Nurses, the administration of medicine for mental disorder and the Mental Health Act 1983

This guidance relates to England only

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This note provides guidance on the administration of medication to patients who are detained in hospital under the Mental Health Act, and to patients who are subject to SCT in the community and at the point of recall to hospital and revocation of SCT.

Care Quality Commission (CQC) urges health authorities, NHS Trusts and the proprietors of independent hospitals to include the following information in their policies and guidelines about the administration of medicines.

Introduction

If the rights and interests of patients are to be protected, it is essential that nurses, and other mental health practitioners, understand the consent to treatment provisions of the Mental Health Act 1983 (‘MHA 1983’), and in particular, of Part 4, as these relate to medication for detained patients, and Part 4A, as these relate to medical treatment of Supervised Community Treatment (SCT) patients in the community and upon recall to hospital. For simplicity, this guidance deals with detained patients and SCT patients separately.

CQC urges health authorities, NHS Trusts and the proprietors of independent hospitals to include the following information in their policies and guidelines about the administration of medicines.

Part A - Patients detained in hospital

see annex A

1. Patients to whom part 4 of the mental health act applies

The consent to treatment provisions in MHA 1983, Part 4 relating to medication do not apply in the case of a patient who is detained under MHA 1983, sections 4, 5(2) or 5(4), 35, 135, 136, or 37(4). Neither do they apply to a patient who has been conditionally discharged under MHA 1983, sections 42(2), 73 and 74. Therefore, medicine for mental disorder may not be administered to such a patient under MHA
1983, and they are in the same position as patients who are not subject to the Act at all, and have exactly the same rights to consent to and refuse treatment.

Part 4 in relation to medication therefore applies to patients detained under sections 2, 3, 36, 37 [except 37(4)], 38, 44, 45A, 47 and 48. It also applies to patients committed to hospital under the Criminal Procedure (Insanity) Acts, and to SCT patients who are recalled to hospital.

2. The three-month rule

For the first three months of a patient’s detention under a section of the MHA 1983 to which Part 4 applies, medication for mental disorder may be administered by nursing staff under the direction of the approved clinician in charge of treatment in question. There is no requirement for SOAD certification, even if the patient refuses consent or is incapable of giving it.

The three-month period begins when, during a continuous period of detention under a section to which Part 4 applies, medication is first administered to a patient; and it will continue even if the medication is changed or if it is not given continuously.

2. Treatment following the first three months

After the three-month period, medicine for mental disorder may be administered to a patient either with his/her capable consent or, if s/he withholds such consent or is incapable of giving it, if the giving of the medicine is authorised by a second opinion appointed doctor (‘SOAD’).

A patient’s capable consent to the administration of medicine should be recorded by the approved clinician in charge of the treatment on statutory Form T2 (A SOAD may also record a patient’s capable consent, and s/he should also use Form T2 for that purpose.) In the absence of such consent, authorisation by a SOAD should be recorded on statutory Form T3.

Before authorising the administration of medicine to an incapable patient, or to a capable patient who does not consent, a SOAD must interview the patient, discuss the treatment plan with the approved clinician in charge of the treatment, and consult two other persons who have been professionally concerned with the patient’s medical treatment. One of these ‘statutory consultees’ must be a nurse, and the other must be neither a nurse nor a doctor. (The second person may be, for example, a psychologist, a social worker, or an occupational therapist attached to the clinical team.) Neither the patient’s Responsible Clinician nor the approved clinician in charge of the patient’s treatment can act as ‘statutory consultees’, although of course the SOAD will wish to discuss the case with the approved
clinician in charge of the patient’s treatment and may wish to see the Responsible Clinician.

Visits by a SOAD should be arranged through the Care Quality Commission. (Please note, in particular, paragraph 24.38 the Mental Health Act Code of Practice).

3. Administration of medication

Where a nurse administers prescribed medication to a patient who is detained under MHA 1983 and subject to the provisions of Part 4, s/he should ensure that s/he is legally entitled to do so and that all legal requirements have been met.

After the end of the three-month period, the Form T2 or T3 will represent the legal authority to continue administering medication to a detained patient who is subject to section 58. A copy of any current Form T2 or T3 should be kept with the medicine card, and nurses should refer to it when they administer to the patient any medicine for mental disorder.

