

Guidelines for Nomination of Authorised Medical Officers under Mental Health Act (NSW) 2007

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Summary The guidelines provide guidance and advice to medical superintendents appointed under the Mental Health Act (NSW) 2007 and medical officers who work in Declared Mental Health Facilities, eg. mental health inpatient units and emergency departments that have been gazetted as Declared Mental Health Facilities under the Mental Health Act (NSW) 2007, about their responsibilities under the Mental Health Act (NSW) 2007.

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Applies to Local Health Districts, Specialty Network Governed Statutory Health Corporations, Public Hospitals

Audience Medical officers, psychiatrists, mental health inpatient units, EDs, declared mental health facilities

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Policy Manual Not applicable

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GUIDELINES FOR NOMINATION OF AUTHORISED MEDICAL OFFICERS UNDER THE MENTAL HEALTH ACT (NSW) 2007

PURPOSE

These Guidelines for Nomination of Authorised Medical Officers under the *Mental Health Act (NSW) 2007* (the guideline), have been developed to provide guidance and advice for medical superintendents and medical officers about their responsibilities under the *Mental Health Act (NSW) 2007* (the Act).

The Act provides for Authorised Medical Officers (AMO) to perform specific functions under the Act. These functions mainly relate to:

- Initial assessment of patients
- Ongoing assessment of patients to determine if they need to continue to be detained
- Care and treatment of people who are mentally ill or mentally disordered as defined under the Act
- Decisions as to whether or not patients should be discharged.

KEY PRINCIPLES

The medical superintendent of a Declared Mental Health Facility (DMHF) is the senior medical practitioner, appointed in writing by the NSW Health Director-General (or delegate), and who holds a range of clinical and administrative responsibilities under the Act. The medical superintendent is also an 'authorised medical officer' and may be appointed as the medical superintendent of more than one DMHF.

Under the Act, an AMO of a DMHF means:

- (a) The medical superintendent of the Declared Mental Health Facility
- (b) A medical officer, nominated by the medical superintendent for the purposes of the Act, attached to the Declared Mental Health Facility.

The key features of the guidelines are that the medical superintendent of the DMHF is responsible for ensuring that:

- The medical officer they wish to nominate as an AMO has the relevant level of knowledge, skills and experience to undertake this role.
- The AMO has an understanding of their responsibilities under the Act.
- The AMO has access to psychiatrist consultation regarding the assessment and care of patients and decision-making regarding the admission and discharge of patients.

The medical superintendent must also ensure that the AMO has access to supervision and other resources to support the AMO to meet their responsibilities under the Act.

- Nominations of medical officers as AMOs are in writing and specifies the name of the medical officer and be signed and dated by the medical superintendent.
- An AMO Register is established at each DMHF.
- The nominated AMO is registered in the AMO Register for each DMHF in which the AMO will work.

USE OF THE GUIDELINE

This guideline is applicable to medical superintendents and medical officers working in a health facility which has been gazetted as Declared Mental Health Facilities under the Mental Health Act (NSW) 2007.

This guideline is to be read in conjunction with the *Mental Health Act (NSW) 2007*
http://www.austlii.edu.au/au/legis/nsw/consol_act/mha2007128/

REVISION HISTORY

Version	Approved by	Amendment notes
December 2013 (GL2013_017)	Deputy Director General, System Purchasing and Performance	New Guideline

ATTACHMENTS

1. Guidelines for Nomination of Authorised Medical Officers under the *Mental Health Act (NSW) 2007*.

**Guidelines for the Nomination of Authorised Medical
Officers under the *Mental Health Act (NSW) 2007***



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1 BACKGROUND

1.1 About this document

The NSW Ministry of Health through the Mental Health and Drug and Alcohol Office has developed this guideline for the nomination of Authorised Medical Officers under the *Mental Health Act (NSW) 2007* (the Act), to assist Local Health Districts and Specialty Networks to ensure mechanisms are in place to nominate and support this role.

The Mental Health Act (NSW) 2007 (the Act) provides for Authorised Medical Officers (AMO), to perform specific functions under the Act. These functions mainly relate to:

- The initial assessment of patients
- Ongoing assessments of a patient to determine if they need to continue to be detained and cannot be cared for in a less restrictive environment
- Care and treatment of persons who are mentally ill or mentally disordered, as defined under the Act
- Decisions as to whether or not patients should be discharged.

