Mental Health Act Policy Practice Guidance Note

Section 132 and 132A Mental Health Act 1983: Patients' Rights - Duty of Hospital Managers to give Information to Detained and Community Patients – V04

1. Introduction

1.1 The practice guidance note (PGN) sets out what information must be given to detained and community patients and their nearest relatives and when and how that information must be given and recorded. When implemented it should reflect anti-discriminatory practice. All services, interventions or actions must take into account any needs arising from race, gender, age, religion and belief, communication, sensory impairment, disability and sexuality.

1.2 The Mental Health Act 1983 (MHA) as amended by the MHA 2007, provides the legislative framework within which practitioners are expected to operate in order to ensure that any actions they take fulfil legal requirements.
2. Objectives and Scope

2.1 The objectives and scope of this PGN is to ensure the consistent fulfilment of the Hospital Managers duty under Sections 132 and 132A of the MHA to ensure that all patients subject to the MHA are given and understand:

a) Specific information as soon as is practicable after being made subject to the Mental Health Act.

b) Particular information in so far as it is relevant to the patient

2.2 The Hospital Managers are required to ensure that the above information is given to the patient both orally and in writing and must also be given in writing to the patient’s nearest relative, except where the patient requests otherwise. Where the patient lacks capacity, information will always be given to the nearest relative under best interests, unless there is reason not to. Reasons for which should be clearly recorded in the patient’s Progress Notes.

3. Definitions/Glossary

3.1 Hospital Managers - have a central role in operating the provisions of the Mental Health Act. In NHS Foundation Trusts, the Trust itself is defined as the Manager though most of the Hospital Managers’ responsibilities are delegated to officers of the Trust, including Mental Health Act Administrators, Registered Nurses and Responsible Clinicians. These delegated duties are detailed in Northumberland, Tyne and Wear NHS Foundation Trust CNTW(C)55 MHA Policy - PGN-07 Delegation of Statutory Functions under the MHA 1983 (and associated Schedule of Delegation (appendix 1).

4. Process/Procedure

4.1 As soon as practicable after the MHA is implemented and no later than seven days following the section being implemented, the nurse in charge of the ward will ensure that an attempt is made to provide the patient with information about their rights under the MHA 1983. This includes the shorter sections of the MHA such as Section 5(2). However it will be necessary to provide the information for short term sections within the currency of the section.

4.2 Where a patient is a community patient subject to a Community Treatment Order (CTO) the responsible clinician (RC) (this is the responsibility of the in-patient RC making the CTO) will ensure that the patient is informed about their rights under the MHA at the time the Community Treatment Order is made.

4.3 This information may be reinforced by MHA Administration Staff, Independent Mental Health Advocates; Advocacy and in other ways such as via the Patient Information Centre, Trust Intranet, Local Posters and Touchscreens.

4.4 The information given must be:

- Correct
- Given in a suitable manner and at a suitable time and in accordance with the requirement of the law

- In a language that can be understood by the patient, taking into consideration ethnicity, sensory impairments, or any disabilities that the patient may have

- Given by a member of staff who has relevant knowledge and skills and as designated by the Delegation of statutory functions PGN

- Recorded accurately, including how, when, where and by whom it was given

- Regularly checked to ensure that the information has been given to each patient subject to the MHA and that they have understood it (it is important that the patient is given the opportunity to ask questions)

4.5 The patient must be provided with both verbal and written information on:

- Detention, renewal and discharge

- Consent to treatment

- Applications to Mental Health Tribunals

- Hospital Managers Panels

- Independent Mental Health Advocacy (IMHA)

- Complaints

- Safeguarding

- Legal advice

- Information about the CQC

4.6 Written information can be found in leaflets.

- These are specifically produced for this purpose, and are available on the Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust intranet on the link [Here](http://nww1.CNTW.nhs.uk/forum/UploadedFiles/1404319862GMS%20user%20guide%20F2F%20booking.pdf)

- These leaflets are available in different languages and can be accessed from the patient information centre on the following link and on specific request from the MHL Departments. [Here](http://nww1.CNTW.nhs.uk/forum/UploadedFiles/1404319862GMS%20user%20guide%20F2F%20booking.pdf)