In the case of a patient who has been detained and receiving medicine for at least three months, it will be unlawful to administer medicine for mental disorder to him/her unless it is covered by a Form T2 or a Form T3. The only exception to this rule is in the case of urgent treatment, where MHA 1983, section 62 may apply (see paragraph 5, below).

Where, although it is required, a Form T2 or a Form T3 has not been completed, the administration of medicine for mental disorder to a patient may constitute an assault, and therefore a civil wrong and/or a criminal offence.

Before administering medication for mental disorder, the nurse should:

i. Check the medicine card for the date of entry of a prescription for the medicine, for its dose, and for the route of administration.

ii. Check the date of the first administration, to ensure that the three-month period has not been exceeded.

iii. Where a patient has consented to medication beyond the three-month period, ensure that a Form T2 is in place and is correctly completed, and that the patient still consents.

iv. Where a second opinion has been obtained, ensure that the Form T3 is in place and is correctly completed, and, if the patient is certified as incapable of giving consent, that the patient remains incapacitated (see Code of Practice, 24.79).
v. Ensure that the administration of medication is consistent with the guidance contained in the following documents: "Code of Professional Conduct" (NMC, 2002); "Guidelines for Mental Health and Learning Disabilities Nursing" (UKCC, 1998); "Guidelines for the Administration of Medicines" (NMC, 2002).

Reference should be made to chapters 23 and 24 of the MHA 1983 Code of Practice.

4. Authorisation of "as required" (P.R.N.) medication

Once the three-month period has ended, regularly administered "as required" (or 'P.R.N.') medication should be included on the Form T2 or the Form T3. If it is not so included, it may only be given under the urgent treatment provisions.

5. Urgent treatment

Under MHA 1983, section 62, there are some circumstances in which the approved clinician may authorise a patient's urgent treatment (see MHA 1983 Code of Practice, paragraphs 16.40-16.41). However, section 62 applies only to patients whose treatment is covered by Part 4 of the Act. "Urgent treatment" is defined as treatment:

i. That is immediately necessary to save the patient's life; or

ii. That (not being irreversible) is immediately necessary to prevent a serious deterioration of the patient's condition; or

iii. That (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or

iv. That (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others.

Under section 62(2), a patient's treatment may be continued pending compliance with section 58, if discontinuation of the treatment would cause serious suffering to the patient.

The MHA 1983 Code of Practice (paragraph 24.37) requires managers to devise a form for completion by the clinician in charge of the treatment every time urgent treatment is given under MHA 1983, section 62. Nurses should ensure that they have access to a supply of such forms, and also that the appropriate administrative record is fully completed. Nurses should also document the administration of the medicine and the reasons for its use.
Summary of points in relation to detained patients

1 For a period of three months commencing on the day such treatment was first administered, medicine for mental disorder may be given in the absence of consent without the need of certification, where it is given under the direction of the approved clinician in charge of that treatment, and the patient is detained under a section to which Part 4 applies.

2 Once the three-month period has expired such medicine may be administered to such detained patients only if the safeguards in Section 58 of the Act have been observed.

3 Any nurse who administers medicine for mental disorder to a patient detained under the Mental Health Act must be satisfied that there is legal authority to do so.

4 Regularly administered PRN medication should not be administered under Section 62; it should be covered by Form T2 (if the patient gives capable consent) or Form T3 (if the patient does not, or cannot, provide capable consent).
Part B – supervised community treatment patients in the community

see annex B

6. The limits of coercive power on SCT

Patients who are made subject to Supervised Community Treatment cannot be compelled to take medication for mental disorder to which they have given a capacitiated refusal of consent. Patients who lack capacity to consent but do not object to taking such medication may be given it under Part 4A of the Act and, in an emergency only, such treatment may also be imposed upon an incapacitated patient who resists it. SCT patients may, of course, also give capacitiated consent to taking medication.

7. The one-month (and three-month) periods

Patients are discharged onto SCT from sections 3, or unrestricted Part 3 hospital orders. For the initial month of an SCT, medication for mental disorder may be given to a patient without certification (provided that the patient either consents to it or, if incapacitated, does not resist taking it). In certain circumstances that ‘one-month period’ may be extended. If a patient is discharged onto SCT with more than one month of his or her three-month period (as discussed at section 2 above) still to run (i.e. the patient is discharged less than two months after first being treated with medication as a detained patient in hospital to whom Part 4 applies), the patient will not need to have treatment certified until the three-month period expires.

