



Public – To be published on the Trust external website

Inter-Agency Section 117 Mental Health Act 1983

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1 Introduction

This guidance sets out the duty to provide after-care for patients under Section 117 of the Mental Health Act 1983 (MHA). It sets out the legislative requirements around Section 117 and the standard processes within the TEWV area associated with recording initial eligibility, ensuring that there is an up to date register of eligible patients and ending Section 117 eligibility and removal from the register. In terms of how the responsible CCGs and Local Authorities implement section 117 at a local level, guidance should be sought from the relevant CCG and LA for the specific service user.

Our Journey to Change sets out that we want people to lead their best possible lives. Our first Strategic Goal 'To co create a great experience for our patient, carers and families' is central to what we do. For people that use our services, their carers and families, we want to ensure that through this guidance we help to identify care needs relating to mental disorder once patients are no longer detained in hospital. This process also requires us to work collaboratively with our partners.

2 Why we need this guidance

2.1 Purpose

- To comply with the legislative requirements of the MHA 1983 and associated Code of Practice
- To comply with the requirements of the Care Act 2014
- To provide clarity in relation to roles and responsibilities

2.2 Objectives

The aim of this guidance is to ensure that:

- All relevant staff, including LA and CCG staff, are aware of the requirements of Section 117 MHA which places a duty on CCGs and LAs, in cooperation with relevant voluntary agencies, to provide (or in the case of CCGs, arrange for the provision of) after-care services to any person to whom this section applies until the CCG and LA are satisfied that the person is no longer in need of such services
- There is guidance around which patients are eligible patients and which CCG and LA are the responsible CCG and LA on which the duty is placed
- There is a framework and process to ensure that the requirements of Section 117 are locally translated and adhered to and that this can be clearly evidenced

- All eligible patients' after-care is planned for, provided and ended equitably and with clear rationale across the TEWV area

3 Scope

- This guidance describes the application and requirements of Section 117 as defined by the MHA and relevant case law.
- This document does not attempt to define how TEWVs partner agencies meet their own obligations.

3.1 Who this guidance applies to

This guidance applies to the following people:

- All clinical staff within TEWV
- Relevant LA and CCG staff
- Mental Health Legislation Department

Implementing this guidance will ensure we respect the rights of the patients that we work with in a compassionate way.

3.2 Roles and responsibilities

Role	Responsibility
Clinical Commissioning Group (CCG)	<ul style="list-style-type: none"> • It is the duty of the CCG to commission after-care for those persons discharged from hospital following detention under section 117 of the Mental Health Act.
Local Authority (LA)	<ul style="list-style-type: none"> • The LA where a person is resident before being detained in hospital on a relevant section (even if the person does not return to that area on discharge) is legally responsible for providing after-care services under Section 117. If no such residence can be established, the duty falls on the authority where the person is to go on discharge from hospital.
Joint LA and CCG	<ul style="list-style-type: none"> • Responsible for ensuring there are systems in place so that those people who have eligible needs under section 117 are not charged for services relating to these needs. • To consider funding care packages required for Section 117.

	<ul style="list-style-type: none"> • To keep under review, at least annually, the identified after-care needs and agree and make any necessary changes. • To agree when to end eligibility for after-care under Section 117 and record that decision.
TEWV clinical staff	<ul style="list-style-type: none"> • To be involved in the development, and ensure the provision of, any agreed package of care for which TEWV is the provider agency.
TEWV MHL administrative staff	<ul style="list-style-type: none"> • To ensure that any person made subject to a relevant section, who is not currently eligible for Section 117 after-care, has Section 117 eligibility recorded on their electronic patient record. • To receive the written record of the decision to end eligibility for Section 117 after-care, ensure that the relevant bodies have appropriately agreed the decision and to remove Section 117 eligibility from their electronic patient record.

4 Guidance

4.1 Aftercare

After-care services are not defined by the MHA but by Section 75 of the Care Act 2014. An after-care service is one that has the purpose of meeting a need arising from or related to a patient's mental disorder and at reducing the risk of a deterioration of the patient's mental condition and accordingly reducing the patient's chance of being re-admitted to hospital for treatment for mental disorder.

