

Reference Number: UHB 440 Version Number: 1	Date of Next Review: 12/02/2022 Previous Trust/LHB Reference Number: N/A
Patient Rights Information to Detained/ Community Patients Mental Health Act, 1983 Procedure	
Introduction and Aim <p>This document supports the Information to Detained/Community Patients (Patient's Rights) under Section 132, 132A & 130D, Mental Health Act, 1983 Policy.</p> <p>To Provide clear guidance to staff in relation to their legal responsibilities under the Mental Health Act 1983 as amended by the MHA 2007.</p> <p>To standardise practices and processes of providing information and clarify and provide guidance to staff responsible for delivering information.</p> <p>To Ensure that statutory requirements under the Mental Health Act 1983 are met.</p>	
Objectives <p>This procedure describe the following with regard to information to detained patients and community patients (patient's rights)</p> <ul style="list-style-type: none"> • The purpose of giving information to detained/community patients • The process for providing information to detained/community patients • The duties of staff responsible for delivering the information <p>Staff must have due regard to the Mental Health Act Code of Practice generally and specifically to the Guiding Principles when they giving information to detained/community patients. This will ensure that considerations are given as to whether the objectives can be met in a less restrictive way.</p>	
Scope <p>This policy is applicable to employees within all Mental Health inpatient settings, community settings and general hospital settings, including those with honorary contracts who are involved in the care and treatment of patients detained under the Act and those in the community involved in the care of patients subject to a Community treatment Order.</p>	
Equality and Health Impact Assessment	<p>There is potential for both positive and negative impact. The procedure is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative outcome, e.g. through the monitoring of the procedure. There is nothing, at this time, to stop the procedure from being implemented.</p>

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Documents to read alongside this Procedure	<ul style="list-style-type: none"> • The Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008 • The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007) • The respective Codes of Practice of the above Acts of Parliament • The Human Rights Act 1998 (and the European Convention on Human Rights) • Domestic Violence, Crime and Victims Act, 2004 <p>All Cardiff and Vale policies on the Mental Health Act 1983 as appropriate including:</p> <p>Community Treatment Order Policy Community Treatment Order Procedure Hospital Managers' Scheme of Delegation Policy Hospital Managers' Scheme of Delegation Procedure Section 5(2), Doctors' Holding Power Policy Section 5(2), Doctors' Holding Power Procedure Section 5(4), Nurses' Holding Power Policy Section 5(4), Nurses' Holding Power Procedure Mental Health Review Tribunal Procedure and Guidance</p>
Approved by	Mental Health and Capacity Legislation Committee

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Summary of reviews/amendments

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Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	12/02/2019	14/02/2019	<i>New document</i>

Glossary of terms

Term	Definition
The Act	The Mental Health Act 1983 (as amended, including by the Mental Health Act 2007, the Health and Social Care Act 2012 and the Care Act 2014).
Nearest Relative	The NR is the person who is informed (unless the patient objects) or consulted with about the patient becoming subject to the provisions of the Act, which includes the right to order discharge of the patient and to object to some provisions of the Act.
Responsible Clinician	The Responsible Clinician is the approved clinician with overall responsibility for a patient's case. Certain decisions (such as renewing a patient's detention or placing a patient on a Community Treatment Order (CTO)) can only be taken by the responsible clinician.

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Mental Health Review Tribunal	An independent judicial body. Its main purpose is to review the cases of detained, conditionally discharged, and CTO patients under the Act and to direct the discharge of any patients where it thinks it appropriate. The Tribunal provides a significant safeguard for patients who have had their liberty curtailed under the Act.
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Keywords	Mental Health Act, Patients Rights, Section 132, Section 132A, Section 130D, Section 133
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1. Introduction

Section 132 of the Mental Health Act 1983 (the Act) places a responsibility upon the hospital managers to take practicable steps to ensure that all detained patients are given information about their rights upon admission. Section 132A places a responsibility upon the hospital managers to take practicable steps to ensure that Community Treatment Order (CTO) patients are given information about their rights. Section 130D places a responsibility on the responsible person to ensure that qualifying patients are given information about Independent Mental Health Advocates (IMHAs). Section 133 places a responsibility upon the hospital managers to inform NR of a patient's discharge from detention including being discharged from a CTO.

