



GOVERNMENT OF BERMUDA  
**Ministry of Health**



# Your Nearest Relative

Mental Health Act 1968, Code of Practice

**Fact Sheet 5**



# The Mental Health Act 1968

## Code of Practice

The Code of Practice explains how patients who are detained in hospital should be supported by the mental health services.

This Fact Sheet tells you who the law says is your Nearest Relative if you are detained under the Mental Health Act (MHA). It tells you how they can be involved in appeals to the Mental Health Review Tribunal (MHRT) and make sure that your rights are protected.

It is made easy to read for as many people as possible.

This is one of a series of different Fact Sheets that describe how different parts of the Code of Practice should be followed.

Cover art is Mo' Betta Blues by Lynwood Richardson, 2019

## Key facts:

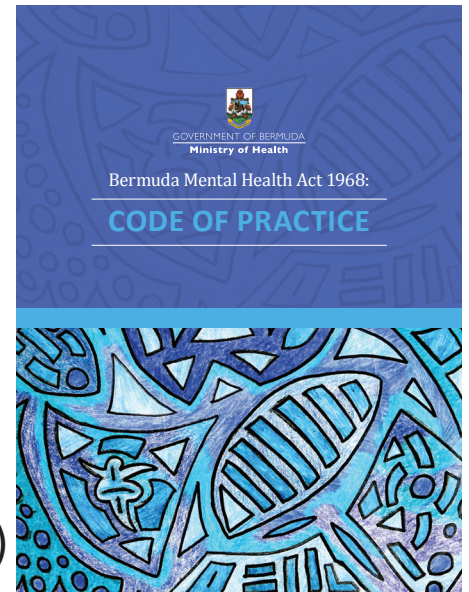
**Nearest Relative** is a term used in the Mental Health Act 1968 (MHA)

The Mental Health Act tells you who your nearest relative should be if you are detained

There are clear rules about who the law says is your nearest relative

The job of the nearest relative is to look out for you, and make sure your wishes and choices are heard and understood

Your nearest relative might not be your Next of Kin





## Who does the MHA say has a Nearest Relative?

You will have a nearest relative if you are:

- Detained in hospital under section 10 (for treatment) or section 22. See *Detained under the Mental Health Act- Fact sheet #2*
- Being treated in the community under a *Community Treatment Order (CTO)- Fact sheet #4*

Your *nearest relative* is not the same as your *next of kin*, but they can be the same person



## Who is my Nearest Relative?

Your nearest relative is usually a relative

The Mental Health Act has a list of people from which your nearest relative will be identified

Family relationships can be complicated; it is not always easy to see who your nearest relative would be. That is why the MHA has clear guidelines about how they are identified



## How does the MHA define “Nearest Relative”?

The MHA defines *relative* as anyone who is a patient’s:

1. Husband or wife (includes people living with a patient as if they were husband or wife, provided they have done so for at least 6 months)
2. Son or daughter
3. Father or mother
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece
9. People who are not otherwise relatives, but are “ordinarily residing” with the person and have done so for at least 5 years



It also includes:

- Half-siblings
- Relationships established through adoption, but not step-relationships

It does not include the relationship of a father and illegitimate child, unless the father has formal parental responsibility

## How is my Nearest Relative chosen?

- The general rule is that the nearest relative is the person who comes first in the list of relatives described above
- Men and women take equal priority, so for example, sons and daughters come in the same place on the list
- If two or more people come in the same place on the list, the eldest takes precedence



## Are there exceptions to these rules?

### There are several exceptions to these general rules:

- A relative who lives with or has been caring for you takes precedence over other relatives
- A relative of the whole-blood (e.g. a full brother or sister) takes precedence over one of the half-blood (e.g. a half-brother or half-sister) regardless of age
- A husband or wife who is permanently separated from you (whether by agreement or a court order) is not eligible to be the Nearest Relative
- A husband or wife who has deserted or been deserted by you is not eligible to be the nearest relative
- A legal husband or wife takes precedence over anyone who is treated as such because they lived with you as if they were married, and over anyone who is treated as a relative only because they have lived with you for at least 5 years