The Act requires a formal process for nominating AMOs.

1.2 Key definitions

Authorised Medical Officer

Section 4 of the Act states: “*authorised medical officer*” of a mental health facility means:

- (a) the medical superintendent of the mental health facility, or
- (b) a medical officer, nominated by the medical superintendent, for the purposes of this Act, attached to the mental health facility concerned.

“*medical superintendent*” of a declared mental health facility means the medical practitioner appointed in writing by the Director General of the Ministry of Health (or delegate) under Section 111 of the Act. The medical superintendent holds a range of clinical and administrative responsibilities under the Act. The medical superintendent is also an “authorised medical officer” and may be appointed as the medical superintendent of more than one Declared Mental Health Facility.

Declared Mental Health Facilities

Declared Mental Health Facilities (DMHF) are premises that are subject to an order of the Director General of the Ministry of Health and are able to perform certain functions under the Act. Under section 109 of the Act, the Director General may create classes of facilities and may designate the purposes of each class and impose restrictions on the operation of a facility.

The current classes of DMHF are:

- Mental health emergency assessment class (allows for short-term detention for initial assessment)
- Mental health assessment and inpatient treatment class (provision of the full range of inpatient functions)
- Community or “health care agency” class (to administer community treatment orders).

Emergency Departments gazetted as DMHF are of the '*mental health emergency assessment*' class and are places to which people detained under the Act can be taken for short-term detention for the purposes of initial assessment, immediate care, and where necessary, arranging transfer to a Mental Health Inpatient Facility.

Mental Illness

Section 4 of the Act states: Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- a) Delusions
- b) Hallucinations
- c) Serious disorder of thought form
- d) A severe disturbance of mood
- e) Sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a) – (d).

Mentally ill person

Section 14 of the Act states:

- 1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:
 - a) For the person's own protection from serious harm, or
 - b) For the protection of others from serious harm.
- 2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

Mentally disordered person

Section 15 of the Act states: A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment and control of the person is necessary:

- a) For the person's own protection from serious physical harm, or
- b) For the protection of others from serious physical harm.

1.3 Legal and legislative framework

The Act provides the legislative framework with respect to the care and treatment of persons experiencing a mental illness or mental disorder. It is important for all of those who work within NSW Health to have an understanding of the provisions and requirements of the Act.

The Act identifies a set of key "Principles for care and treatment" (Section 68) of people experiencing a mental health illness or mental disorder. These principles can be summarised as follows:

- People experiencing a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment required to enable the care and treatment to be effectively given
- Care and treatment should be timely and of high quality in line with professionally accepted standards
- Care and treatment should be designed to assist people experiencing a mental illness or mental disorder wherever possible, to live, work and participate in the community
- The prescription of medication should meet the health needs of the person and should be given for therapeutic and diagnostic needs and not as a punishment or for the convenience of others
- People experiencing a mental illness or mental disorder should be given information about their treatment, the effects of treatment and any alternatives
- Any restriction on the liberty or interference with the rights, dignity and self respect of a person experiencing a mental illness or mental disorder is to be kept to the minimum necessary in the circumstances
- Each person's particular needs including those related to age, gender, religion, culture and language should be recognised
- Every effort should be made to involve people experiencing a mental illness or mental disorder in the development of their treatment plan where practicable
- People experiencing a mental illness or mental disorder should be informed of their legal rights and other entitlements under the Act, in a language and manner they are most likely to understand
- The role of carers for people experiencing a mental illness or mental disorder and their right to be kept informed should be given effect.

2 AUTHORISED MEDICAL OFFICERS UNDER THE MENTAL HEALTH ACT (NSW) 2007

2.1 Nomination of a medical officer as an Authorised Medical Officer

The medical superintendent of the DMHF is responsible to ensure that:

- The medical officer they wish to nominate as an AMO has the level of knowledge, skills and experience to undertake this role
- The nominated AMO has access to appropriate consultation and support
- The nominated AMO is registered in the AMO Register for each DMHF in which the AMO will work
- Nominations of medical officers as an AMO are in writing, specifying the name of the medical officer and signed and dated by the medical superintendent.