Although the Act does not impose any duties to give information to informal patients they should be given an explanation of their legal position and rights. It is important that they are aware that should they wish to leave the hospital they are advised to discuss this with their Doctor along with the nurse in charge of the ward, so that appropriate arrangements can be made for their safe discharge.

It must also be remembered that explaining patient rights to them is not a one-off event but needs to be ongoing throughout their detention as a person's level of understanding can fluctuate. This policy must be read in conjunction with MHA Code of Practice for Wales, Chapter 4 (MHA COP).

2. Policy Statement

This policy has been developed to guide staff on the execution of their duties to inform patients subject to the Act of their rights and legal position. The policy is also applicable to their NR.

3. Scope

The contents of this policy apply to all clinical staff working within the Health Board who are involved in the care and treatment of patients detained under the Act and those in the community involved in the care of patients subject to Community Treatment Orders.

4. Aim

The aim of this policy is to:

- Standardise practices and processes of providing information
- Clarify and provide guidance to staff responsible for delivering the information
- Provide a framework to staff on the information that should be given to detained patients and their NR

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- Identify who should deliver this information and the expected frequency of the delivery of information.

5. Objectives

Practitioners should have due regard to the MHA COP generally and specifically to the guiding principles when they are providing information to patients and their NR.

There is a statutory duty to inform patients detained under specific sections of their right of access to an Independent Mental Health Advocate (IMHA). IMHA's are available for all patients receiving treatment for their mental disorder and can be invaluable in assisting the patient to understand the questions and information that is being presented to them and in helping patients communicate their views to staff, an IMHA should not be used as an interpreter, translator or as providers of general communication support other than in exceptional circumstances. If this is a requirement the reasons must be recorded within the patient health records. (Chapter 6 MHA COP)

6. PROCEDURE/IMPLEMENTATION

6.1 Availability of Information

For all patients, relevant information should be given to them as soon as is practicable, following:

- Admission to Hospital;
- Commencement of a period of detention under the Act;
- Detention under another section of the Act
- Renewal of any period of detention or extension of CTO

The information must be given both verbally and in writing, and detained patients must be given a copy of the statutory information leaflet which is provided by Welsh Government. Copies of any available information should also be displayed on the ward notice boards/leaflet racks.

6.2 Information to Informal Patients

Though section 132 is specific to detained patients, information regarding their legal rights and treatment should also be provided on an ongoing basis to informal patients. Information on advocacy services should also be made available to them. They should also be made aware of the fact that if they wish to leave hospital but it is felt that they need remain for a period of assessment and/or treatment, they could be assessed for possible detention under the Act. Where discussions take place staff should ensure this is documented.

6.3 Information to Detained Patients

Any detained patient must be informed as soon as possible both verbally and in writing of the following:

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- Of the provisions of the Act under which they are being detained or subject to CTO and the effect of those provisions;
- Of the rights (if any) of their NR to discharge them (and what can happen if their Responsible Clinician does not agree with that decision);
- For community patients, of the effect of the CTO, including the conditions which they are required to keep and the circumstances in which their Responsible Clinician may recall them to hospital; and
- That help is available to them from an IMHA, and how to obtain that help;
- The reasons for their detention or CTO;
- The maximum length of the current period of detention or CTO;
- That their detention or CTO may be extended at any time if it is no longer required or the criteria for it are no longer met;
- That they will not automatically be discharged when the current period of detention or CTO ends;
- That their detention or CTO will not automatically be renewed or extended when the current period of detention or CTO ends;
- The reasons for a CTO being revoked;
- Their rights of appeal to both the Hospital Managers and the Mental Health Review Tribunal (MHRT). Appropriate details of address/telephone numbers should also be given along with guidance on how to make an application and a list of solicitors;
- That if they are detained on a treatment order (including a CTO) should it be extended for a further 6-month period and they do not appeal to the MHRT in the first period of detention, then the Health Board will automatically refer their case;
- That they have the right of legal representation at the MHRT and are given a list of solicitors who are specifically trained in mental health law;
- The nature and likely effects of any treatment which is planned;
- The role and powers of the Healthcare Inspectorate Wales (HIW) and how to make a complaint to them. The address and telephone number should also be supplied;
- Their right to receive or send correspondence and whether there are any constraints on this;
- The procedure for making a formal complaint to the Health Board;
- The patient's financial entitlements whilst in hospital and how to secure them;
- Details of the Visiting Policy for the unit and in particular any restrictions around the visiting of children;
- After care entitlement under section 117 (if applicable) and the implications of this.

