

Mental Health Act 1983 – Revised Code of Practice Briefing

Introduction

The [Mental Health Act \(1983\) code of practice](#) provides guidance to professionals on how to carry out their roles and responsibilities under the Mental Health Act (MHA). The code was last updated in 2008 and there has been changes in legislation, policy case and professional codes of practice since then which has necessitated this revised versions.

The new code came into force on 1 April 2015 and provides guidance on a number of areas.

This briefing will outline the key changes to the code and key changes that affect carers.

Key Changes to the Code of Practice

The code has made a number of key changes which are highlighted below, these include:

- Five new guiding principles which are:
 1. Least restrictive option and maximising independence
 2. Empowerment and involvement
 3. Respect and dignity
 4. Purpose and effectiveness
 5. Efficiency and equity
- New sections on care planning, human rights, equality and health inequalities
- When the Mental Health Act can be used and when the Mental Capacity Act (2005) and Deprivation of Liberty Safeguards can be used.
- Sections on physical health care, blanket restrictions and duties to support patients with dementia
- In light of recent findings and rulings on restrictive practices, updated information on the appropriate use of restrictive interventions
- Guidance on how to support children, young people, people with a learning disability of autism.

Key Areas of Note for Carers and Carers' Organisations

The consultation with carers and service users on the changes to the Code of Practice have been welcomed by Carers Trust, the revised Code of Practice brings some welcome changes for carers.

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Key Points:

1. Two of the five guiding principles specifically cite carers, in particular principle two which states “carers..., if appropriate, should be fully considered when taking decisions” and principle three which states “carers should be treated with respect and dignity and listened to by professionals”. Specifically this guidance emphasises the need for patients to be encouraged and supported to involve carers and that professionals should fully consider their views when making decisions. (These two clear statements are very welcome as they echo the standards of the Triangle of Care and make clear the need for carer involvement and support.

2. The new code of practice (**chapter four**) sets out new and clear guidance on how carers (separate from nearest relative/next of kin) should be involved and supported. In addition the guidance is very clear about carers being provided with information and support through the process, areas of particular interest are:

- Even if a carer is not able to be given detailed information on the condition and treatment of the person they care for, they must be given general information (in an appropriate form) to help them understand mental health conditions, treatments and how the MHA works.
- Ensuring carers have access to practical and emotional support to help them make decisions with (or in some cases) about and for the person they care for.
- If carers request the information they provide is kept confidential this must be respected and recorded in the patient’s notes accordingly. Many carers have found this can cause conflict with the person they care for when consent to share is not sought by professionals. This is made explicit in the new guidance with carers being required to be asked for consent to share before any information is shared.
- The welcome addition of the guidance now applying equally to children and young people and those with a learning disability who are supporting the patient. The guidance states professionals must take into account the needs of the child in relation to the privacy of the patient, in addition the age appropriateness of the information being provided to the young carer must be ensured.

3. Service providers must make “reasonable efforts” to ensure that carers are informed of their rights under the Act.

4. The guidance makes recommendations on the use of advance statements for patients to express their wishes and make clear in advance (often when they are well) what their wishes are for carer involvement. This is a welcome addition as it often an area of anxiety for many carers that the wishes of the person they care for can differ severely when they are ill as opposed to when they are well.

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5. The guidance makes clear the value that sharing information with carers has benefits for the patient's care and treatment.
6. The guidance makes clear that requesting information from carers, or more specifically listening to carers, does not in and of itself constitute a breach of confidentiality so long as no confidential information is shared. In addition carers have the same right to the information they share to be treated confidentially.
7. Although a diagnosis cannot be disclosed without consent the guidance makes clear that general information should be given to carers including young carers that will help them understand the nature of mental ill health.
8. The Act recognises the value of patients maintaining contact with family when they are in hospital, in particular it makes clear that they should be admitted to a hospital as near as possible to their home. The Act states that where a patient is placed out of area then the needs of carers who have to travel in order to visit should be considered. The Act sets out clear guidance for commissioners in relation to this:

14.85 When a patient's carer informs the commissioner of difficulties in visiting the patient because of the distance that they need to travel, the commissioner should consider whether they can provide any assistance to support the patient's carer to visit and maintain contact with the patient. The commissioner should inform the carer that they can request a carer's assessment from the local authority. CCGs should work with the relevant NHS Commissioning Board regional team under these circumstances to seek to move the patient closer to their preferred location. (Additional information and reference can be found at 17.85)

9. The Act stipulates when making decisions on treatment, in particular whether or not to admit someone to hospital the impact of the deterioration or lack of improvement of the patient's on carers, young carers must be considered.
10. The Act makes specific reference to the need to involve carers in the treatment of those with a learning disability or autism, in particular making reference to practitioners not over-relying on carers to make decisions or support the person they care for. The Act makes clear the carer's willingness and ability to continue to provide care and support must be considered and practitioners ensure that carers have access to additional support for their own needs.
11. The new guidance makes specific reference to the Triangle of Care in its reference section and has clearly referred to this whilst developing the new code of practice.

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