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Information for Detained Patients, Patients subject to a Community Treatment Order and Nearest Relatives

(Sections 132, 132A and 133 – Mental Health Act 1983)

(Replaces Policy No. TP/MHA&MCA/305 V4)

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EXECUTIVE SPONSOR	Chief Nursing Officer
POLICY AUTHOR	Mental Health Law Practice Development Manager

KEY POLICY ISSUES:

- 1) One procedure for use throughout Sussex Partnership NHS Foundation Trust to replace the policies used in each locality.
- 2) Incorporates changes made to the Mental Health Act 1983 and the Code of Practice.

If you require this document in another format such as large print, audio or other community language please contact the Corporate Governance Office on 0300 304 1195 or email:
policies@sussexpartnership.nhs.uk

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Information for Detained Patients, Patients subject to a Community Treatment Order, Nearest Relatives and Informal Patients

1.0 Introduction

This procedure outlines the formal process of informing patients detained under the Mental Health Act (“MHA”) 1983 of their rights. It also outlines information that should be provided to patients who are discharged from detention under the MHA.

1.1 Purpose of Policy

This document outlines the legal requirements relating to the giving of information to patients detained under the MHA 1983, as required by sections 132 and 132A MHA 1983. This document gives guidance on the completion of the s132 monitoring form which must be used to evidence the giving of information.

1.2 Scope of Policy

This policy applies to all those who are involved in the care and treatment of those subject to detention in hospital or subject to a Community Treatment Order (“CTO”) under the Mental Health Act 1983 and the care and treatment of informal patients.

1.3 Principles

Use of the MHA severely restricts the rights and freedom of the person to whom it is applied; time must therefore be taken to ensure that information about use of the MHA is given to the patient in a way that makes it possible for the patient to understand their situation. This is not a one-off exercise.

Everything should be done to overcome barriers to effective communication. Most patients will have difficulty understanding the complexity of the law, technical terms and jargon and some may:

- have a different perspective based on their cultural background or religion
- not speak or read English as a first language
- have a hearing / visual impairment
- have difficulty in reading or writing .

Independent advocates and interpreters must be used if necessary.

The trust have provider contracts for language interpreting, braille and easy read translations to comply with the Accessible Information Standard'

2.0 Policy Statement

This policy is to ensure compliance with the MHA 1983 and associated Code of Practice and to assist ward and community teams who have responsibilities for ensuring good practice and adherence to the Act.

3.0 Duties

Chief Nursing Officer

Ensure a fit for purpose ratified policy is in place.

General Managers, Matrons, Team Managers and Ward Managers

Ensure that this policy and procedure is adhered to within their area of accountability.

Clinical staff (qualified and unqualified) / Lead Practitioner

Staff providing care to a person detained under the MHA or subject to a Community Treatment Order and Conditional Discharged patients (Part III of the MHA) are responsible for providing the patient with information regarding their rights under the MHA.

Staff are also responsible for communicating to the MHA office the patient's wishes on releasing information to the nearest relative.

Mental Health Law Services Team

Responsible for ensuring that training and advice is provided to ward and community teams.

4.0 Procedure

4.1 The duty to give information to patients subject to the MHA

Sections 132(1) and 132A(1) of the MHA require that patients who are detained in hospital under the MHA, or who are subject to CTO are informed about how the MHA applies to them as soon as is practicable after the start of the detention or CTO.

The information is required to be given both orally AND in writing, including in accessible formats as appropriate (e.g. braille, easy-read); these are not alternatives. All information must be communicated in a way the patient understands. (para 4.10 Code of Practice 2015.)

The MHA Code of Practice 2015 clearly states that it would not be sufficient to repeat what is already written on an information leaflet as a way of providing information orally (para 4.11 Code of Practice 2015).

It is also necessary to take such steps as are practicable to give the patient's nearest relative a copy of any information given to the patient in writing, under this section, unless the patient requests otherwise. This should happen at the time the patient is given the information or within a reasonable timescale thereafter.

Steps should be taken to find out whether a patient who lacks capacity has an attorney or deputy with authority to make decisions for that person's welfare. Where there is such a person he/she acts as the person's agent and should be informed in

the same way as the patient themselves about matters within the scope of their authority.