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6.4 Information to Conditionally Discharged Patients following recall to hospital

Where a conditionally discharged patient is to be recalled to hospital, a brief verbal explanation of the Secretary of State's reasons for recall must be provided to the patient at the time of recall unless there are exceptional reasons why this is not possible eg; the patient is violent or too distressed. The Secretary of State's warrant will detail the reasons. The patient should also receive a full explanation of the reasons for his or her recall within 72 hours after admission, and both written and oral explanations should be provided. Conditionally discharged patients recalled to hospital, should be told that their cases will be referred automatically to the Mental Health Review Tribunal.

6.5 Information on Consent to Treatment

All patients, regardless of their legal status, must be informed of:

- The nature, purpose and likely effects of any treatment which is planned;
- The circumstances (if any) in which they can be treated without their consent and the circumstances in which they have the right to refuse treatment;
- The role of the second opinion appointed doctors (SOADs) and the circumstances in which they may be involved; and
- (Where relevant) the rules on electro-convulsive therapy (ECT) and medication administered as part of ECT.

6.6 Information on access to the independent advocacy services

Access to independent advocacy services, is available in all areas of the Health Board and all patients, regardless of their legal status, should be given information about the independent mental health advocacy service (IMHA), and how to access it.

Where independent advocacy services are available the inpatient wards will display on their patient information boards the days and times as to when the advocates will be on the unit.

6.7 Information on Rights to Vote

The Representation of the People Act 2000 makes it clear that in most circumstances, detained patients can still exercise their right to vote in general or other elections. To allow patients to exercise this right the Health Board should give information to them about their voting rights.

6.8 Information about the role of the Healthcare Inspectorate Wales (HIW)

All patients, regardless of their legal status, should be given information about:

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- The role of HIW;
- When HIW is next due to visit the service;
- Their rights to meet with HIW during a visit; and
- Their rights to make a complaint to HIW.

6.9 Information to the nearest relative of detained patients

On admission or as soon as practical thereafter, the patient should be made aware of the fact that their NR, within the meaning of the Act, will be supplied with a copy of the written information of their rights, unless the patient objects.

Staff should also ascertain if the patient has an advance statement in place giving details of any other person they wish to be notified of their detention under the Act. If there is, the Mental Health Act Department is to be notified so that arrangements can be made for the necessary information to be sent.

A copy of the letter sent by the Mental Health Act Department to the patient's NR will be held in the patient's health records. If the patient does not wish their NR to be informed of their detention this is to be recorded on the appropriate record of patient's rights form at the earliest convenience.

6.10 Explaining and Understanding Patient Rights

The explaining of a patient's rights is an ongoing process throughout their stay in hospital or period of detention on a CTO and should be done both verbally and in writing.

It should be done in a suitable manner, at a suitable time, taking into account the patient's mental state and capacity to retain information. Staff should not rush through the process but give it their full attention, spending as much time as necessary with the patient in a private area free from interruption allowing time for questions to be asked. Carers and advocates should be involved where the patient wishes or if the patient lacks capacity to understand.

Consideration also needs to be given to the fact that there are some patients who have difficulties relating to their capacity to understand or the ability to retain the information given to them for any length of time. Whilst these patients are detained under the Act, the MHA COP advocates good practice in relation to detained patients who lack capacity or have fluctuating capacity. In these situations staff need to comply with the principles of the Mental Capacity Act (2005) and take all reasonable steps to provide information in a suitable format, i.e. easy word version large print version or pictorially in order to facilitate capacity to understand if at all possible. Staff need to be aware that they may have to explain their rights to such individuals on more than one occasion in the first instance and on a more frequent and ongoing basis.