8. Treatment following the initial month of SCT (or after the three-month period ends, whichever is the later)

After the initial months of SCT (or at the end of the three-month period if this is later), treatment with medication for mental disorder must be certified as appropriate by a SOAD if its administration is to be continued, whether the patient is consenting or incapable of consenting. A SOAD will certify that the treatment is appropriate on Form CTO11. The SOAD cannot certify that treatment is appropriate if the patient has capacity and refuses consent to it, or has refused consent through an advance directive, or if treatment would conflict with a decision made by a deputy, donee or the Court of Protection in relation to an incapacitated patient.

Before authorising that treatment is appropriate, a SOAD must interview the patient, discuss the treatment plan with the approved clinician in charge of the treatment, and consult two other persons who have been professionally concerned with the patient’s medical treatment. At least one of these ‘statutory consultees’ must not be a doctor,
and neither can be the patient’s Responsible Clinician or the approved clinician in charge of the patient’s treatment, although of course the SOAD will wish to discuss the case with the approved clinician in charge of the patient’s treatment and may wish to see the Responsible Clinician.

SOADs do not have to certify on Form CTO11 whether the patient is consenting or incapacitated, but they may make it a condition of the certificate that particular treatments are given only in certain circumstances (Code of Practice, 24.27). This might include, for example, that a treatment is only appropriate so long as the patient consents to it. Nurses should be clear that such conditions are met if they are dispensing the medication to the patient.

SOADs completing a Part 4A certificate may also authorise, on that certificate, the administration of medication for mental disorder upon an SCT patient’s recall to hospital (see Part C below), and may set conditions on such authorisation. Unless it specifies otherwise, any such advance authority to treat upon recall will allow for treatment to be given by force against the patient’s capacitous refusal as well as to an incapacitated or consenting patient).

Visits by a SOAD should be arranged through the Care Quality Commission.

9. Urgent treatment

Under Part 4A, there are some circumstances in which the approved clinician may authorise an SCT patient’s **urgent treatment** without certification. However, it is only the requirement to have a certificate authorising such treatment that is lifted in emergency situations in the community, and treatment must otherwise have a legal basis in either the patient’s consent or under the Mental Incapacity Act. Under such circumstances treatment can be enforced against an incapacitated patient’s resistance (s.64G), but emergency powers do not authorise treatment against a patient’s capacitous refusal of consent.

Urgent treatment" is defined as treatment:

i. That is immediately necessary to save the patient's life; or

ii. That (not being irreversible) is immediately necessary to prevent a serious deterioration of the patient's condition; or

iii. That (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or

iv. That (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others.
The MHA 1983 Code of Practice (paragraph 24.37) requires managers to devise a form for completion by the clinician in charge of the treatment every time urgent treatment is given under Part 4A. Nurses should ensure that they have access to a supply of such forms, and also that the appropriate administrative record is fully completed. Nurses should also document the administration of the medicine and the reasons for its use.

**Part C – supervised community treatment patients upon recall to hospital**

(see annex C)

**10. The limits of coercive power upon recall from SCT**

Patients who are recalled to hospital whilst on Supervised Community Treatment may be held there for up to 72 hours. During this period in hospital they are subject to the provisions of Part 4 of the Act, and as such require certification under section 58 for medication for mental disorder to be lawfully given, EXCEPT in the following circumstances:

- If the three-month period under Part 4 has yet to expire, or it is not yet a month since the SCT was implemented, no certification is needed;
- If the SOAD explicitly authorised the administration of medication upon recall on Form CTO11, and any conditions placed by the SOAD on doing so are met, then no further certification is needed.
- Treatment that was already being given on the basis of a Part 4A certificate may be continued pending compliance with section 58, even if the SOAD has not certified for continuation upon recall, if the approved clinician in charge of the treatment in question considers that discontinuing it would cause the patient serious suffering.
- The approved clinician otherwise uses emergency treatment powers (section 62) to authorise treatment.