The ultimate aim is to maintain patient's in the community, with as few restrictions as are necessary, wherever possible. The Mental Health Act Code of Practice (CoP) states:

CCGs and local authorities should interpret the definition of after-care services broadly. For example, after-care can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of deterioration in the patient's mental condition.

“As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital.”

The CoP states that a thorough assessment to identify the needs of each patient is likely to involve consideration of:

<ul style="list-style-type: none"> • Continuing mental healthcare, whether in the community or on an out-patient basis;
<ul style="list-style-type: none"> • The psychological needs of the patient and, where appropriate, of their family and carers;
<ul style="list-style-type: none"> • Physical healthcare;
<ul style="list-style-type: none"> • Daytime activities or employment;
<ul style="list-style-type: none"> • Appropriate accommodation;
<ul style="list-style-type: none"> • Identified risks and safety issues
<ul style="list-style-type: none"> • Any specific needs arising from, for example, co-existing physical disability, sensory impairment, learning disability or autistic spectrum disorder
<ul style="list-style-type: none"> • Any specific needs arising from drug, alcohol or substance misuse (if relevant);
<ul style="list-style-type: none"> • Any parenting or caring needs;
<ul style="list-style-type: none"> • Social, cultural or spiritual needs;
<ul style="list-style-type: none"> • Counselling and personal support;
<ul style="list-style-type: none"> • Assistance in welfare rights and managing finances;

- The involvement of authorities and agencies in a different area, if the patient is not going to live locally
- The involvement of other agencies, for example the probation service or voluntary organisations
- For a restricted patient, the conditions which the Secretary of State for Justice or the Tribunal has imposed or is likely to impose on their conditional discharge; and
- Contingency plans (should the patient's mental health deteriorate) and crisis contact details.

Services provided under Section 117 can include services provided directly by the LA as well as services they commission from other providers. CCGs will commission rather than provide these services.

4.2 Eligible sections

A patient becomes eligible for after-care under Section 117 when they cease to be detained on one of the following sections and leave hospital (whether or not they leave hospital immediately after they cease to be detained):

- Section 3
- Section 37
- Section 45A
- Section 47
- Section 48

Although entitlement to aftercare begins on discharge from detention and leaving hospital, it extends to a patient who goes on leave of absence under Section 17, a patient going onto a Community Treatment Order (CTO) or a restricted patient who is conditionally discharged.

4.3 Identifying the responsible authorities

The after-care bodies are the relevant CCG and LA.

The relevant LA is - Under section 117 of the 1983 Act, as amended by the Care Act 2014, if a person is ordinarily resident in local authority area (A) immediately before detention under the 1983 Act, and moves on discharge to local authority area (B) and moves again to local authority area (C), local authority (A) will remain responsible for providing or commissioning their after-care.

However, if the patient, having become ordinarily resident after discharge in local authority area (B) or (C), is subsequently detained in hospital for treatment again, the local authority in whose area the person was ordinarily resident immediately before their subsequent admission (local authority (B) or (C)) will be responsible for their after-care when they are discharged from hospital.

The relevant CCG:

In 2020 NHS England released the [Who Pays? Guidance](#) which sets out in detail the funding arrangements for 117. This guidance also sets out arrangements for when patients eligible for s117 move.

4.4 Planning aftercare

‘The planning of after-care needs to start as soon as the patient is admitted to hospital’ (MHA CoP). The LAs and CCGs have a statutory duty to ensure that those people who are eligible for after-care services are considered for such services and that:

- Health and social care assessments are coordinated during the period of in-patient care and should include consideration of the areas set out in 4.1 above
- Appropriate after-care plans are agreed with the patient, their carer and all involved agencies.
- The services that are provided under Section 117, and would incur a charge to the patient if not provided under s117, are clearly indicated on the after-care plan and it is also made clear that those services are provided free of charge.
- The services provided under Section 117 must be directly related to the need arising from the mental disorder to avoid incurring a charge to the patient. An example may be a person who has nowhere to live but is ready for discharge from hospital, accommodation is a need that everybody has and it is not a need arising from the mental disorder unless it is accommodation specifically required to address an assessed need eg, 24 hour supervised accommodation.