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The Welsh Assembly Government has produced a series of Mental Health Act patient information leaflets. These are designed to assist hospitals to meet their legal obligations under the Act to provide written information to patients subject to detention and other compulsory measures under the Act; they can be accessed via the Mental Health Act page on the Health Boards intranet site.

Once an explanation of their legal rights has been given to the patient staff must take steps to ascertain their level of understanding. If it is identified that a patient lacks the capacity to understand even after all attempts to assist them have been undertaken, their lack of capacity should be documented in their patients records. However, staff need to be aware that in the majority of cases any lack of capacity will not be permanent and in view of this staff must continue in their attempts to facilitate the patients understanding.

6.11 Communication with patients

Section 132 places a duty on the Health Board to take all reasonable steps to facilitate the patient's understanding of their legal rights. If the patient is not fluent in English or Welsh or has a learning or sensory impairment, arrangements must be made for the explanation of their rights to be delivered in a manner which is appropriate to their needs.

Everything possible should be done to overcome barriers to effective communication. Being able to communicate in the patients' usual language is essential to ensuring that those providing services can undertake an accurate assessment and deliver ongoing care and treatment. The Health Board should ensure people with specialist expertise e.g. in sign language or Makaton, are available as required. Staff should be aware of who to contact to ensure individuals' communication needs can be met.

Where interpretation is needed, every effort should be made to identify an interpreter who is suitable to the needs and circumstances of the patient. Arrangements are in place for staff to have access to these outside normal working hours

However, in respect of this policy interpreters should:

- Fully understand the terminology and conduct of a mental health interview;
- Have knowledge of the patient's cultural and religious values;
- Be able to interpret the law; and
- Be of a gender which accords with the patient's wishes.

NB: It is not desirable that relatives or friends be asked to act as interpreters and this should only be done in exceptional circumstances and at the express wish of the patient.

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MHA patient information leaflets are available from the Mental Health Act Department in languages other than English and Welsh, and arrangements can be made for them to be provided in Braille and audio format.

6.12 Explanation of legal rights to a child/young person

For a child:

A child aged under 16 and anyone under this age who is admitted should have their legal rights under section 132 explained to them in the presence of their parent(s) (or others with parental responsibility) who will also be given a copy of the appropriate rights form.

For a young person:

A young person is a person aged 16–17 and the usual procedure with regard to reading a person their legal rights under this procedure should apply.

However, consideration should be given to completing this in the presence of their parent(s), if the patient agrees.

6.13 Confidentiality and sharing information in relation to a child/young person:

As with adults, children and young people have a right to confidentiality. Where children are competent, and young people have the capacity to make decisions about the use and disclosure of information they have provided in confidence, their views should be respected. (Chapter 19 MHA COP).

However, as with adults, in certain circumstances confidential information may be disclosed without the child or young person's consent, e.g. if there is reasonable cause to believe that the child or young person is suffering, or is at risk of suffering, significant harm.

The same principles of confidentiality apply if a child who is competent or a young person who has capacity to make a decision regarding the information does not wish their parent (or others with parental responsibility) to be involved in decision making about their care and treatment. Their decision should be respected unless the disclosure can be justified, e.g. if there is cause to suspect that the child or young person is suffering or is likely to suffer serious harm. Practitioners should encourage the child or young person to involve their parents (unless it is considered to do so would not be in the best interests of the child or young person). They should also be proactive in discussing with the child or young person the consequences of their parents not being involved.

Where a child or young person does not wish their parents to be involved, every effort should be made to understand the child or young person's reasons with a view to establishing whether the child or young person's concerns can be addressed.

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6.14 Recording the reading of rights to a patient

An entry is to be made in the patient's health records to the effect that an oral and written explanation has been given with an indication of the patient's level of comprehension;

A patients rights form is to be completed and forwarded to the Mental Health Act Department indicating if the patient had the capacity to understand their legal rights or not;

If the patient did not understand, all further attempts will be recorded onto the patients rights form. Once a patient initially lacking capacity has understood their rights, a further patient's rights form will be completed and forwarded to the Mental Health Act Department. Staff will then continue to record on the patients rights form the on-going explanation to the patient of their legal rights.