If none of the above exceptions can be claimed by the approved clinician in charge of the patient’s treatment, a new SOAD visit should be arranged to authorise treatment. The Code of Practice (24.81) explicitly condemns as bad practice using the last s.58 certificate that was issued to the patient before his or her discharge from detention in hospital onto SCT status to authorise treatment upon recall from SCT, although it acknowledges that such certificates may be technically valid. It would appear that this technical validity may be an unforeseen consequence of the drafting of Parts 4 and 4A. The Commission takes the view that it would indeed be very poor practice to take the authority to impose treatment upon a patient from such a certificate.
Part D – Supervised community treatment patients upon revocation of SCT

11. Treatment of SCT patients upon revocation

If the patient’s SCT status is revoked, they return to detained status. Although in most respects the law treats such patients as if they have been newly admitted on the section 3 or hospital order from which they were previously discharged onto SCT, there is no new three-month period for medication.

The exceptions to the need for certification listed in the bullet-point list at paragraph 10 above may also authorise treatment upon recall, but only for so long as it takes to arrange a further second opinion. No ‘old’ certificate from the patient’s detention in hospital prior to release from SCT should be used to authorise treatment, as discussed at paragraph 10 above.

Questions or concerns about this guidance should be addressed to:
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Gallowgate
Newcastle upon Tyne
NE1 4PA
Tel: 03000 616161

E-mail MHAenquiries@cqc.org.uk
Annex A

Treatment with medication for mental disorder of patients detained in hospital under the Mental Health Act 1983

Is the patient detained under a section to which Part 4 applies?

- yes
- no

MHA 1983 provides no powers of treatment

Is it three months or more from the first administration of medication whilst the patient has been so detained?

- yes
- no

Treatment can be given under the direction of AC in charge (s.63)

Have emergency treatment powers under s.62 been evoked by Approved Clinician in charge of treatment?

- yes
- no

Treatment may be given under the direction of AC in charge (s.62)

Is the patient capable of consent?

- yes
- no

Is the patient consenting?

- yes
- no

Treatment must be certified by SOAD on Form T3

Treatment must be certified by AC in charge or SOAD on Form T2
Treatment with medication for mental disorder under the Mental Health Act 1983
of Supervised Community Treatment patients not recalled to hospital

Is it three months or more from the first administration of medication
when the patient was detained / one month or more since the start of
SCT status?

- yes
  - Treatment can be given under the direction of AC in charge

- no
  - Have emergency treatment powers been evoked by Approved Clinician in charge of treatment?

- yes
  - Is the patient capable of consent?
    - yes
      - Treatment may be given under the direction of AC in charge
    - no
      - Is the patient refusing?
        - yes
          - No authority to treat in the community / consider recall to hospital
        - no
          - Is the patient consenting?
            - yes
              - Treatment must be certified by SOAD on Form CTO11
            - no
              - Is force needed to administer treatment?
                - yes
                  - Treatment must be certified by SOAD on Form CTO11
                - no
                  - No authority to treat in the community / consider recall to hospital

- no
  - Is the patient capable of consent?
    - yes
      - Treatment can be given under the direction of AC in charge
    - no
      - Is the patient refusing?
        - yes
          - No authority to treat in the community / consider recall to hospital
        - no
          - Is the patient consenting?
            - yes
              - Treatment must be certified by SOAD on Form CTO11
            - no
              - Is force needed to administer treatment?
                - yes
                  - Treatment must be certified by SOAD on Form CTO11
                - no
                  - No authority to treat in the community / consider recall to hospital
Is it three months or more from the first administration of medication when the patient was detained / one month or more since the start of SCT status?

- yes
  - Have emergency treatment powers been evoked by Approved Clinician in charge of treatment?
    - yes
      - Treatment can be given under the direction of AC in charge, even if patient refuses consent
    - no
  - no

- no
  - Treatment can be given under the terms of the Form CTO11 certification

Was the treatment being given whilst the patient was in the community, and, if so, would its discontinuation cause the patient serious suffering?

- yes
  - Treatment can be given under the terms of the Form CTO11 certification
- no

Is the treatment explicitly authorised for administration upon recall on Form CTO11 including any conditions?

- yes
  - Does the patient have capacity to consent?
    - yes
      - Treatment can be given when certified by a SOAD on Form T3
    - no
      - Treatment may be certified by AC in charge on Form T2
- no

Does the patient consent?

- yes
  - Treatment can be only be given once certified by a SOAD on Form T3
- no