4.2 When should information be given?

Detained inpatients – On admission a patient must be given oral and written information regarding their status. All possible steps must be taken to ensure that patients are given and understand specific information relating to their detention as soon as practicable after the start of their detention.

If a patient does not understand their rights further attempts should be made on a regular basis until the patient understands and all attempts **must** be recorded on the Carenotes “Rights Recording Sheet”.

There should always be a further date entered onto the s.132 form to record when the next s.132 conversation is scheduled. The next date is at the discretion of the staff member and will be dependent on the needs of the patient.

Responsibility for ensuring that the conversation about the rights is repeated as appropriate for the patient rests with the lead practitioner.

For example, this could be on a weekly basis.

It is clearly not practicable for staff to attempt to provide the informally orally to a patient who is either too ill to understand the information, refuses to listen to staff, or becomes significantly distressed when the attempt is made. If the patient initially fails to understand the information or is too distressed to receive it, staff should make further attempts to provide the information if it is considered that the patient’s mental state has improved to the extent that such an attempt would be likely to succeed.

Patients subject to CTO – At the start of supervised community treatment a patient must be given oral and written information regarding their status. Where this is not possible, all possible steps must be taken to ensure that patients are given and understand specific information relating to their detention as soon as practicable after the start of their CTO. This should be repeated at appropriate intervals dependent on the need of each individual patient.

For detained patients and those subject to a CTO, the process of giving information must be repeated in the following circumstances:

- The patient is considering appealing or becomes eligible again to appeal to either the Tribunal or hospital managers;
- Any changes in relation to the patient’s treatment plan or their consent to that treatment (e.g. because three months have passed since they were first given treatment or have regained capacity to consent to treatment);
- There is to be a Care Programme Approach review (or its equivalent);
- A decision has been taken to renew their detention or extend their CTO;

- When the detention/CTO has been ended to advise of their rights as an informal patient (see 4.9 and the Acute Inpatient Mental Health Service Operational policy).

Patients subject to Conditional Discharge – a patient subject to a conditional discharge must be advised of their right to appeal to the Tribunal for an absolute discharge between 12 months and 2 years following the start of the conditional discharge, and again during each subsequent 2 year period. This should be repeated at appropriate intervals within the above timescales dependent on the need of each individual patient.

4.3 What information should be given?

Patients must be informed of:

The Section

- The provisions of the MHA (i.e. the section) under which they are detained or on CTO and the effect of those provisions.
- the maximum length of the current period of detention or CTO or that this may be ended at any time if it is no longer required or the criteria are no longer met
- the reason for their detention or CTO
- the right of the Responsible Clinician and hospital managers to discharge them

Treatment

- The nature, purpose and likely effects of the 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.
- how and when treatment can be given without consent, the role of second opinion appointed doctors (SOADs) and the circumstances in which they may be involved.
- (where relevant) the rules on electro-convulsive therapy (ECT).

Right to Appeal

- Their right to have their views about being detained, being subject to CTO or discharge considered before any decision is made about the renewal of the section or discharge.
- the rights (if any) of the nearest relative to discharge them

- their right to appeal to the Tribunal, the role of the Tribunal and how to apply especially in the case of CTO patients (* - see below)
- their right to appeal to the hospital managers to discharge them (* - see below)
- that the hospital managers must consider discharging them when their detention is renewed or their CTO extended.
- right to legal representation and how to contact a suitably qualified solicitor
- that free legal aid may be available
- how to contact any other organisation who may be able to help them make an application to the Tribunal

* To be able to exercise their right of appeal, the patient must have capacity to make the decision. This is a low threshold and requires only that (a) the patient understands they are detained against their wishes and (b) the Tribunal and Hospital Managers have the power to discharge them. The decision around capacity is made by the staff member talking with the patient about their rights. If the patient wishes to appeal, but there is concern they do not have capacity to make this decision, please speak to your local MHA office for advice as it may be possible for the Secretary of State to make a referral to the Tribunal on the patient's behalf.

Information about the Care Quality Commission & Independent Mental Health Advocate

- The role of the Care Quality Commission and their right to meet visiting commissioners in private, including appropriate arrangements for those patients on CTO.
- the right to make a complaint to the Commission and the procedure for doing this.
- the right to and role of the Independent Mental Health Advocate (IMHA).