AMOs working in an Emergency Department should note that the medical superintendent appointed under the Act may not necessarily be the Director of the Emergency Department, and are more likely to be a senior psychiatrist attached to the Mental Health Service. For the purposes of the application of the Act, AMOs working in an Emergency Department are answerable to the medical superintendent appointed under the Act.

2.1.1 AMO Register

The medical superintendent is required to maintain a register of AMOs which is to include:

- The medical officer's name
- The date of their nomination as an AMO
- A copy of the written nomination
- The date the medical officer ceased to be an AMO at the DMHF.

The AMO Register is to be updated as needed, for example when an AMO leaves the service.

2.1.2 Supervision and support of AMOs

The medical superintendent must ensure there are clear and well understood mechanisms operating twenty four hours a day to ensure AMOs have access to psychiatrist consultation on the assessment and care of patients and decision-making regarding the admission and discharge of patients.

The medical superintendent must ensure that AMOs have access to supervision and other resources to support the AMO to meet their responsibilities under the Act.

2.2 Responsibilities of an Authorised Medical Officer

The Act provides a detailed explanation of the role and responsibilities of AMOs. The Act can be accessed at:

<http://www.legislation.nsw.gov.au/viewtop/inforce/act+8+2007+FIRST+0+N/>

The Mental Health Act 2007 Guide Book provides practical information about the application of the Act and can be accessed at:

http://www.hnehealth.nsw.gov.au/_data/assets/pdf_file/0005/91859/MHA_2007_Guidebook_NSWIOP.pdf

The AMO is to have an understanding of their role and responsibilities under the Act. Key Sections of the Act as they relate to an AMO's role and responsibilities are:

- Understanding the definitions of mental illness and mentally ill and mentally disordered persons under the Act (Sections 4, 14, and 15)
- Understanding the mechanisms for initial detention of a person in a DMHF (Section 18)
- Understanding the process for ongoing detention of a person in a DMHF (Section 27)
- Understanding the key "Principles for care and treatment" (Section 68)
- Understanding the rights of a detained person and their primary carer (Chapter 4)
- Discharge of a detained person (Sections 12 and 27)

There are other provisions of the Act that place obligations on AMOs and medical superintendents and AMOs and medical superintendents should be familiar with the Act and their responsibilities therein.

Section 18 – Initial detention of a person in a DMHF

Section 18 of the Act sets out the circumstances in which a person may be initially detained in a DMHF:

- On a mental health certificate given by a medical practitioner or accredited person (see Section 19)
- After being brought to the facility by an ambulance officer (see Section 20)
- After being apprehended by a police officer (see Section 22)
- After an order for an examination and an examination or observation by a medical practitioner or accredited person (see Section 23)
- On the order of a Magistrate or bail officer (see Section 24)
- After a transfer from another health facility (see Section 25)
- On a written request made to the authorised medical officer by a primary carer, relative or friend of the person (see Section 26).

A person can also be detained through an order from a Magistrate or bail officer under Section 33 of the Mental Health (Forensic Provisions) Act 1990 (see Section 32 of the *Mental Health Act 2007*).

Once a person has been detained in the DMHF, the AMO is required to determine whether the person requires ongoing detention in the mental health facility (Section 27).

The AMO should also involve other services if the detained person has potential co-morbidities or age-related issues. In such cases it may be appropriate for the AMO to engage services such as Drug and Alcohol Services, Specialist Mental Health Services for Older People (SMHSOP) or Child and Adolescent Mental Health Services (CAMHS).

Section 27 - Steps for medical examination requirements for ongoing detention in mental health facility

A section 27 assessment involves a five-step process including two (or possibly three) examinations by a medical practitioner (in addition to an examination by a medical practitioner who may have written the initial certificate under section 19).

The following flow chart describes the steps under Section 27.

Step 1

The first examination (section 27 (a)) is to be carried out by an AMO (the first examiner).

This examination must take place as soon as practicable and not later than 12 hours after the person arrives at the facility or after the person is detained after being a voluntary patient.

The AMO must issue a certificate as part of the requirements of Step 1 (see Attachment 2: Form 1 - Medical Report as to Mental State of a Detained Person).

