

Policy Directive: compliance is mandatory

Forensic Mental Health Patient Admission to SA Health Facilities Policy Directive

Objective file number: 2013-13456

Policy developed by: Office of the Chief Psychiatrist and Mental Health Policy

Approved at Portfolio Executive on: 20 November 2013

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Summary

The Forensic Mental Health Patient Admission to SA Health Facilities Policy Directive outlines the processes and legal parameters for the admission of forensic mental health patients to SA Health facilities. People committed to detention (s269O and s269U orders) or committed to custody (s269X orders) under the Criminal Law Consolidation Act 1935 should, wherever possible, be admitted directly to Forensic Mental Health Services or to an Acute Mental Health Service.

Keywords

Forensic Patient, Forensic Mental Health Patient, Forensic Mental Health Services, Section 269, Admission to SA Health Facilities, Policy Directive

Policy history

Is this a new policy? **Y**
Does this policy amend or update an existing policy? **N**
Does this policy replace an existing policy? **N**
If so, which policies?

Applies to

All Local Health Networks
CALHN, SALHN, NALHN, WCHN, CHSALHN, SAAS

Staff impact

All Staff, Management, Admin, Students; Volunteers

PDS reference

D0332

Version control and change history

Version	Date from	Date to	Amendment
1.0	20/11/2013	current	Original version

1. Introduction

Preamble

This area of law and practice is very complex and requires the collaboration of: Supreme, Magistrates and District Courts, Acute Mental Health Services, Courts Administration Authority, Department of Correctional Services, Director of Public Prosecutions, Disability SA, Emergency Departments, Forensic Mental Health Services, Legal Services Commission, Parole Board, Police, Police Prosecutions and the Victim's Rights Commissioner.

Background

Section 269 of the *Criminal Law Consolidation Act 1935* was introduced as an amendment to the Act in 1995. The purpose of the section is to ensure that that people who have offended because of mental impairment (including mental illness, intellectual disability, brain injury or senility) can receive care and treatment appropriate to their impairment, rather than a correctional sentence. The Act provides that a defendant may be found mentally incompetent to commit an offence or mentally unfit to stand trial, and that a Court may unconditionally release the person, release the person on License into the community, place the person in detention (section 269O and section 269U orders) or place the person in custody (section 269X orders).

Purpose

The purpose of this Policy Directive is to provide clarity regarding processes and responsibilities for people subject to s269 orders and to reduce, and where possible prevent, their impact on Emergency Department services.

Scope

This Directive applies to all staff of SA Health facilities that provide care and treatment to forensic patients.

Guiding Principles

- 1.1 The care and supervision of vulnerable people who offend is a whole of community and whole of government responsibility. Government agencies are responsible for collaborating to bring s269 orders into effect.
- 1.2 People subject to s269 orders have not been found guilty but have been found to be mentally incompetent to commit an offence or mentally unfit to stand trial (or are awaiting assessment to determine this).
- 1.3 People subject to s269 orders who present to SA Health facilities have had a Court deem Health the most appropriate setting for their treatment and supervision.
- 1.4 People subject to s269 orders in SA Health facilities are patients, whether they have acute treatment needs or not.
- 1.5 People subject to s269 orders will be provided with custody, supervision and care in accordance with the objects and guiding principles of s6 and s7 of the *Mental Health Act 2009*, except where those objects and/or principles would be in conflict with the s269 order.

2. Direct admission of people subject to s269 orders

Context

People committed to detention (s269O and s269U orders) or committed to custody (s269X orders) should, wherever possible, be admitted directly to the Forensic Mental Health Service or to an Acute Mental Health Service. Direct admission is the preferred option, with particulars determined by the care and custody needs of the patient, bed availability in the Forensic Mental Health Services or appropriate Acute Mental Health Service, and the requirements of the Court order.