Appropriate after-care services should be identified for patients ideally before their discharge from detention and always before their actual discharge from hospital and must always be considered:

- | |
|---|
| <ul style="list-style-type: none"> • Prior to a Hospital Managers’ hearing or Mental Health Tribunal |
| <ul style="list-style-type: none"> • Prior to leave under Section 17 which is more than very short-term, ie less than overnight, (for short term leave a less comprehensive review will suffice but arrangements for the patients’ care must still be properly recorded) |
| <ul style="list-style-type: none"> • Prior to making a patient subject to a Community Treatment Order (CTO) |
| <ul style="list-style-type: none"> • Prior to transferring a patient into Guardianship |

Patients are under no obligation to accept the after-care services they are offered, but any decision they make to decline them must be fully informed. An unwillingness to accept services does not mean that patients have no need to receive services, nor should it preclude them from receiving them under Section 117 if they change their minds.

After-care Payments – a Local Authority may make direct payments to pay for after-care services under Section 117. An eligible adult with capacity can request the LA to make payments to them or the LA can make them to an authorised person if the patient lacks capacity if certain conditions are met.

Patient's, relatives or carers can make top-up payments where the local authority is providing or arranging accommodation under Section 117 to enable the patient to live in their preferred accommodation where certain conditions are met.

A CCG or NHS Commissioning Board can also make direct payments in respect of after-care to the patient or a representative where the relevant conditions are met and this is appropriate.

4.5 Leave under s17 MHA

Where leave under Section 17 is being considered and it is overnight or substantial eg, the patient is on leave all day every day and returns to the ward to sleep, then appropriate after-care services must be identified, discussed with the patient and addressed in their after-care plan.

4.6 Community Treatment Orders (CTOs)

Patients detained under one of the relevant sections of the Mental Health Act as outlined in 4.2 above and who are subsequently made subject to a CTO are entitled to after-care services under Section 117 of the Act. The after-care arrangements should be drawn up as part of the normal care planning arrangements within CPA. The CCG and LA must continue to provide aftercare services under Section 117 for as long as the patient remains on a CTO.



On discharge from a CTO or Guardianship, Section 117 eligibility will continue until the criteria for discharge from Section 117 eligibility are met (see 4.9 below)

4.7 Review

Any patient in receipt of after-care services, whether eligible for Section 117 or not, must have their care reviewed as required at a CPA or standard care review.



Patients who have Section 117 eligibility may be subject to standard care rather than CPA provided that this is indicated by their level and complexity of need

In terms of Section 117, the continued eligibility for Section 117 after-care services must be reviewed by the identified statutory after-care bodies – the relevant LA and relevant CCG. As a provider service, TEWV will be involved (represented) at all reviews of Section 117 eligibility for, patients for whom they are providing a service, but not always as a decision-maker regarding continued eligibility. The CCG may delegate their representation as a decision-maker at the review to TEWV but this should be formally agreed and the level of delegated decision-making set out clearly. The LA must be involved (represented) as a decision-maker in all reviews of Section 117 eligibility.

- Reviews are coordinated and undertaken regularly (at least annually), and the review must include specific consideration of identified Section 117 needs and continued eligibility. The review must be formally recorded on the review document.
- Services are provided according to need and ended appropriately (see section 4.9 of this guidance). This should be formally recorded on the review document.

4.8 Discharge from Section 117 Eligibility

The duty to provide after-care exists until *both* the CCG and LA agree that the patient is no longer in need of *any* after-care services. Each CCG and LA will need to determine what they consider to be an after-care need taking into account relevant case law. This must be clearly articulated, particularly where the responsibility for agreeing discharge on behalf of the CCG has been delegated to a TEWV healthcare professional.



The LA and CCG should give particular guidance around consideration for discharge from Section 117 eligibility where the person remains in receipt of medication for mental disorder and is being discharged back to the care of their GP. Any dispute regarding discharge criteria must be referred to the relevant CCG and LA for clarity.

A community patient (ie a patient subject to a Community Treatment Order) cannot be said to be no longer in need of after-care services.