If the AMO is not of the opinion that the patient is a mentally ill person or a mentally disordered person, the patient must not be detained.

If the AMO is of the opinion that the patient is a mentally ill person or a mentally disordered person as defined under section 4 and section 14 of the Act; and the AMO is of the opinion that the patient requires ongoing detention and care under the Act and cannot be cared for in a less restrictive environment, the patient is required to be examined by another medical practitioner as described in Step 2

Step 2

The first examiner must ensure that the patient is examined by a second medical practitioner as soon as possible after issuing the certificate in Step 1.

The second examiner must be a psychiatrist if the first examiner (the AMO) is not a psychiatrist.

Following the second examination, the second examiner must notify the first examiner (the AMO) of the outcome of the examination. The second examiner must complete the prescribed form (see Attachment 2: Form 1).

The information within the form should include whether the second examiner is of the opinion that the person is a mentally ill person or a mentally disordered person, or if they are not able to form such an opinion.

If the second examiner is of the opinion the patient is a mentally ill person or a mentally disordered person, the first examiner (the AMO) must follow the steps outlined in Step 4.

If the second examiner does not find the patient to be a mentally ill person or a mentally disordered person, the first examiner (the AMO) must arrange for the patient to be examined by a third medical practitioner who must be a psychiatrist (see Step 3).

Step 3

If the first examiner (the AMO) is of the opinion that the person is a mentally ill person or a mentally disordered person (Step 1) and the second examiner did not find the person to be a mentally ill person or a mentally disordered person (Step 2) then the patient must be examined by a third medical practitioner who must be a psychiatrist.

This examination must be undertaken as soon as practicable after the first examiner (the AMO) has been notified of the outcome of the second examination (on the prescribed form at Attachment 2: Form 1).

If the psychiatrist (the 3rd examiner) is of the opinion that the patient is a mentally ill person or a mentally disordered person then they must notify the first examiner (the AMO) in the prescribed form (Attachment 2: Form 1) and Step 4 must then be undertaken.

If the psychiatrist (the 3rd examiner) is of the opinion that the patient is not a mentally ill or mentally disordered person, then the person must not be detained after the examination.

Step 4

An AMO must notify the Tribunal and bring the person before the Tribunal for a mental health enquiry if :

- the person is found to be a mentally ill person by an AMO on initial examination in Step 1, and to be a mentally ill person or a mentally disordered person on examination in Step 2, or Step 3, or
- the person is found to be a mentally disordered person by an AMO on initial examination in Step 1, and to be a mentally ill person on examination in Step 2 or Step 3.

The person must be brought before the Tribunal as soon as practicable after admission (subject to meeting the requirements outlined above).

Authorised Medical officers do not have to wait for the mental health inquiry hearing before they can discharge a detained person. If an authorised medical officer believes the detained person is well enough to be discharged prior to the inquiry they may take this step at any time.

Anyone detained in a mental health facility can be asked to be discharged (section 42); this request can also be made by the detained person's primary carer (section 43); if the request is refused or not determined within 3 working days, anyone, including the detained person, or their primary carer, can appeal to the Tribunal (section 44).

Step 5

If the person is found to be a mentally disordered person by an AMO (the first examiner) on initial examination (Step 1) and is found to be a mentally disordered person on examination in Step 2 or Step 3, the person may be detained in the mental health facility as a mentally disordered person (under section 31 of the Act).

Section 12 – General restrictions on detention of persons

There are circumstances where it is appropriate, legal and mandatory for a person detained under the Act to be discharged or admitted and treated as a voluntary patient. Section 12 of the Act addresses these circumstances.

Section 12 states:

- (1) A patient or other person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that:
 - a) the person is a mentally ill person or a mentally disordered person, and
 - b) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.
- (2) If an authorised medical officer is not of that opinion about a patient or other person at a mental health facility, the officer must refuse to detain, and must not continue to detain, the person.
- (3) An authorised medical officer may, immediately on discharging a patient or person who has been detained in a mental health facility, admit that person as a voluntary patient.