### Some other exceptions

#### In addition:

- No-one under 18 can be the nearest relative, unless they are your mother, father, husband or wife (or are treated as such)
- Only patients who are not themselves ordinarily resident in Bermuda can have a nearest relative who also does not live in Bermuda. This means tourists, visitors and Bermudians who live abroad (but are visiting Bermuda) can have a nearest relative in a country where they are ordinarily resident
- There are also special rules if the patient is a child or young person and the Director of Child and Adolescent Services has the formal powers of a parent





## Special situations affecting Nearest Relative appointments

Tables 2 and 3 on pages 42 and 43 of the MHA Code of Practice summarise how the rules are used to identify your nearest relative. There are some special situations:

- The identity of the nearest relative will change if the current nearest relative dies or if they are a spouse and the marriage ends
- It can change if the patient marries, or another relative reaches the age of 18, or comes to live in Bermuda and becomes eligible to become the nearest relative
- The Magistrates' court can appoint an acting nearest relative if there is no nearest relative within the meaning of the Act, or if the nearest relative:
  - o is incapable of acting because of illness
  - o has made unreasonable decisions which do not take account of your welfare or the interests of the public
- If the court appoints an acting nearest relative, this displaces who would otherwise be the nearest relative



## Why is it important to involve the nearest relative?

Your nearest relative can help to make sure that:

- you are safe and your rights are being protected
- you are not detained in hospital when you shouldn't be
- your wishes are being considered when decisions are made about your care



## Communications with the nearest relative

Your nearest relative and MWI clinicians need to work together for your benefit:

- It is usually the Mental Welfare Officer (MWO) who tries to identify the nearest relative
- An application for admission to hospital can be made by either the nearest relative (usually in consultation with the MWO) or by the MWO
- When an MWO makes an application for admission under section 10, they will try to consult with the nearest relative.
- In certain circumstances the nearest relative might not be consulted if:
  - o it is not possible to find out who the nearest relative is in the time available
  - o the nearest relative is in poor health
  - o it could have a negative effect on you.

However, this decision cannot be taken lightly



- Although it is important to consult the nearest relative, other relevant people should also be involved in the decision-making. The MWO *will consider*:
  - o your wishes
  - o the relationship between yourself and the person in question
  - o whether there is any hostility between you and the person in question
- Wherever possible the MWO should also consult with other people who have been involved in your care (e.g. community health services, family doctors and other services)
- When you are given any information, the same information should usually be provided to the nearest relative. This will include information about your discharge
- Your nearest relative can make applications to the Mental Health Review Tribunal (MHRT) on your behalf (see *Mental Health Review Tribunal- Fact sheet #6*)



This Fact Sheet has been developed from the Bermuda Mental Health Act 1968: Code of Practice:  
Chapter 6 “Information for patients, relatives, carers and others”,  
paragraphs 6.24 – 6.34  
Chapter 11 “Role of the Nearest Relative”

## Do you need more information?

The Mental Health Act and Code of Practice are found at:  
<https://www.gov.bm/mental-health>

More Fact Sheets on the Act and Code are found at:  
<https://www.gov.bm/mental-health>

If you have questions about the Act or the Code, contact the BHB  
Mental Health Act Administrator at Mid-Atlantic Wellness Institute:

Telephone: **236 3770**  
Email: **MHA@bhb.bm**



If you have a complaint about something to do with the Mental Health Act this should be directed to the unit/ department manager of the relevant service provider.

**BHB Complaints: Patient Relations Manager**  
at 239 1425, or [feedback@bhb.bm](mailto:feedback@bhb.bm) or

**Patient Relations Manager**  
Quality and Risk Department  
Bermuda Hospitals Board  
PO Box 1023  
Hamilton, Bermuda HMDX



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