The circumstances in which Section 117 eligibility is discharged will vary from person to person. A patient's expressed wish to be 'discharged' from this section has no legal effect if they continue to have a need for after-care services.



The clearest example of circumstances in which after-care will end is where the person's mental health has improved to a point where they no longer needed services to meet needs arising from or related to their mental disorder.

Eligibility for Section 117 after-care cannot be withdrawn solely on the grounds that:

- The patient has been discharged from the care of specialist mental health services;
- An arbitrary period has passed since the care was first provided;
- The patient is deprived of their liberty under the Mental Capacity Act 2005;
- The patient may, or has, returned to hospital informally or under Section 2; or
- The patient is no longer on a Community Treatment Order, Section 17 leave or subject to conditional discharge or Guardianship.

In order for a person to have their eligibility for Section 117 after-care removed from their electronic patient record, the Section 117 review meeting at which this is decided must be fully recorded on the Discharge Pro-forma at appendix 2, with the appropriate signatures present. The local LA and CCG should have clear guidance where the decision to discharge Section 117 eligibility has been delegated by the CCG to a member of TEWV staff. The completed Discharge Pro-forma must then be forwarded to the MHL Department at Roseberry Park who will check that the appropriate information is present and then remove Section 117 eligibility from the electronic patient record.

Eligibility for Section 117 after-care will also be removed if the person dies. It is therefore essential that the MHL Department at Roseberry Park is notified of the death of any Section 117 eligible person.

4.9 Resolving Disagreements

There are various stages within the Guidance where disagreements may arise such as whether the person remains eligible or should be discharged from section 117 eligibility. Where there are issues that cannot be resolved through negotiation with the relevant LA and CCG, they should be escalated to the relevant Head of Service.

5 Definitions

Term	Definition
Care Programme Approach (CPA)	CPA is an overarching system for coordinating the care of people with mental disorder. It includes arrangements for assessing, planning and reviewing care. There will be named individual with responsibility for coordinating the preparation, implementation and evaluation of the CPA care plan.
Clinical Commissioning Groups (CCGs)	CCGs are NHS organisations set up by the Health and Social Care Act 2012 to organise the delivery of NHS services in England. They replace the PCTs which ceased to exist in April 2013.
Local Authorities (LAs)	County Council, District Council or Unitary Authority for a specific area within which the Adult Social Care Department usually has responsibility for assessing needs for and provision of community care.

6 Related documents

[Mental Health Act Code of practice](#)

[The Care Programme Approach and Standard Care Policy](#)

[Community Treatment Order Policy](#)

7 How this guidance will be implemented

- This guidance will be published on the Trust's intranet and external website and on the intranets of Local Authorities and CCGs
- Line managers will disseminate this guidance to all Trust, LA and CCG employees through a line management briefing or other method used for communication to staff.
- Specify where this guidance will/will not be published, i.e. intranet, Trust website

7.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All clinical staff	MHL e-learning	3 hours	Every 2 years

8 How the implementation of this guidance will be monitored

Auditable Standard/Key Performance Indicators		Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Audit of Section 117 aftercare services is encompassed in the annual CPA audit	This is carried out yearly by the Trust	Actions taken to appropriate assurance group
2	Monitoring of patients receiving s117	Team managers	Escalate problems to the CPA department

9 References

[Mental Health Act Code of practice](#)
[Who Pays? Guidance \(2020\)](#)

10 Document control (external)

To be recorded on the policy register by Policy Coordinator

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Next review date:	29 November 2024	
This document replaces:	Inter-Agency Section 117 Mental Health Act 1983 MHA-0011-v1.1	
	Name of committee/group	Date

This document was approved by:	Mental Health Legislation Committee	31 August 2023
This document was ratified by:	Name of committee/group	Date
	n/a	
An equality analysis was completed on this document on:	October 2021	
Document type	Public	
FOI Clause (Private documents only)	n/a	