Process

- 2.1 A Court may liaise with Forensic Mental Health Services when they are considering a s269 defence to determine suitable detention or custody arrangements.
 - a. If the patient's care and supervision requirements are known to Forensic Mental Health Services they will liaise with Acute Mental Health Services and make necessary admission/transfer arrangements.
 - b. If the patient is unknown, Forensic Mental Health Services will request that LHN Mental Health Services carry out an assessment of the patient's mental and physical health care and supervision needs. LHN Mental Health Services will subsequently liaise with Forensic Mental Health Services, and they will jointly make admission/transfer arrangements.
- 2.2 Forensic Mental Health Services and LHN Mental Health Services will consider new patient care and custody needs against those of current inpatients when making admission/transfer arrangements.
- 2.3 Forensic Mental Health Services will liaise with the Court to advise of arrangements.
- 2.4 The Court may commit the person to detention or custody.
- 2.5 The Sherriff's Office and Court Registry will make patient and paperwork arrangements.
- 2.6 Notification of the order will be made to Forensic Mental Health Services.
- 2.7 If a Ministerial Direction is needed to carry the detention into effect Forensic Mental Health Services will liaise with the Senior Mental Health Executive On-Call, who will liaise with the Deputy Chief Executive.
- 2.8 Police or G4S will transport the patient to Forensic Mental Health Services or the Acute Mental Health Service.
- 2.9 The patient will be admitted directly into Forensic Mental Health Services or the Acute Mental Health Service.

Considerations

- 2.10 Forensic Mental Health Services will directly admit a person subject to a s269 order if they have a bed available, whether or not the person is known to Forensic Services.
- 2.11 People subject to s269O or s269U orders can be admitted to Forensic Mental Health Services or an appropriate Acute Mental Health Service, the latter requiring a Ministerial Direction.
- 2.12 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may be administered to a person subject to s269O or s269U orders, consistent with the plan before the Court, within the context of the objects and guiding principles of s6 and s7 of the *Mental Health Act 2009*.
- 2.13 People subject to a s269X order can only be admitted to the facility, or to the custody of the official, named in the order.
- 2.14 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may only be administered to a person subject to a s269X order if a *Community Treatment Order level 1* or an *Inpatient Treatment Order level 1* is made under the *Mental Health Act 2009*.

3. Non-preferred admission pathway for people subject to s269O and s269U orders

Context

People subject to s269O or s269U orders are committed to detention under the custody of the Minister for Mental Health and Substance Abuse, who may give directions for the custody, supervision and care of the person that the Minister considers appropriate. People subject to s269O or s269U orders are in the custody, supervision and care of SA Health staff, as the agents responsible for carrying out the Minister's functions.

On occasion, through circumstances outside of SA Health control, an individual may present to an Emergency Department. Unless the individual has acute physical health needs, the Local Health Network Mental Health Service where the patient is located and Forensic Mental Health Services will make admission and/or transfer arrangements for the person and move them from the Emergency Department within 4 hours.

Process

- 3.1 A patient may be conveyed to an Emergency Department in the custody of Police or G4S guards.
- 3.2 Emergency Department staff will request Police or G4S to maintain custody of the patient until an assessment can be carried out to ascertain health and security needs.
- 3.3 The Emergency Department will liaise with the LHN Mental Health Service to request an assessment.
- 3.4 The Emergency Department may use security guards to assist with the supervision and custody of the patient, if indicated.
- 3.4 LHN Mental Health Services will assess the care and safety needs of the patient.
- 3.5 LHN Mental Health Services will liaise with Forensic Mental Health Services regarding the care, safety and custody needs of the patient and they will jointly decide:
 - a. Immediate admission to Forensic Mental Health Services.
 - b. Immediate interim admission to Acute Mental Health Services, to PICU or elsewhere with security supervision if indicated, while a bed in Forensic Mental Health Services is arranged.
- 3.6 Police or G4S will transport the patient to Forensic Mental Health Services or an Acute Mental Health Service.
- 3.7 A Ministerial Direction is required to admit the patient anywhere but Forensic Mental Health Services. To arrange this the Senior Mental Health Executive On-Call will liaise with the Deputy Chief Executive.
- 3.8 If the patient remains in the Emergency Department for longer than 4 hours an incident will be reported through the Safety Learning System.

Considerations

- 3.9 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may be administered to a person subject to s269O or s269U orders, consistent with the plan before the Court, within the context of the objects and guiding principles of s6 and s7 of the *Mental Health Act 2009*.
- 3.10 If the patient needs emergency medical treatment to meet an imminent risk to life or health and is incapable of consent s13 of the *Consent to Medical Treatment and Palliative Care Act 1995* can be used to provide that care, while security supervision, if indicated, can be provided under the s269O or s269U order. See the SA Health Directive *Providing medical assessment and/or treatment where consent cannot be obtained* for more information.

