



Key rights of mental health carers (England and Wales)

This is a brief summary of the most relevant rights of adult mental health carers in England and Wales, and should not be seen as a definitive list. See **Further help and guidance** section below for more information on individuals' rights under mental health, carers' and related legislation.

1. People with mental health problems

A selection of the most relevant rights:

- ◆ entitlement to care plan and appropriate treatment services (Mental Health Act 1983, 2007)
- ◆ right to advocacy support (Mental Health Act 2007)
- ◆ right to receive help with their parenting from adult services if appropriate; for example, tasks relating to child care can be carried out by a parent's support worker (Children's Act 1989)
- ◆ rights to challenge compulsory detention and treatment (Mental Health Act 1983, 2007)
- ◆ rights to make their own decisions, and be assumed to have capacity to do so unless it is proved otherwise (Mental Capacity Act 2005)
- ◆ right to make Advance Decisions to refuse treatment (Mental Capacity Act 2005), although these may be overruled in some circumstances with the Mental Health Act 1983 or 2007

2. Carers of people with mental health problems

Carers (Equal Opportunities) Act 2004 – England and Wales

- ◆ right to have their views taken into account by a social services department when it is considering how best to make provision for a disabled person
- ◆ right to be offered and/or request a Carers Assessment
- ◆ right to claim Carers Allowance, under certain conditions
- ◆ right to receive services in their own right (under the Carers and Disabled Children Act 2000, restated in 2004 Act)
- ◆ right to receive free intermediate care services, and equipment up to the value of £1,000, for up to 8 weeks following the discharge of a patient (depending on circumstances)
- ◆ right to request Direct Payments for themselves (cash payments in lieu of social care), or Personal Budgets, or to receive vouchers in lieu of break services (under the Carers and Disabled Children Act 2000, restated in 2004 Act, and outlined in Putting People First concordat)

Mental Health Act 1983 (amended by 2007 Act) – England and Wales

- ◆ right to be included on service user's Care Plan (also Care Programme Approach Guidance¹)

MENTAL HEALTH CARERS

Relevant Legislation (England And Wales)



The Princess Royal Trust
for Carers

- ◆ right to be given general information about the condition of the person cared for, though not specific information if the service user does not consent (also Care Programme Approach Guidance, Data Protection Act 1998, Code of Practice for Mental Health Act 1983 – revised 2008)
- ◆ right to be given copy of service users care plan if (a) service user consents or (b) issues of duty of care or risk override service user objections (Care Programme Approach Guidance)
- ◆ if carer is the **nearest relative**ⁱⁱ, right to request an Mental Health Act assessment of the person cared for (if the person has been seen by the nearest relative in the last 14 days)
- ◆ if carer is the **nearest relative**, right to be informed of the patient's detention, and the nearest relative's right to discharge the patient, before application under Section 2 – application for assessment
- ◆ if carer is the **nearest relative**, right to seek to have the patient discharged from hospital (giving 72 hours notice), though the doctor in charge of the patient's care can prevent this action
- ◆ if carer is the **nearest relative**, right to express his/her point of view when the patient's detention is reviewed by tribunal or hospital managers
- ◆ if carer is the **nearest relative**, right to be told when the patient is due to be discharged from hospital, unless the nearest relative or patient has instructed that this information should not be disclosed
- ◆ if carer is the **nearest relative**, right to request advocacy visits for the person cared for

Mental Capacity Act 2005 - England and Wales

- ◆ right to be consulted by professionals in assessing someone's capacity, (though occasionally this will be impossible, such as in an emergency)
- ◆ right to be involved in determining what is in the best interests of the person cared for, if that person lacks the mental capacity to make a decision
- ◆ right to be named as attorney in person's Lasting Power of Attorney
- ◆ right to be immune from prosecution following the results of a decision made on behalf of an individual, if carer has a reasonable belief that the person lacks capacity and that the action they are taking is in that person's best interests
- ◆ right (as a third party) to apply for an independent assessment of whether someone has justly been deprived of their liberty from the Court of Protection

England: *National Service Framework (NSF) for Mental Health – Standard 6: Caring About Carers*

- ◆ All individuals who provide regular and substantial care for a person on CPA should:
 - have an assessment of their caring, physical and mental health needs, repeated on at least an annual basis
 - have their own written care plan (if they are assessed as eligible for support), which is given to them and implemented in discussion with them

MENTAL HEALTH CARERS

Relevant Legislation (England And Wales)



The Princess Royal Trust
for Carers

This is in addition to carers' rights to a Carers Assessment if they are caring for someone who is not on CPA. However, the assessment under Standard 6 can be one and the same as a Carers' Assessment under the Carers (Equal Opportunities) Act 2004.ⁱⁱⁱ

Wales: *Raising the Standard: The Reviewed Mental Health National Service Framework and Action Plan*

Carers are featured to varying degrees through the 8 Standards. This includes performance targets for all carers to have "timely access to comprehensive, clear, appropriate and helpful information" by the end of 2009 (Standard 2, Key Action 5), and to be meaningfully involved with the planning of services now.

As with the NSF for Mental Health (England), carers for people on CPA should:

- have an assessment of their caring, physical and mental health needs, repeated on at least an annual basis (Standard 2, Key Action 8)
- have their own written care plan (if they are assessed as eligible for support), which is given to them and implemented in discussion with them ("")

In addition, the "special needs of young carers are to be taken into account" (Standard 2, Key Action 8).^{iv}

Further help and guidance

- **Mental Capacity Act 2005 guidance** and **Mental Health Acts 1983 and 2007 guidance** on www.carers.org/professionals

Disclaimer: This document contains information about organisations, people and resources that have not been checked or vetted by The Princess Royal Trust for Carers. Some sources have been summarised. Before using any of the contacts, information or resources in this document, you **must** check it for safety/ reliability/ appropriateness. Advice in this document does not give a full statement of the law. It is intended for guidance only, and is not a substitute for professional advice. The Trust cannot accept any responsibility for loss or liability occasioned as a result of any person acting or refraining from acting on information contained in this document.

Guidance last updated: Feb 09

ⁱ See <http://www.markwalton.net/cpa/cpa.pdf> for the Care Programme Approach Handbook.

ⁱⁱ For an accessible definition of the '**Nearest Relative**' concept, see MIND Carers factsheet at <http://www.mind.org.uk/Information/Factsheets/Carers/>, or the Hyperguide to the Mental Health Act page at <http://www.hyperguide.co.uk/mha/whoswho.htm#NR>

ⁱⁱⁱ From '**National Service Framework for Mental Health: Modern Standards & Service Models**.

MENTAL HEALTH CARERS

Relevant Legislation (England And Wales)



The Princess Royal Trust
for Carers

Department of Health' (1999),

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4009598

^{iv} See the **Revised National Service Framework for Wales** in full at:

http://www.mentalhealthwales.net/website/framework_wales.htm