

Mental Health Act Section 117 Overarching Policy

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1.0 Introduction

Section 117 of the Mental Health Act (MHA) 1983, relates to after-care and imposes duties on the Health Authority and Local Authority to plan and provide such aftercare.

Section 117 applies to those subject to the following sections of the MHA 1983:-

- Section 3-compulsory admission to hospital for treatment
- Section 37-detention in psychiatric hospital under a court order
- Section 37/41 – detention in psychiatric hospital under a court order with restrictions.
- Section 45A-detention in hospital under a court order
- Section 47-under a transfer to hospital from prison
- Section 47/49 – transfer to hospital from prison with restrictions.
- Section 48- transfer of a remand prisoner
- Section 17-where the patient is granted leave to residential care there is an entitlement to s.117 after-care during the period of leave
- Section 17A-Community Treatment Orders

Patients detained under section 2, 4, 5 or 38 MHA 1983 are not entitled to s117 aftercare.

1.1 Purpose of policy

This policy was developed jointly by the Professional Heads of Social care for West Sussex, Brighton and Hove and East Sussex to provide clarification for staff in carrying out the duties under Section 117.

Section 117 applies to both children and adults who meet the relevant legal criteria.

Section 117 status must be recorded on CPA.

2.0 Purpose of Section 117 MHA 1983

The purpose of Section 117 as defined in the 2015 Code of Practice to the Mental Health Act is as follows:-

- Meeting a need arising from or related to the patient's mental disorder
- Reducing the risk of a deterioration of the patient's mental condition
- Reducing the risk of the patient requiring admission to hospital again for treatment for mental disorder.
- To maintain patients in the community, with as few restrictions as are necessary, wherever possible.

The Code of Practice (33.20) states:-

'The duty to provide after-care services exists until both the CCG and the local authority are satisfied that the patient no longer requires them. The circumstances in which it is appropriate to end section 117 after-care will vary from person to person and according to the nature of the services being provided.'

The Code of Practice (33.21) also goes on to state that services should not be withdrawn on the basis that: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 person is deprived of their liberty under the Mental Capacity Act 2005;
- the patient has returned to hospital informally or under section 2 of the Mental Health Act;
- The person is no longer on a CTO or section 17 leave.

Section 117 can apply when a patient is granted section 17 leave but only where the nature of that leave signifies the likely conclusion of the patient's period of acute inpatient care. (see *R (CXF) v Central Bedfordshire Council* [2017] EWHC 2311)

The Code of Practice (33.23) states:

'Even when provision of after-care has been successful in that the patient is now well settled in the community, the patient may still continue to need after-care services, eg to prevent a relapse or further deterioration in their condition.'

2.1 Section 117 Aftercare and 'Residence'

The Care Act 2014 (s.39(4)) specifies that an adult who is being provided with accommodation under S.117 MHA is to be treated as ordinarily resident in the area of the local authority in England or the local authority in Wales on which the duty to provide the adult with services under that section is imposed. (As the Care Act does not apply in Wales, it specifies that the term 'local authority in Wales' means a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014.)

S.117 MHA sets out that the **duty to provide aftercare services** under this part of the Act **rests with the local authority and CCG for the area in which the patient was ordinarily resident immediately before they were detained under the MHA** – even if the person will become ordinarily resident in another area after leaving hospital.

Regulations made under S.117 MHA may impose the duty of one CCG on another CCG or on NHS England instead. For more information, Regulations 14 and 15 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012/2996 may need to be consulted.

Although any change in the patient's ordinary residence after discharge will affect the local authority responsible for their social care services, it will not affect the local authority responsible for commissioning the patient's after-care plan under S.117 MHA. It may be affected however if the patient is subsequently detained again at a later point under the MHA.

As amended by the Care Act 2014, S.117 MHA provides that, if a person is ordinarily resident in local authority A immediately before detention under the MHA, and moves on discharge to local authority B and moves again to local authority C, then local authority A will remain responsible for providing or commissioning their after-care.

As amended by the Care Act 2014, if the patient, having become ordinarily resident after discharge in local authority B or local authority 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 (that is, local authority B or local authority C – whichever applies) will be responsible for the patient's after-care when they are discharged from hospital.

If the patient's ordinary residence immediately before being detained in hospital under the MHA was not in England or Wales, the local authority responsible for commissioning the patient's after-care will be the one for the area in which the patient is resident. Only if that cannot be established, either, will the responsible local authority be the one for the area to which the patient is sent on discharge. However, practitioners should only determine that a person is not resident anywhere as a last resort.

Where the patient lacks the mental capacity to make decisions about their accommodation, the judgment in the case of R (on the application of Cornwall Council) Secretary of State & OR's [2015] UK Supreme Court UKSC46 (Cornwall) is appropriate because the patient's lack of mental capacity may mean that they are unable to voluntarily adopt a particular place of residence. The Supreme Court concluded (paragraph 54) that: *"an authority should not be able to export its responsibility for providing the necessary accommodation by exporting the person who is in need of it."*

When a patient is conditionally discharged from Section 37/41 (within the meaning of the Mental Health Act). The Tribunal (mental health) may send the patient to an area by imposing a residence condition.