A number of important points should be noted about section 12 of the Act:

- The decision not to detain or to discharge a detained patient under section 12 can only be made by an AMO.
- Section 12 applies at all times while ever the person is detained.
- If an AMO is of the opinion that the detained person is neither a mentally ill nor a mentally disordered person or that other care of a less restrictive kind is appropriate and reasonably available to the detained person, then the person should not continue to be detained, but instead may be admitted as a voluntary patient.

Section 12 is an important safeguard to ensure that persons are only detained, or continue to be detained in a mental health facility where the requirements for ongoing detention are met. Moreover, as Section 12 applies at all stages while a person is detained, Section 12 may require a detained person to be discharged (or admitted as a voluntary patient) under Section 12 prior to all the steps in Section 27 being carried out.

As Section 12 requires an AMO to discharge a person who no longer meets the criteria for detention under the Act, it is important that a medical superintendent nominates suitably qualified/experienced medical officers who are competent to properly assess a person's condition and determine whether or not the criteria for ongoing detention is being met.

Section 31 – Limited detention of mentally disordered persons

When a person has been detained as a mentally disordered person under step 5 of Section 27, Section 31 applies. Section 31 states:

- 1) The person must not be detained in a mental health facility for a continuous period of more than 3 days (not including weekends and public holidays).
- 2) If an AMO of a mental health facility is of the opinion that an assessable person has ceased to be a mentally ill person but is a mentally disordered person, the person

must not be further detained in the facility for a continuous period of more than 3 days (not including weekends and public holidays).

- 3) An AMO must examine a mentally disordered person detained in a mental health facility at least once every 24 hours.
- 4) The person must not be further detained in the mental health facility if, on any such examination, the AMO is of the opinion that the person is not a mentally disordered person or a mentally ill person or that other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person.
- 5) A person must not be admitted to and detained in a mental health facility on the grounds that the person is a mentally disordered person on more than 3 occasions in any one calendar month.

Section 31 of the Act would in most instances, fall under the responsibilities of an AMO working in a DMHF “mental health assessment and inpatient treatment” class.

3 LIST OF ATTACHMENTS

Attachment 1 - Implementation Checklist

Attachment 2 - Medical report as to mental state of a detained person


3.1 Attachment 1 - Implementation checklist

LHD/Facility:			
Assessed by:		Date of Assessment:	
IMPLEMENTATION REQUIREMENTS	Not commenced	Partial compliance	Full compliance
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
3.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
4.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		
6.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>Notes:</u>		

3.2 Attachment 2 - Medical Report as to Mental State of a detained person


Can be downloaded from:

http://www.health.nsw.gov.au/resources/mhdao/mh_act_forms/form_1_pdf.asp



SMR025110

Holes punched as per AS 2828-1999
BINDING MARGIN - NO WRITING

	FAMILY NAME	MRN
	GIVEN NAME	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
Facility:	D.O.B. _____/_____/_____	M.O.
ADDRESS		
LOCATION		
COMPLETE ALL DETAILS OR AFFIX PATIENT LABEL HERE		

FORM 1
MEDICAL REPORT AS TO MENTAL STATE OF A DETAINED PERSON

FORM 1
 (Mental Health Regulation 2007, Clauses 4(a) and (b))
 (Mental Health Act 2007 - sections 27(a), 27(b) or (c))

MEDICAL REPORT AS TO MENTAL STATE OF A DETAINED PERSON

This report is made as:

a certificate of the opinion of an authorised medical officer after examination of a person under section 27 (a) of the Act (initial examination).

(OR)

advice by a medical practitioner to authorised medical officer under section 27 (b) or (c) of the Act (further examination)

(Tick whichever box is appropriate)

I, the undersigned, a registered medical practitioner, on _____ (date)

personally examined _____ (patient's full name)

a person detained at _____ (name of mental health facility)

In my opinion _____ (patient's full name)

is not a mentally ill or mentally disordered person,
(OR)

is a mentally ill person,
(OR)

is a mentally disordered person.

(Tick whichever box is appropriate)

The basis for my opinion is as follows:
*(Reported behaviour of the patient**)*

**This report may be continued on a separate page, if necessary.

FORM 1
 MEDICAL REPORT AS TO MENTAL STATE OF A DETAINED PERSON

NO WRITING

Page 1 of 2