- Interpretation Services should be accessed for patients whose first language is not English or who require interpretation due to sensory deficits [http://nww1.CNTW.nhs.uk/forum/UploadedFiles/1404319862GMS%20user%20guide%20F2F%20booking.pdf](http://nww1.CNTW.nhs.uk/forum/UploadedFiles/1404319862GMS%20user%20guide%20F2F%20booking.pdf)
4.7 **Detention, Renewal and Discharge** - The patient must be informed:

- Of the provisions of the Act under which they are detained or on CTO, the effect of those provisions including (for CTO patients) the conditions they are required to keep and the circumstances in which their responsible clinician may recall them to hospital

- Of the reasons for detention or CTO

- Of the maximum length of the current period of detention or CTO

- Of the right (if any) of the nearest relative to discharge them and what can happen if the responsible clinician disagrees with that decision

- 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/CTO ends

- That their detention/CTO will not automatically be renewed or extended when the current period of detention/CTO ends

- Of their right to have their views about their continued detention/CTO or discharge considered before any decision is made

- Detained patients must be told that their letters for posting may be withheld if the person to whom it is addressed asks the hospital managers to do so

- Detained patients should be told about any section 17 leave arrangements that apply to them and the conditions of such leave

4.8 **Consent to Treatment** – This section should also be reinforced by the patient’s RC. The patient must be informed:

- Of the nature, purpose and likely effects of the treatment which is planned

- Of their rights to withdraw their consent to treatment at any time and of the need for consent to be given to any further treatment

- How and when treatment can be given without their consent, including by the second opinion process and the likely effects of their stopping treatment against medical advice

- Where relevant, the rules on ECT
4.9 **Applications to Mental Health** Tribunals - Patients must be informed by Nursing Staff or RC* (*or their delegate - for CTO).

- Their right to apply to the Mental Health Tribunal
- About the role of the Tribunal
- How to apply to a Tribunal
- How to contact a suitably qualified solicitor
- That free Legal Aid – Advice by Way of Representation (ABWOR) may be available
- How to contact any other organisation, which may be able to help them make an application to a Tribunal

4.10 **Hospital Managers** - The patient must be informed by nursing staff, RC (for CTO):

- Of their right to seek discharge by the Hospital Managers
- Of the distinction between this and their right to a Mental Health Tribunal

4.11 **Independent Mental Health Advocacy (IMHA)** - The patient must be informed by nursing staff, or RC* (*or their delegate for CTO), of their right to have access to statutory independent mental health advocacy and how they can obtain that help. Information relating to IMHA services will be given to all eligible patients and a specific leaflet is available for the purpose of providing information in writing.

4.12 **Care Quality Commission** - Patients must be informed:

- About the role of the Care Quality Commission
- When the Commission is to visit a hospital or unit – where advance notice is given
- Of their right to meet with the Commissioners in private
- Of their right to complain to the Commission

5. **When to give information to Detained/Community Patients and Record Keeping**

5.1 The above procedure will be recorded using the local form on RIO – Record of Rights Given Form H3L. This will be completed as soon as practicable after the patient’s detention/CTO and have a seven-day performance standard.
5.2 The patient’s rights will be revisited at regular intervals determined by their level of understanding, comprehension and for patients with capacity taking into consideration their wishes; and recorded using Form H3L.

5.3 The assessment of the patient’s level of understanding (using the MCA 2 stage diagnostic and the 4 stage functional test) should be recorded in the patient’s progress notes in their case record and the rationale for the scheduling of the next provision of rights should recorded in the patient’s care plan.