It is advisable to seek legal advice in complex situations.

2.2 Charging

Services provided under s117 MHA 1983 cannot be charged for by the local social services authority, including those provided under self directed support.

Continued eligibility for the provision of services under Section 117 will remain until the health authority and local social services authority are jointly satisfied that the patient is no longer in need of such services.

In *R (on application of Mwanza) v London Borough of Greenwich and London Bromley (2010)* the Court was asked to consider how far S117 duties would stretch. The court confirmed that local authority responsibility to provide aftercare is restricted to services which are designed to meet a need arising from a former patient's mental disorder.

The judgement also made clear that local authorities and health authorities will be given some discretion to determine a patient's needs and the level of service required to meet those needs.

2.2.1 - Provision of medication for mental disorder under Section 117

At the time of writing the medical exemption certificate does not cover provision of medication for mental disorder.

The patient can be bought a pre-payment certificate by the community team out of petty cash. The medication for mental disorder can then be prescribed either by an SPFT prescriber or the GP.

Guidance on how to obtain a pre-payment certificate can be found here:

<https://www.nhs.uk/using-the-nhs/help-with-health-costs/save-money-with-a-prescription-prepayment-certificate-ppc/>

2.3 Relationship between Section 117 Aftercare and NHS Continuing Healthcare

There are no powers to charge for services provided under Section 117, regardless of whether they are provided by the NHS or the Local Authority. The DoH guidance states it is not necessary to assess eligibility for NHS Continuing Health Care if all services in questions are to be provided as aftercare services under Section 117.

However patients in receipt of after care services under Section 117 may also have needs that are not related to their mental disorder and may not fall within the scope of Section 117. For example a person with physical health problems, not related to and pre-existing their detention under the Mental Health Act. In such circumstances it may be necessary to carry out an assessment for NHS Continuing Health Care on the basis of their physical problems. There is scope for joint funding care.

Care coordinators may be required to support completion of the NHS Continuing Care Checklist or the Decision Support Tool. The Decision Support Tool is a comprehensive multidisciplinary assessment of an individual's health and social care need. This consists of 12 'care domains' of which some relate directly to an assessment of patients' mental health needs. It would be advisable to seek advice and support from colleagues in the local Primary Care Trust Continuing Care Team.

Additionally guidance can be sought by reading The Department of Health National Framework for NHS Continuing Health Care and NHS Funded Nursing Care November 2012, (<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>).

3.0 Roles and Responsibilities

It is the responsibility of the Responsible Clinician (RC) to ensure that an after-care plan is in place prior to a patient being discharged, taking into consideration the service users protected characteristics, such as accessible locations and paperwork in appropriate formats. A review date should be set at the aftercare planning meeting.

The named nurse should check for any existing Section 117 Mental Health Act 1983 or Care Programme Approach arrangements.

Discharge planning must involve both health and social care staff, including the patient's Responsible Clinician. The purpose of RC input is to confirm that the patient no longer requires services to support them in the community, or to prevent relapse or further deterioration in their condition.

4.0 Ending the S.117 after-care provision

The duty to provide after care services continues until *both* authorities have come to a decision that the patient no longer needs *any* after-care services. A patient should not be discharged from care under this section solely on the ground that

- (1) he has been discharged from the care of a responsible clinician or specialist mental health services;
- (2) an arbitrary period has elapsed since the care was first provided;
- (3) the provision of care is successful in that he is well settled in the
- (4) community or in residential care and the continuation of after-care is needed to prevent a relapse or further deterioration in his condition;
- (5) he is no longer subject to a community treatment order of s.17 leave;
- (6) he returns to hospital as an informal patient or under s.2 and subsequently leaves the hospital;
- (7) the diagnostic category of the patient's mental disorder changes or

- (8) The patient has been made the subject of a deprivation of liberty authorisation under the MCA 2005.

5.0 Further Information

Further information can be sought from:

- The MHA office,
- The relevant Local Authority (each LSSA will have their own S117 policy)
- The Mental Health Act Manual (Jones)
- The MHA Code of Practice.

6.0 Equality, Diversity and Human Rights Impact Assessment (EHRIA)

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

7.0 Monitoring compliance

This document is a policy overarching other s117 policies held by each Local Authority. This document provides information for staff on section 117 to raise awareness.

The MH Law Services team will continue to monitor this policy to ensure it accurately reflects the MHA Code of Practice and any developments through case law.

8.0 Dissemination and Implementation of policy

8.1 Dissemination

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

8.2 Training

Section 117 entitlement is included within the MHA eLearning provision which is mandatory for all Trust staff.

Section 117 entitlement is also included in the mandatory training delivered to junior doctors.

9.0 Document Control including Archive Arrangements

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