journey to change

NHS
Tees, Esk and Wear Valleys
NHS Foundation Trust

Public – To be published on the Trust external website

Section 132/132A MHA – providing information to patients and patients' nearest relatives

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Status: Approved
Document type: Procedure

Contents

1 Introduction

When patients are subject to the Mental Health Act 1983 (MHA) there is a statutory requirement to ensure they are provided with information about how the act applies to them. There is also a requirement to provide information to a patient's nearest relative.

One of the Trust's goals from Our Journey to Change is to provide a great experience for patients, families and carers. Although being subject to the MHA is usually a difficult and distressing time for patients, families and carers, this procedure will help to support patients and protect their rights.

2 Purpose

Following this procedure will help the Trust to meet its obligations to:

- Make sure that all patients subject to the Mental Health Act 1983 (MHA) are given and understand information about how the MHA applies to them.

In inpatients, this duty is delegated to qualified care staff, nursing associates or associate practitioners.

For patients on a Community Treatment Order (CTO) who have not been recalled to hospital, the Care Coordinator is responsible, but rights can be read by qualified care staff, nursing associates or associate practitioners.

- Make sure that information is also given to the patient's nearest relative.

This duty is delegated to the Mental Health Legislation (MHL) department.

3 Who this procedure applies to

This procedure applies to all staff who work with patients who are subject to the MHA. This procedure aligns to the Trust's values of respect.

4 Related documents

Mental Health Act 1983 Code of Practice, TSO, 2015

TEWV Interpreting and translation policy

TEWV Independent Mental Health Advocacy (IMHA) Procedure

5 Providing relevant information

- Written information can be found in leaflets produced for this purpose. Leaflets can be obtained from the MHL department or from the staff intranet.
- These leaflets are available in different languages and formats (including audio visual DVD, Easy Read and Braille) and can be obtained from the MHL department.
- Leaflets in the most common languages are available on InTouch. If leaflets in additional languages are required please contact the MHL department.
- An interpreter must be used for patients whose first language is not English or who require interpretation due to sensory deficits. See the Interpreting and Translation Policy for more information.

6 Information that must be provided to patients

This is a summary of information that is provided in chapter 4 of the MHA Code of Practice.

6.1 Information about detention and CTOs

You must explain the following:

- Of the provisions of the Act under which they are detained or subject to a CTO, and the effect of those provisions;
- Of the rights (if any) of their nearest relative to discharge them, and what can happen if their responsible clinician does not agree with that decision;
- For CTO patients, of the effect of the community treatment order, including the conditions which they are required to keep to and the circumstances in which their responsible clinician may recall them to hospital.
- 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 ended 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.
- For patients who have been recalled on a CTO, the reasons for being recalled;
- For patients whose CTO has been revoked, the reasons for revocation.

6.2 Information about recall to hospital whilst on a CTO

If a patient is to be recalled to hospital, the Responsible Clinician (RC) should give (or arrange for someone else to give) oral reasons for the decision before the recall. The patient may nominate another person who they wish to have informed of the decision.

6.3 Information about consent to treatment

You must explain what the MHA says about treatment for their mental disorder. In particular the patient must be told:

- The circumstances (if any) in which they can be treated without their consent – and when they have the right to refuse treatment;
- The role of second opinion appointed doctors (SOADs) and when they may be involved; and
- (Where relevant) the rules on electro-convulsive therapy (ECT).

6.4 Information about the tribunal

You must explain the following to the patient. The MHL department must inform the nearest relative where applicable:

- Their right to apply to the Tribunal;
- About the role of the Tribunal;
- How to apply to a Tribunal;
- How to contact a suitably qualified legal representative;

- That free Legal Aid may be available;
- How to contact any other organisation, which may be able to help them make an application to a Tribunal.
- CTO patients whose community treatment orders are revoked, and conditionally discharged patients recalled to hospital, should be told that their cases will be referred automatically to the Tribunal.

Tribunal application forms can be found here

6.5 Information about the hospital managers

You must explain the following:

- That the responsible clinician and the hospital managers have the right to discharge them (and, for restricted patients, that this is subject to the agreement of the Secretary of State for Justice).
- That the patient has the right to ask the hospital managers to discharge them;
- That the hospital managers must consider discharging them when their detention is renewed or their CTO extended;
- That this renewal or extension is different to their right to a Mental Health Review Tribunal.

If a patient wishes to appeal to the hospital managers this can be recorded on a rights form within the electronic patient records. The MHL team will be automatically notified about this. Alternatively, arrangements can be made directly with the MHL department.

6.6 Information about independent mental health advocacy (IMHA)

You must explain the following:

- That they have the right to have access to statutory independent mental health advocacy.

Information about IMHA services must be given to all eligible patients and a TEWV leaflet is available.

See the TEWV IMHA procedure for further information

6.7 Information about the Care Quality Commission (CQC)

You must explain the following:

- The role of the Care Quality Commission,
- When the Commission is to visit the hospital or unit – where advance notice is given;
- Of the role of the commissioners and their right to meet with them;
- Of their right to complain to the Care Quality Commission.

7 Information for nearest relatives

The MHL department must give the patient's nearest relative a copy of any information given to the patient in writing, unless the patient requests that you don't do this.

