

1994—No.553

MENTAL HEALTH ACT 1990—REGULATION

(Relating to community counselling orders, community treatment orders and forms)
NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Mental Health Act 1990, has been pleased to make the Regulation set forth hereunder.

Ron Phillips
Minister for Health.

Commencement

1. This Regulation commences on 14 October 1994*.

Amendments

2. The Mental Health Regulation 1990 is amended:
 - (a) by omitting clause 7 and by inserting instead the following clause:

Statement of legal rights and entitlements

7. For the purposes of section 30 of the Act, the prescribed form of explanation and statement of a person's legal rights and other entitlements under the Act is Form 4.
- (b) by omitting clauses 14, 16, 35 and 38;
- (c) by omitting from clause 34 the words "the prescribed form of application for a licence is Form 24 and";
- (d) by omitting from clause 36 the words "the prescribed form of statement is Part 1 of Form 26 and";

* The Regulation appointed 14.10.1994 as the date of commencement. Pursuant to s. 39 (1) (b) of the Interpretation Act 1987, a statutory rule takes effect on the day on which it is published in the Gazette (or, if a later day is specified in the rule for that purpose, on the later day so specified).

- (e) by inserting after clause 45 the following clause:

Authorised applicants

45A. A director of a health care agency is an authorised applicant for a community counselling order or a community treatment order for the purposes of paragraph (d) of the definition of authorised applicant in Schedule 1 to the Act.

- (f) by omitting Form 4 and by inserting instead the following form:

FORM 4

MENTAL HEALTH ACT 1990

Section 30

YOUR RIGHTS

You should read the questions and answers below to find out your rights and what may happen to you after you are brought to a mental hospital.

WHAT HAPPENS AFTER I ARRIVE AT HOSPITAL?

You must be seen by a hospital doctor not later than 12 hours after you arrive at the hospital.

If you are a person who is already in hospital as an informal patient, and you have been told you are now to be kept in hospital against your will, you must be seen by a hospital doctor not later than 12 hours after it is decided to keep you in hospital.

WHEN CAN I BE KEPT IN HOSPITAL AGAINST MY WILL?

You can be kept in hospital against your will if you are certified by the hospital doctor as a mentally ill person or a mentally disordered person. The doctor will decide whether you are a mentally ill person or a mentally disordered person.

A mentally ill person is someone who has a mental illness and who needs to be kept in hospital for his or her own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that he or she needs to be kept in hospital for a short time for his or her own protection or to protect other people.

The hospital cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

HOW LONG CAN I BE KEPT IN HOSPITAL AGAINST MY WILL?

If you are found to be a mentally disordered person, you can only be kept in hospital for up to 3 DAYS (weekends and public holidays are not counted in

this time). During this time you must be seen by a doctor at least once every 24 hours. You cannot be detained as a mentally disordered person more than 3 times in any month.

If you are found to be a mentally ill person, you will be kept in hospital until you see a Magistrate who will hold an inquiry to decide what will happen to you.

HOW CAN I GET OUT OF HOSPITAL?

You, or a friend or relative, may at any time ask the medical superintendent to let you out. You must be let out if you are not a mentally ill person or a mentally disordered person or if the medical superintendent thinks that there is other appropriate care reasonably available to you.

CAN I BE TREATED AGAINST MY WILL?

The hospital staff may give you appropriate medical treatment, even if you do not want it, for your mental condition or in an emergency to save your life or prevent serious damage to your health. The hospital staff must tell you what your medical treatment is if you ask. You must not be given excessive or inappropriate drugs.

CAN I BE GIVEN ECT AGAINST MY WILL?

You may only be given electro convulsive therapy against your will if 2 doctors and the medical superintendent certify that the treatment is necessary to save your life or if the Mental Health Review Tribunal decides that it is necessary or desirable for your safety or welfare.

WHAT OTHER RIGHTS DO I HAVE IN HOSPITAL?

You can receive mail. You must not be ill-treated.

MORE INFORMATION

You should read the questions and answers below to find out about Magistrate's inquiries and when you may be kept in hospital against your will after an inquiry.

WHEN IS A MAGISTRATE'S INQUIRY HELD?

A Magistrate's inquiry must be held as soon as possible after it is decided to keep you in hospital against your will because you are a mentally ill person.

WHAT HAPPENS AT A MAGISTRATE'S INQUIRY?

The Magistrate will decide whether or not you are a mentally ill person.

If the Magistrate decides that you are not a mentally ill person, you must be let out of hospital. The Magistrate may make a community counselling order requiring you to have certain treatment after you are let out.

If the Magistrate decides that you are a mentally ill person, the Magistrate will then decide what will happen to you. The Magistrate may order that you be kept in hospital as a TEMPORARY PATIENT for a set time (not more than 3 months) or the Magistrate may order that you be let out of hospital. If you are let out, the Magistrate may make a community treatment order requiring you to have certain treatment after you are let out.

The Magistrate may adjourn the inquiry for up to 14 days.

WHAT RIGHTS DO I HAVE AT A MAGISTRATE'S INQUIRY?

You can tell the Magistrate what you want or have your lawyer tell the Magistrate what you want. You can wear street clothes, be helped by an interpreter and have your relatives and friends told about the inquiry. You can apply to see your medical records.

CAN I APPEAL AGAINST BEING MADE A TEMPORARY PATIENT?

You can appeal. If you are made a temporary patient, you will be given a notice setting out your appeal rights. The notice includes information about how to apply to be let out of hospital.

WHAT HAPPENS WHEN THE TIME SET BY AN ORDER MAKING ME A TEMPORARY PATIENT RUNS OUT?

The medical superintendent will look at your case before the time ends and may discharge you from hospital. If you are still in hospital at the end of the time set by the Magistrate, your case will be looked at by the Mental Health Review Tribunal. If the Tribunal decides that you are a mentally ill person, it may make you stay as a temporary patient for a further time (not more than 3 months) or it may make you a continued treatment patient.

The Tribunal must let you out of hospital if it decides that you are not a mentally ill person or if it feels that other care is more appropriate and reasonably available.

WHO CAN I ASK FOR HELP?

You may ask a social worker, doctor, official visitor, chaplain, your own lawyer or the Mental Health Advocacy Service for help. The Mental Health Advocacy Service telephone number is:

(NOTE: Additional telephone numbers may be added as appropriate.)

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(g) by omitting Forms 8, 10, 24, 25 and 26 from Schedule 1.

EXPLANATORY NOTE

The object of this Regulation is to amend the Mental Health Regulation 1990 to omit or amend certain forms and to enable the director of a health care agency to make certain applications under the Mental Health Act 1990.

In accordance with an amendment made by the Statute Law (Miscellaneous Provisions) Act (No. 3) 1992, the Regulation omits certain forms, which are of a minor and machinery nature. Those forms will be approved by the Minister (under section 302A of the Mental Health Act 1990) instead of being prescribed by regulation.

The Regulation updates and simplifies Form 4, which contains information required to be given to a person as soon as practicable after the person is detained as a patient in a hospital, as a result of amendments made to the Mental Health Act 1990 by the Mental Health (Amendment) Act 1994.

The Regulation also enables the director of a health care agency to apply to the Mental Health Review Tribunal, or a Magistrate holding an inquiry under the Mental Health Act 1990 as to the admission of a person into hospital or care, for the making of a community counselling order or a community treatment order in relation to the person.

This Regulation is made under the Mental Health Act 1990, including section 302 (the general regulation making power), section 30 and the definition of “authorised applicant” in Schedule 1.