If at the time of admission the patient is clearly lacking the capacity to understand all or any of the oral and written information regarding their detention, this is to be recorded along with a date for when it will be repeated.

If a patient continues to lack the capacity to understand all or any of the verbal and written information regarding this detention a record of this should be made within the patient's health records.

The reading of rights should be undertaken to reflect the individual needs of the patient but it is recommended that, as a minimum, staff should adhere to the guidance as detailed below:

Section	Initial Frequency	Ongoing Frequency	Who by
Section 2	As soon as practicable after the patients detention begins, then twice weekly for the first two weeks of detention	Weekly for the remaining period of detention	Named nurse or other nominated clinical staff
Section 3	At the time of the section being applied then once a week for the first month of detention	Monthly for the remaining period of detention	Named nurse, Care Coordinator or other nominated clinical Staff.
Section 37	At the time of the section being applied then once a week for the first month of detention	Monthly for the remaining period of detention	Named nurse, Care Coordinator or other nominated clinical staff

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Community Treatment Order	At the time of the section being applied then once a week for the first month of detention.	To reflect the individual needs of the patient	Care Coordinator or other nominated clinical staff
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The patient MUST also have their legal rights explained to them if their period of detention is renewed. This is to be recorded on a patient's rights form, which should then be forwarded to the Mental Health Act Department.

These minimum requirements do not prevent a member of the clinical team from using their professional judgement to decide how frequently individual patients legal rights have to be explained to them.

For patients who have a good understanding of their rights, it may not be necessary to renew their rights at such frequent intervals.

For any subsequent explanation of legal rights under section 132, staff should document this on a patient's rights form.

6.15 Discharge from Detention

When the patient is discharged from detention or if the authority for detention expires, the section's end date/time and the patient's right to leave hospital should be made known to them.

Section 133 provides a duty for the Hospital Managers to inform the NR of discharge from detention including CTO patients and this is to be given at least seven days before the discharge if practicable. To facilitate this it will be necessary for the patients' Responsible Clinician to inform the MHA Department of the planned discharge.

The requirement to inform the NR does not apply if the patient requests that information is not sent. The NR may also request that information is not sent to them regarding their relative.

7. Responsibilities

The Mental Health and Capacity Legislation Committee is responsible for:

- Overseeing the implementation of the Act within the organisation;
- The review and issuing of all policies and procedures which relate to the Act;
- Monitoring the Health Boards compliance with the legal requirements of the Act;
- Undertaking audit work and agreeing action plans in relation to the Act;

7.1 Hospital Managers under the Act

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Whilst the MHA 1983 uses the term “Hospital Managers”, in NHS Foundation Trusts and Health Boards they are defined as the “Hospital Managers”. They have certain statutory duties they must fulfil under the Act and some of these duties including the explaining of legal rights under section 132 can be delegated by the hospital managers but in delegating this responsibility they must be satisfied that:

- The correct information is given to the patient/NR (with the patient’s consent);
- The information is given in a suitable manner and at a suitable time, and, in accordance with the law;
- The member of staff who is to give the information has received sufficient guidance and is aware of the key issues regarding the information to be given;
- A record is kept of the information given, including how, when and by whom it was given;
- A regular check is made that the information has been properly given to each detained patient and understood by him or her;
- There are processes in place to monitor the explanation to patients of their legal rights under section 132.

7.2 Independent Mental Health Advocates (IMHA)

The role of the IMHA is to help qualifying patients (those detained under the Act, conditionally discharged, subject to guardianship or a CTO understand the legal provision to which they are subject under the Act and the rights and safeguards to which they are entitled. This could include assistance in obtaining information about any of the following:

The provisions of the legislation under which she/he qualifies for an IMHA;

- Any conditions or restrictions she/he is subject to, for example; any arrangements made for section 17 leave;
- The medical treatment being given, proposed or being discussed and the legal authority under which this would be given;
- The requirements that would apply in connection with the giving of the treatment;
- Their rights under the Act and how those rights can be exercised.