Information about withholding of correspondence

- detained patients must be informed that post that is sent by them may be withheld if the person to whom it is addressed requests this.

General

- How to complain
- Information around safeguarding – this should be clearly displayed for patients in ward areas.

Patients should also be informed when they are discharged from detention or CTO or when the authority for their detention or CTO expires. They should also be given an explanation of what happens next including any section 117 aftercare or other services which are to be provided.

Leaflets detailing the above information must be available on all in-patient wards, on and at community team offices, as appropriate. Copies of patient information leaflets can also be printed from the Trust intranet. They must be given to the patient by the person talking to them about their circumstances and rights. The MHA office will be able to provide alternative format leaflets if required.

4.4 Who should give the information?

It is the duty of the patient's primary nurse to ensure that information is being given to the detained patient, although this may be delegated to be undertaken by another staff member (which may be an unqualified clinical staff member, nursing associate or support worker) provided they have completed MHA training and the competency checklist (see Appendix A) and are clear on their responsibilities relating to documentation.. The giving of detailed information relating to the consent to treatment provisions for the purposes of the patient's own treatment plan should be undertaken by the patient's responsible clinician.

For those discharged on to CTO the information should be given by the patient's primary nurse or Nurse in Charge prior to discharge on to the CTO and again by the patient's care co-ordinator once the CTO is implemented. The responsibility may be delegated to be undertaken by another staff member (which may be an unqualified clinical staff member, nursing associate or support worker) provided they have completed MHA training and the competency checklist (see Appendix A). However, as with those detained in hospital, the giving of information relating to the consent to treatment provisions may more appropriately be undertaken by the patient's Responsible Clinician (RC).

For those subject to a Conditional Discharge (Part III of the MHA) the information should be given by the patient's social supervisor.

Where an interpreter is needed, consideration should be given to the patient's gender, religion, belief, age, language, dialect and cultural background. Interpreters need to be skilled and experienced in medical or health-related interpreting. Using the patient's relatives and friends as intermediaries or interpreters is not good practice, and should only exceptionally be used, including when the patient is a child or a young person. All interpreters must respect the confidentiality of any personal information they learn about the patient through their involvement (paragraph 4.6 Code of Practice to the MHA 2015).

An unqualified member of staff, including Nursing Associates may only discuss rights with a patient once they have successfully completed all steps outlined in the Checklist – see Appendix A.

4.5 How should the information be given?

The member of staff who gives the information must have received appropriate training before undertaking this process.

The information should:

- be given at a suitable time
- be given somewhere quiet and private
- be given in a friendly and helpful way
- be given in a way that the patient understands
- be in an accessible format, including, where appropriate, with the aid of assistive technologies and interpretive and advocacy services .
- be given as part of a conversation
- reflect the content of the rights leaflet

4.6 S132 Rights Recording Form

Each attempt to explain the rights **must** be recorded on the “Rights Recording Sheet” using the electronic s.132 form on Carenotes.

4.7 Information for Nearest Relative

When a patient detained under the Act or subject to a CTO is given information, they should be told that the written information will also be supplied to their nearest relative, so that they can discuss their views about sharing this information and following discussion, raise any concerns or object to the sharing of some or all of this information. There should be discussion with the patient at the earliest possible time as to what information they are happy to share and what they would like to be kept private.

When giving the patient their s132 rights, the patient should be asked whether they consent to their nearest relative being supplied with written information about the patient’s detention. Information will only be sent to the nearest relative by the MHA office on confirmation from the ward that the patient does not object. The patient is not required to give reasons for their decision. The decision must be recorded on the s.132 Rights Recording form.

Where the clinical team are of the view that the patient lacks capacity to make this decision, they should take reasonable steps to establish whether an advance statement was completed by the patient when capable and is relevant to this decision.

If the patient lacks capacity to make this decision and there is no advance statement, then the clinical team must consider whether disclosing information to the nearest relative would have a detrimental impact on the patient that is disproportionate to any advantage to be gained from informing the nearest relative. Before disclosing

information to nearest relatives without a patient's consent, the person concerned must consider whether the disclosure would be likely to:

- put the patient at risk of physical harm or financial or other exploitation.
- cause the patient emotional distress or lead to a deterioration in their mental health or
- have any other detrimental effect on their health or wellbeing and, if so, whether the advantages to the patient and the public interest of the disclosure outweigh the disadvantages to the patient, in the light of all the circumstances of the case.

