information for nearest relatives.* Public guidance explaining the legal role, its distinction from next of kin and Tribunal-related rights.

Department of Health and Social Care. *SHARE: consent, confidentiality and information sharing in mental healthcare and suicide prevention.* Guidance on working with families and carers while respecting confidentiality.

Mental Health Act 2025, Schedule 2. Creates the future Nominated Person framework and provides for replacement of the current Nearest Relative provisions when commenced.

Next in this collection

The next resource will focus on **Section 117 Aftercare**: who qualifies, what aftercare means, NHS and local-authority responsibilities, charging, planning and when the statutory duty can end.