8 When to give information

When a patient is first detained you must:

- Explain rights as described in section 4- Information that must be provided to patients
- Complete a rights form within the electronic patient record.

You must review rights as described in section 4 - Information that must be provided to patients whenever any of the following happen

- Detention is renewed or CTO is extended
- There is a change in the patient's legal status
- The patient is transferred
- Unsuccessful appeal against detention
- The patient is seen about consent to treatment
- There is a significant change in the patient's treatment
- A CTO patient or Conditionally Discharged patient is recalled to hospital
- A CPA review takes place

- It is three months since an inpatient's rights were reviewed

9 Rights Form

The reading of rights should be recorded in the electronic patient record using a Record of Rights form. A form should be completed every time a patient is read their rights.

10 Definitions

Term	Definition
Nearest relative	Patients subject to the MHA have a nearest relative. This may not be the same person as the next of kin. The MHA requires hospital managers to provide the patient's nearest relative with information about the patients detention.
CTO	A Community treatment allows suitable patients to be safely treated in the community rather than under detention in hospital.
Tribunal	The tribunal is an independent judicial body. Its main purpose is o review the cases of detained and conditionally discharged.
Hospital managers	The hospital managers refers to the Trust or organisation responsible for the hospital where a patient is subject to the MHA. They have the power to discharge patients and this function is delegated to the associate hospital managers.
IMHA	Independent Mental Health Advocates are trained advocates that support patients subject to the MHA.

11 How this procedure will be implemented

- This procedure will be published on the Trust's intranet and external website.
- Line managers will disseminate this procedure to all Trust employees through a line management briefing.

11.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
Clinical staff with a professional registration	MHL e-learning	3 hours	Every 2 years
Clinical staff without a professional registration	MHL e-learning	3 hours	Every 2 years

12 How the implementation of this procedure will be monitored

Number	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	Rights competed on initial detention and transfer	MHL monitor compliance and escalate with clinical services if not completed.	Report on patients' rights sent to MHLC on a quarterly basis.

13 References

Mental Health Act 1983 Code of Practice, TSO, 2015

14 Document control (external)

To be recorded on the policy register by Policy Coordinator

Required information type	Information
Date of approval	31 August 2023
Next review date	17 February 2025
This document replaces	MHA-0009-v5.1 Section 132 Providing information to patient and patients' nearest relatives
This document was approved by	MHLC
This document was approved	31 August 2023
This document was ratified by	n/a
This document was ratified	n/a
An equality analysis was completed on this policy on	Dec 2021
Document type	Public
FOI Clause (Private documents only)	n/a

Change record

Version	Date	Amendment details	Status
4.1	Jan 2017	Forms 132A and 132B revised	Withdrawn
5	Jun 2018	Minor formatting changes.	Withdrawn
5	08 July 2020	Links to inTouch removed. Review date extended by six months to 12 Jan 2022.	Withdrawn
5	23 Aug 2021	Review date extended to 23/02/2022	Withdrawn
5.1	Dec 2021	3 yearly review with minor changes:- Template updated to include Our Journey to Change. Section 2: nursing associates and associate practitioners included as staff who can read rights. Section 5, 6.4 and 6.5: Minor amendments to clarify the process.	Published
5.2	3	Minor changes made to sections 6.5, 8 and 9. These changes reflect the changes to the recording process within the new electronic patient record system. 132A and 132B forms have been amalgamated into one form.	

		References to PARIS have been replaced with “electronic patient record”.	

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.	Mental Health Legislation Department					
Policy (document/service) name	Section 132 – Providing information to patients					
Is the area being assessed a…	Policy/Strategy		Service/Business plan		Project	
	Procedure/Guidance			X	Code of practice	
	Other – Please state					
Geographical area covered	Trustwide					
Aims and objectives	• Make sure that all patients subject to the Mental Health Act 1983 (MHA) are given and understand information about how the MHA applies to them. • Make sure that information is also given to the patient's nearest relative.					
Start date of Equality Analysis Screening (This is the date you are asked to write or review the document/service etc.)	Original EA screening completed in June 2018. Reviewed Dec 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)	**Dec 2021**					

You must contact the EDHR team if you identify a negative impact - email tewv.eandd@nhs.net

1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?

- Ensures that the obligations placed on TEWV by the Mental Health Act 1983 are met

Ensures that patients and their nearest relatives are provided with information about detention under 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

Yes – Please describe anticipated negative impact/s

No – Please describe any positive impacts/s

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?**	**Yes**	**X**	**No**	

Sources of Information may include: • Feedback from equality bodies, Care Quality Commission, Equality and Human Rights Commission, etc. • Investigation findings • Trust Strategic Direction • Data collection/analysis • National Guidance/Reports		• Staff grievances • Media • Community Consultation/Consultation Groups • Internal Consultation • Research • Other (Please state below)

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

Yes – Please describe the engagement and involvement that has taken place

No – Please describe future plans that you may have to engage and involve people from different groups

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	Yes	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					

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	

	Title of document being reviewed:	Yes/No/ Not applicable	Comments
7.	**Implementation and monitoring**		
	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 document been reviewed for harm?	Y	
	Does the document identify whether it is private or public?	Y	
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	NA	