Where, after taking the above factors into account, the outcome is that information may be shared with the nearest relative, the MHA Office will send a copy of the relevant leaflet(s) to the patient's nearest relative together with a letter advising of the admission, change of section, renewal, extension of CTO, transfer to another hospital or discharge of the patient. This letter will also state the rights of the nearest relative regarding their powers of discharge (where appropriate).

In addition the clinical team have a duty to inform the nearest relative of a detained patient that the patient is about to be discharged from detention (including being discharged subject to a community treatment order) or discharged from a community treatment order. The information should be given at least seven days before the date of discharge if this is practicable. The duty does not arise if either the patient or his nearest relative has requested that this information should not be given (as above).

4.8 Information for Patient's Children

When considering the kind and amount of information which young people (and especially young carers) should receive about a patient's condition or treatment, clinical supervisors need to balance the patient's right to privacy and their wishes and feelings with the interests of the child. In almost all cases, information is not to be shared if the patient objects (para 4.35 MHA CoP 2015). The question can be revisited with the patient, but they must not be placed under any duress or pressure to share.

Any information given should be appropriate to the age and understanding of the child.

4.9 Information for Informal Patients

On admission to hospital, informal patients will also be given oral and written information about their status. A rights leaflet for informal patients should be available on every ward - please refer to the Acute Inpatient Operational policy. Patient's discharged from detention under the MHA or CTO must also have their rights as an informal patient explained.

Informal patients who lack capacity should have their position explained to them as far as possible and any close relative / carer / advocate should be kept informed about their care arrangements.

Informal patients who are capable of consenting to hospital admission should be made fully aware of their legal position and rights.

Local policies and arrangements about movement around the hospital and its grounds must be clearly explained to the patients concerned. Failure to do so could lead to a patient mistakenly believing that they are not allowed freedom of movement, which could result in an unlawful deprivation of their liberty.

5.0 Development, Consultation and Ratification

Policy and Procedure to be reviewed and amended by the Mental Health Law Services Team. To be ratified by the Professional Policy Forum.

6.0 Equality and Human Rights Impact Assessment (EIA)

The policy has been equality impact assessed in accordance with the Procedural Documents Policy.

7.0 Monitoring Compliance

Compliance with this policy is monitored through regular MHA audit completed by clinical teams and reported to MH Law Services Team. The MH Law Services Team will report to the Mental Health Act Committee any areas of concern regarding compliance with this policy.

8.0 Dissemination and Implementation of Policy

8.1 Dissemination

This policy will be uploaded onto the Trust website by the Governance Support Team. Publication will be announced via the Communications e-bulletin to all staff.

8.2 Training

S132 procedure is part of the essential MHA training; all staff will be made aware of the requirements of this policy.

9.0 Document Control Including Archive Arrangements

This policy will be stored and archived in accordance with the Trust Procedural Documents Policy.

10.0 Reference Documents

MHA Code of Practice 2015

Appendix A – Sharing of s.132 information - Competency checklist for unqualified clinical staff / Nursing Associates

To be completed by a qualified nurse in conjunction with the unqualified clinical staff member

Name of unqualified clinical staff member	
Ward/Team/Base	

Action	Date completed	Qualified Nurse signature	Qualified Nurse – print name
Discussed the s.132 policy and policy on a page			
Watch the s.132 training video http://staff.sussexpartnership.nhs.uk/i-need-help-with/mental-health-act/mental-health-act-mha-and-mental-capacity-act-mca-guidance			
Completed MHA elearning			
Successfully discussed rights with a patient and made record on Carenotes – Observation 1			
Successfully discussed rights with a patient and made record on Carenotes – Observation 2			

When all steps successfully completed please complete the following actions:

- Create entry in My Learning – Other evidence.
- Upload completed checklist.

Ongoing support as required in regular supervision meetings.

Must be reviewed as part of the Appraisal process and any further learning needs identified/actioned.