5.4 The patient’s rights will be revisited at least every 3 months. This should be sooner if there is a significant change in the patient’s mental health and/or their level of understanding means they are unable to understand the information relevant to Section 132/132A; and always:

- At the seven-day ‘follow up’ appointment (CTO patients)
- When the patient is considering applying to the Tribunal, or when the patient becomes eligible again to apply to the Tribunal
- It is particularly important that patients detained under section 2 of the MHA are reminded of their right to appeal to the Tribunal within 14 days, starting with the day they were detained under section 2. Failure to have done this in cases where the patient missed the 14 day deadline, could result in a breach of the patient’s human rights.
- When the patient requests the hospital managers to discharge them, or such a request is refused
- Following an unsuccessful appeal to MHT or Hospital Managers
- When the rules in the Act about their treatment change (e.g. because three months have passed since they were first given medication
- When they have regained capacity to consent to treatment.
- When any significant change in their treatment is being considered
- When there is to be a care programme approach review (or its equivalent)
- If renewal of their detention, or extension of their CTO is being considered
- If a decision is taken to renew their detention or to extend their CTO
- Following transfer
- When the decision is taken to revoke Section 17 Leave and the patient is recalled to hospital
- When a decision is taken to recall a community patient or revoke a CTO, or a decision is taken to recall a conditionally discharged patient to hospital
- When a detained or community (CTO) patient is discharged or their detention/CTO expires. The patient should be given an explanation of what happens next including any Section 117 After-care, or other services which are to be provided.

6 **Information for Nearest Relatives**

6.1 Section 132 and 132A of the Mental Health Act 1983 requires that such steps as are practical are taken to provide the nearest relative with a copy of any information given to the patient in writing (unless the patient requests otherwise.) Refer to paragraph 2.2 above regarding providing information to nearest relatives in best interests where the patient lacks capacity.

6.2 In Cumbria, Northumberland, Tyne & Wear NHS Foundation Trust it is the responsibility of the Mental Health Legislation Team to provide written information to the nearest relative however this is in addition to registered nursing staff providing information to patients’ nearest relatives face-to-face as the need arises and in accordance with the patients care plan (unless the patient objects).

6.3 The patient should be told that written information will be supplied to the nearest relative and their views sought so that they have the opportunity to raise any concerns or object to the sharing of some or all of the information.

6.4 The information should be given to the nearest relative when it is given to the patient or within a reasonable time afterwards.

6.5 The nearest relative must be told of the patient’s discharge from detention or CTO unless either the patient or nearest relative has requested that information about discharge should not be given. This includes discharge from detention onto a CTO. If practicable, the information should be given at least seven days in advance of discharge.

6.6 Additionally, regulations require that nearest relatives be informed of various other events, such as the renewal of detention, extension of a CTO and transfer from one hospital to another. These duties to inform nearest relatives are not absolute and in almost all cases information is not to be shared if the patient objects.

6.7 There may be cases where the duty to share information does not apply because disclosing such information about the patient to the nearest relative cannot be considered practicable, on the grounds that it would have a detrimental impact on the patient that is disproportionate to any advantage gained from informing the nearest relative. This would therefore be a breach of the patient’s rights to privacy under Article 8 of the European Convention on Human Rights. The risk of this is greatest where the nearest relative is someone whom the patient would not have chosen themselves. 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 or financial harm 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 light of all the circumstances of the case.

6.8 Any decision (and the justification for the decision) to withhold information should be recorded in the patient’s case record.

6.9 Nearest relatives should be told of their power of discharge and how to use it. The Trust has provided a standard letter (appendix1) to complete which they may use, should they so wish, in any event any request must be in writing and contain all of the relevant information.

7. Training / Advice / Monitoring

7.1 This PGN is available on the Trust intranet.

7.2 Training of the contents and implications of this PGN will be incorporated in the existing training programme for MHA with Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust (the Trust). This can also be delivered via e-learning, on an individual basis to teams and departments on request to the local MHA office and in response to incidents and inspections.

7.3 Staff requiring further advice on issues relating to the operation of this PGN or the interpretation of legal points should use their usual reporting and consultative arrangements in the first instance. Local Mental Health Act offices can also offer advice.

7.4 It is a legislative requirement that every time the MHA is implemented to detain a person, the documentation and the process is scrutinised, both administratively and medically.

7.5 Every time the Mental Health Act is used, the processes and documentation are scrutinised within the MHA Departments.