4. Non-preferred admission pathway for people subject to s269X orders

Context

People subject to s269X orders are committed to the custody of the official or facility named in the order. SA Health staff reporting to the official, or of the facility, named in the order are the agents responsible for carrying out the order. SA Health staff not reporting to the official, or of the facility, named in the s269X order cannot enforce the order.

On occasion, through circumstances outside of SA Health control, an individual may present to an Emergency Department. Unless the individual has acute physical health needs, the Local Health Network Mental Health Service where the patient is located and Forensic Mental Health Services will make admission and/or transfer arrangements for the person and move them from the Emergency Department within 4 hours.

Process

- 4.1 A patient may be conveyed to an Emergency Department in the custody of Police, G4S guards or the Sherriff.
- 4.2 Emergency Department staff will request Police, G4S or the Sherriff to maintain custody of the patient until an assessment is made to assess health and security needs.
- 4.3 The Emergency Department will liaise with LHN Mental Health Services to request an assessment. LHN Mental Health Services will assess health and safety needs.
- 4.4 LHN Mental Health Services will liaise with Forensic Mental Health Services regarding the care, safety and custody needs of the patient and they will jointly decide:
- 4.5 **If the patient can be immediately admitted to the facility, or to the custody of the official, named in the order:**
 - a. The named Forensic Mental Health Service or Acute Mental Health Service will make the arrangements/transfers necessary to admit the patient.
 - b. Police, G4S or the Sherriff will transport the patient to the named Mental Health Service for admission.
- 4.6 **If the patient cannot be immediately admitted to the facility, or to the custody of the official, named in the order:**
 - a. Forensic MHS will liaise with the Court Liaison Program or Police Prosecutions to liaise with the Court to request an urgent amendment of the s269X order.
 - b. The facility or official named in the order will make the arrangements necessary to admit the patient, including transferring another patient.
 - c. LHN Mental Health Services will make interim voluntary mental health admission and/or transfer arrangements for the patient.
 - d. Police, G4S or the Sherriff will transport the patient to the interim Mental Health Service for voluntary admission.
 - e. The patient will be transferred from the interim Mental Health Service to the facility or official named in the order as soon as a bed is available.
 - f. **If the Court amends the order:**
 - i. Forensic Mental Health Services and/or Acute Mental Health Services will make the arrangements/transfers necessary to admit the patient.
 - ii. Police, G4S or the Sherriff will transport the patient to the named Mental Health Service for admission.
- 4.7 If the patient remains in the Emergency Department for longer than 4 hours an incident will be reported through the Safety Learning System.

Considerations

- 4.8 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may only be administered if a *Community Treatment Order level 1* or an *Inpatient Treatment Order level 1* is made under the *Mental Health Act 2009*.
- 4.9 If the patient needs emergency medical treatment to meet an imminent risk to life or health and is incapable of consent then s13 of the *Consent to Medical Treatment and Palliative Care Act 1995* can be used to provide that care. See the SA Health Directive *Providing medical assessment and/or treatment where consent cannot be obtained* for more information.
- 4.10 A Ministerial Direction cannot be used for a s269X patient.

5. Legal Considerations

Summary for s269O and s269U orders

- 5.1 People subject to s269O or s269U orders are committed to detention under the custody of the Minister for Mental Health and Substance Abuse, who may give directions for the custody, supervision and care of the person that the Minister considers appropriate.
- 5.2 People subject to s269O or s269U orders are in the custody, supervision and care of SA Health staff, as the agents responsible for carrying out the Minister's functions, and may take action as reasonably required to enforce the order.
- 5.3 A Ministerial Direction is recommended to admit the patient anywhere but Forensic Mental Health Services.
- 5.4 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may be administered to a person subject to s269O or s269U orders, consistent with the plan before the Court, within the context of the objects and guiding principles of s6 and s7 of the *Mental Health Act 2009*.

Summary for s269X orders

- 5.5 People subject to s269X orders are committed to the custody of the official or facility named in the order.
- 5.6 SA Health staff reporting to the official, or of the facility, named in the order are the agents responsible for carrying out the order and may take action as reasonably required to enforce the order.
- 5.7 SA Health staff not reporting to the official, or of the facility, named in the s269X order cannot carry out the order and cannot take action.
- 5.8 A Ministerial Direction cannot be used for a s269X patient.
- 5.9 An interim voluntary admission to an Acute Mental Health Service other than the facility named in the order may be made while a bed in the named facility is made available.
- 5.10 Involuntary psychiatric treatment (except prescribed treatments such as ECT) may only be administered if a *Community Treatment Order level 1* or an *Inpatient Treatment Order level 1* is made under the *Mental Health Act 2009*.