Change record

Version	Date	Amendment details	Status
1	Aug 2016		Withdrawn
1.1	29 Nov 2021	3 year review. Template updated to include Our journey to Change. Section 4.3 updated to include link to the latest guidance on funding for s117. Section 4.8 has been removed and is covered in 4.3.	Withdrawn
1.1	06 June 2023	Corrected document control: <ul style="list-style-type: none"> Next review date corrected from 29 Nov 2021 to 29 Nov 2024. Amended “To be added to the minutes of Mental Health Legislation Committee (Jan 2022)” to “Mental Health Legislation Committee 17 Feb 2022 (retrospective record of approval)” 	Withdrawn
1.2	31 Aug 2023	Minor wording changed In sections 3.2 and 4.8 “Paris” changed to “electronic patient record” In section 4.8 “MHA Department” has been changed to “MHL Department”	Published

Appendix 1 - Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc.	MHL			
Policy (document/service) name	Section 117 Mental Health Act			
Is the area being assessed a...	Policy/Strategy		Service/Business plan	Project
	Procedure/Guidance		X	Code of practice
	Other – Please state			
Geographical area covered	Trust wide			
Aims and objectives	To comply with the legislative requirements of the MHA 1983 and associated Code of Practice			
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	01 July 2021			
End date of Equality Analysis Screening (This is when you have completed the equality analysis and it is ready to go to EMT to be approved)	19 July 2021			

You must contact the EDHR team if you identify a negative impact. Please ring the Equality and Diversity Team on 0191 3336267/3046

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?					
It benefits staff and patients to ensure they are aware of the requirements of the MHA					
2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?					
Race (including Gypsy and Traveller)	No	Disability (includes physical, learning, mental health, sensory and medical disabilities)	No	Sex (Men, women and gender neutral etc.)	No
Gender reassignment (Transgender and gender identity)	No	Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.)	No	Age (includes, young people, older people – people of all ages)	No
Religion or Belief (includes faith groups, atheism and philosophical belief's)	No	Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners)	No
<p>Yes – Please describe anticipated negative impact/s</p> <p>No – Please describe any positive impacts/s</p>					

<p>3. Have you considered other sources of information such as; legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.? If 'No', why not?</p>	<p>Yes</p>	<p>X</p>	<p>No</p>	
<p>Sources of Information may include:</p> <ul style="list-style-type: none"> • Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc. • Investigation findings • Trust Strategic Direction • Data collection/analysis • National Guidance/Reports 	<ul style="list-style-type: none"> • Staff grievances • Media • Community Consultation/Consultation Groups • Internal Consultation • Research • Other (Please state below) 			
<p>4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Sex, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership</p>				
<p>Yes – Please describe the engagement and involvement that has taken place</p>				
<p>The MHA and the associated code of practice undergoes a rigorous E&D consultation process. This guidance is based upon that.</p>				
<p>No – Please describe future plans that you may have to engage and involve people from different groups</p>				

5. As part of this equality analysis have any training needs/service needs been identified?					
Yes/No	Please describe the identified training needs/service needs below				
A training need has been identified for;					
Trust staff	No	Service users	No	Contractors or other outside agencies	No
Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so					
If you need further advice or information on equality analysis, the EDHR team host surgeries to support you in this process, to book on and find out more please contact the team					

Appendix 2 – Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Y	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Y	
2.	Rationale		
	Are reasons for development of the document stated?	Y	
3.	Development Process		
	Are people involved in the development identified?	Y	
	Has relevant expertise has been sought/used?	Y	
	Is there evidence of consultation with stakeholders and users?	Y	
	Have any related documents or documents that are impacted by this change been identified and updated?	Y	
4.	Content		
	Is the objective of the document clear?	Y	
	Is the target population clear and unambiguous?	Y	
	Are the intended outcomes described?	Y	
	Are the statements clear and unambiguous?	Y	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Y	
	Are key references cited?	Y	
	Are supporting documents referenced?	Y	
6.	Training		
	Have training needs been considered?	Y	
	Are training needs included in the document?	Y	
7.	Implementation and monitoring		

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
	Does the document identify how it will be implemented and monitored?	Y	
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Y	
	Have Equality and Diversity reviewed and approved the equality analysis?	Y	
9.	Approval		
	Does the document identify which committee/group will approve it?	Y	
10.	Publication		
	Has the policy been reviewed for harm?	Y	
	Does the document identify whether it is private or public?	Y	public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	NA	