7.3 Clinical Staff

In relation to this policy all clinical staff must be aware of and comply with the contents of this procedure by providing inpatients with information about:

- Any conditions or restrictions she/he is subject to, for example, any arrangements made for Section 17 leave;
- The medical treatment being given, proposed or being discussed and the legal authority under which this would be given;

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- The requirements that would apply in connection with the giving of the treatment;
- Their rights under the Act and how those rights can be exercised;
- The rights of qualifying patients to the services of an IMHA and how to obtain one.

Clinical staff should also:

- Complete all the necessary documentation required;

7.4 Care Co-ordinators

Care Co-ordinators are responsible for ensuring patients who are on a CTO are provided with information about:

- Any conditions or restrictions she/he is subject to for example any specific requirements around residency;
- The medical treatment being given, proposed, or being discussed and the legal authority under which this would be given;
- The requirements that would apply in connection with the giving of the treatment;
- Their rights under the Act and how those rights can be exercised;
- The rights of qualifying patients to the services of an IMHA and how to obtain one.
- Care Co-ordinators should also complete all the necessary documentation required.

Depending on the place of residence of the patient, support workers within care homes can also undertake these functions

7.5 Non-registered clinical staff

Any non- registered staff working within clinical services must:

- Be aware of this procedure and its contents;
- Direct any patient who has a query about their legal rights to a member of registered staff unless they are competent to address any issues raised.

7.6 Mental Health Act Department

The Mental Health Act Department are responsible for:

- Providing clinical staff with copies of the appropriate patient information leaflets;
- Monitoring the initial and on-going explanation of their legal rights to detained patients, via the receipt of the patients rights forms;
- Co-ordinating requests by patients for an appeal to the Hospital Managers and/or the Mental Health Review Tribunal;
- Ensuring referrals are made to the IMHA service where necessary;

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- Patient's rights forms are filed within the patient's legal correspondence file and a copy in the patient's case notes.
- Ensuring copies of correspondence to NR are filed within the patient's legal correspondence files (Section 133).

8. References

Jones R (2016) Mental Health Act Manual, nineteenth Edition, Sweet and Maxwell

Code of Practice for Wales (revised 2016) Welsh Government

Mental Health (Wales) Measure 2010

Mental Capacity Act Code of Practice

Human Rights Act

Data Protection Act

9. Appendices

Appendix 1 – Patients Rights Form

Document Title: Patients Rights Information to <i>Community Treatment Order MHA 1983</i> <i>Procedure</i>	18 of 19	Approval Date: 12 Feb 2019
Reference Number: UHB 440		Next Review Date: 12 Feb 2022
Version Number: 1		Date of Publication: 14 Feb 2019
Approved By: MHCLC Committee		

**Mental Health Act 1983 – Section 132/132A
Information to Detained Patients**



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Caerdydd a'r Fro
Cardiff and Vale
University Health Board

Patients Name:	
Nearest Relative:	
Current Section:	Date of Section:
Ward:	Name of IMHA:
<p>I can confirm that I have fully explained the contents of the Patients Rights Leaflet to the patient, including reasons for their detention and the patients right to an Independent Mental Health Advocate (IMHA)</p> <p>I have informed the patient how long their detention will last for, if and when they have a right of appeal against their detention to the Mental Health Review Tribunal Wales. The role of the Hospital Managers, the patients right to raise a concern and how to do so. The role of Health Care Inspectorate Wales has been explained. Information of Treatment has also been explained in full.</p>	
<p>Please tick one of the following boxes:</p> <p>The patient has understood the information read and has been given a copy of the information leaflet. <input type="checkbox"/></p> <p>The patient is currently refusing to have their rights read. Further attempts will be made. <input type="checkbox"/></p> <p>The patient currently lacks capacity to understand their rights. Further attempts will be made. <input type="checkbox"/></p> <p>The patient has no capacity to understand information <input type="checkbox"/></p>	
Name of Staff Member reading rights	
Patients preferred language?	

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Has the information been given to the patient in their preferred language?	YES/NO
Does the patient agree to the Nearest Relative being given information?	YES/NO
Patients Signature:	Date:

Please return this form to the Mental Health Act Office, Hafan Y Coed, Llandough Hospital, Penlan Road, Penarth, CF64 2XX.

Fax Number : 02921 824740