6. Responsibilities

Executives

The Chief Executive of the Department for Health and Ageing, Chief Executive Officers of the Local Health Networks, Chief Psychiatrist, General Managers of Mental Health Services, and Clinical Directors of Forensic Mental Health Services, Area Mental Health Services and Emergency Departments will promote, monitor and evaluate the use of this Directive, and ensure managers and clinicians are trained and supported in their implementation.

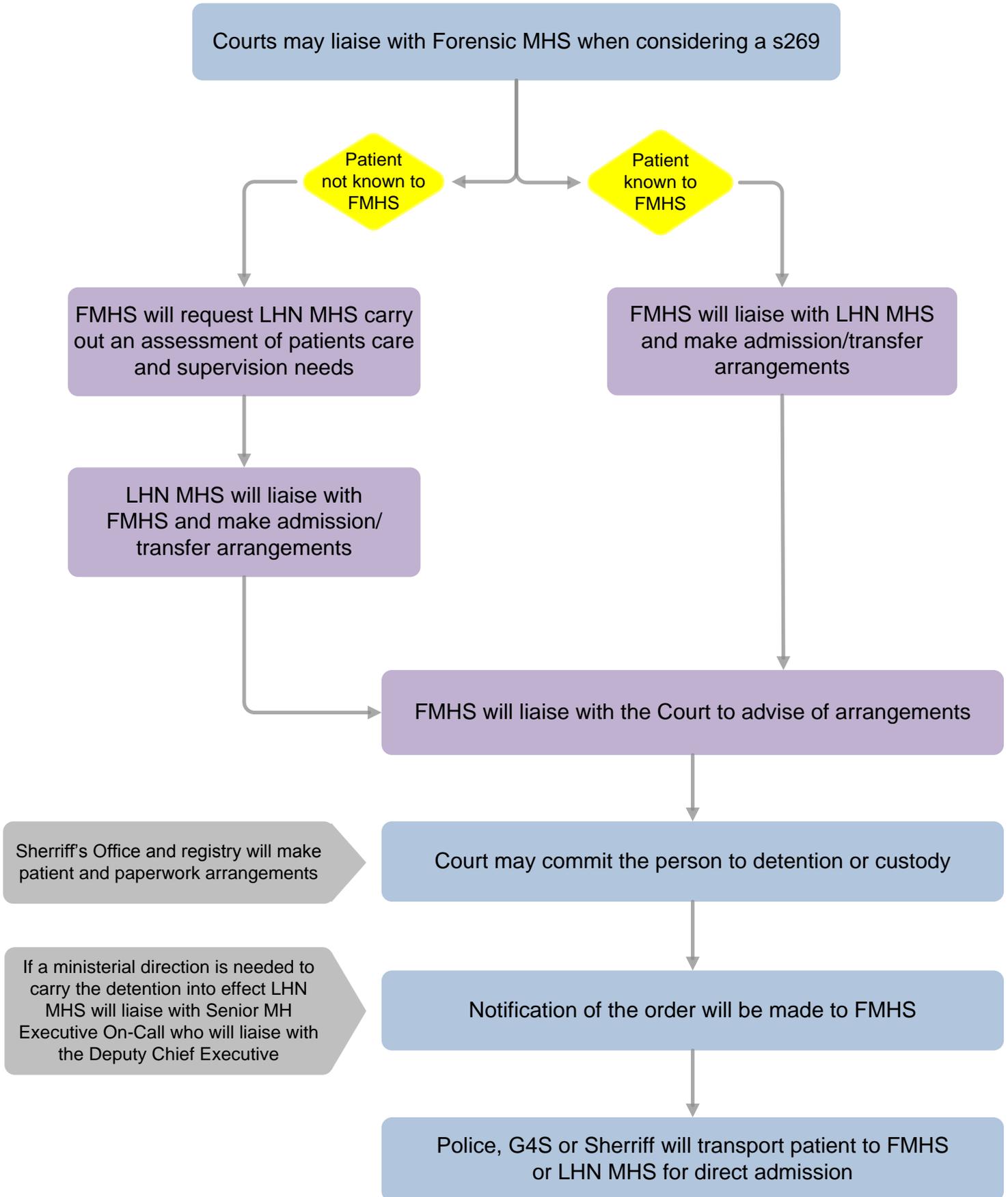
Managers and Clinicians

Managers and Clinicians will implement this Directive.

For more information

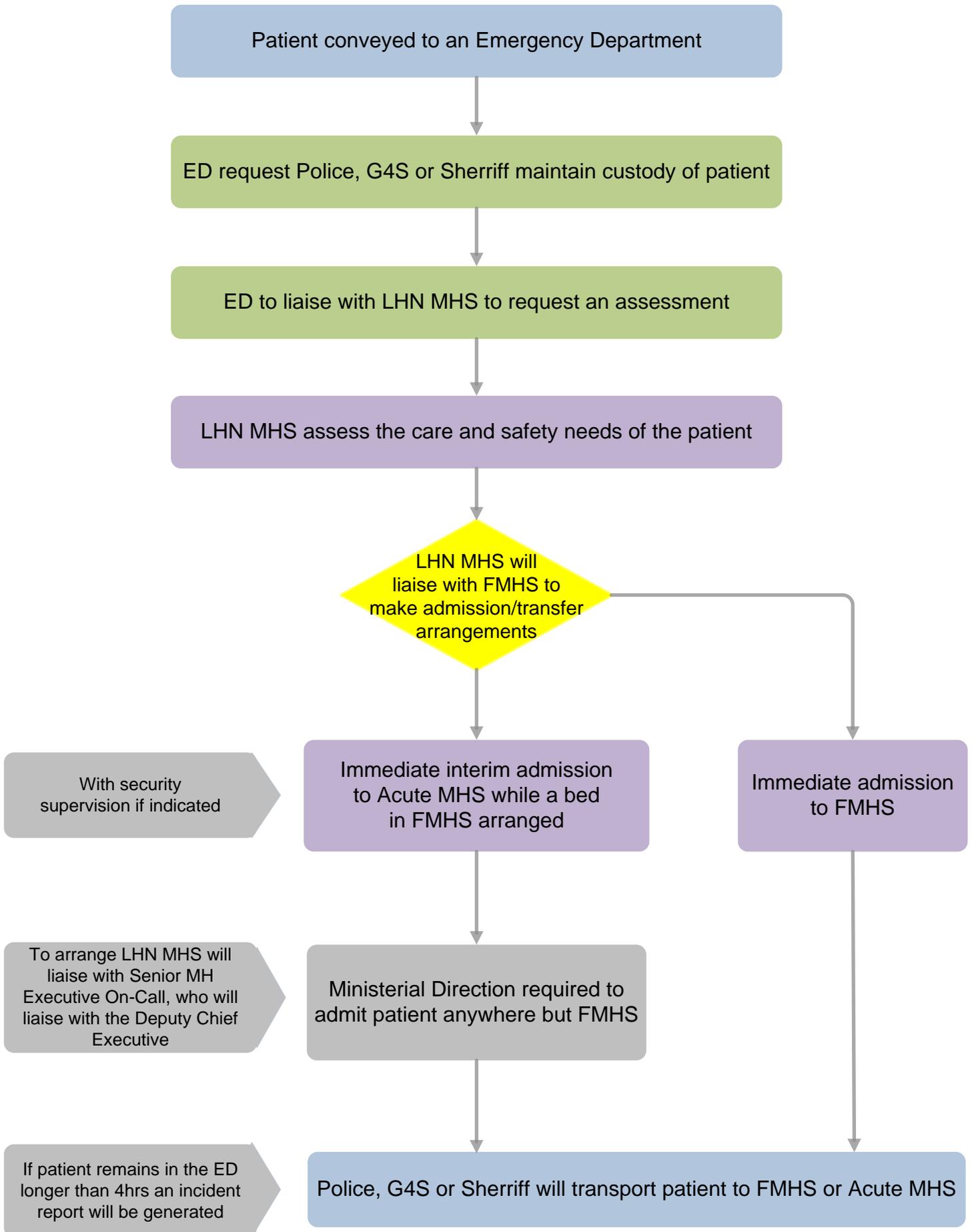
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Flowchart 1: Direct admission of people subject to s269 orders



Flowchart 2: ED presentation process for s269O/s269U orders

Non-preferred admission pathway



Flowchart 3: ED presentation process for s269X orders

Non-preferred admission pathway

