

# Brief guide: Covert Medication in Mental Health Services.

## Context and policy position

Staff give medicine covertly when they administer it without the patient's knowledge or consent; for example, disguising it in food or drink without the patient knowing.

Under human rights law, people who are capable of making the decision have the right to accept or refuse medical treatment even if that may lead to their death. The Mental Health Act (MHA) overrides that right in specific circumstances. It provides authority to provide psychiatric treatment to a patient detained under its powers<sup>1</sup> without their consent (see [brief guide to capacity and consent](#)). This may include authority to give psychiatric medication covertly.

Treatment powers under the MHA are limited to treating a patient's mental health. Where the patient has capacity to make decisions about their treatment, it is **never** appropriate to give medicines covertly to treat any patient's physical health.

The Mental Capacity Act 2005 (MCA) may provide authority to provide health treatments only where the patient is aged over 16 years, is assessed as lacking capacity, and where the treatment is judged in a best interests meeting to be in the patient's best interests. If the medication is being given covertly, this should have been explicitly considered in the best interests meeting. The MCA might be used to provide authority for covert medication for physical health whether or not the patient is detained under the MHA, and may be used as authority for covert psychiatric medication for patients who are not detained under the MHA.

## Evidence required

### Policy

- Does the provider have a policy on covert medication?
- Can all staff who might need to follow it access the policy?

### Training

- Have staff had training in the MCA and MHA?
- Does the training cover issues of capacity and consent?

### Capacity

- Do staff administer covert medication only to adults assessed as lacking capacity as part of an agreed management plan and following a documented best interests meeting?

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<sup>1</sup> The treatment provisions of the MHA do not apply to patients held under short-term holding powers such as s.5, 135 or 136, or conditionally discharged or CTO patients who have not been recalled to hospital. Such patients are in the same position as informal patients in relation to treatment without consent.

Brief guides are a learning resource for CQC inspectors. They provide information, references, links to professional guidance, legal requirements or recognised best practice guidance about particular topics in order to assist inspection teams. They do not provide guidance to registered persons about complying with any of the regulations made pursuant to s 20 of the Health and Social Care Act 2008 nor are they further indicators of assessment pursuant to s 46 of the Health and Social Care Act 2008.

- Do staff ever give medicines covertly to patients who have capacity to consent to the treatment? If so, is the patient detained under the MHA, with a specific case for the legal and ethical justification for this having been established?

### Best interests meetings

- Do staff record the names and role of attendees?
- Do attendees include the prescriber, pharmacist, family member, friend or independent mental capacity/mental health?
- If the patient has an attorney appointed under the Mental Capacity Act for health and welfare decisions, is this person at the meeting?
- Does the meeting include a medication review to consider whether treatment is necessary?
- Are the benefits of treatment so great that they merit staff administering medication covertly? (Refer to [Mental Capacity Act briefing](#) – case law on covert medication case reference: 2016 EWCOP 37- internal)

### Care planning

- Does the covert medication plan that staff make after the best interests meeting describe clearly how they should give and disguise each medication?
- Do staff pass on information about covert administration of medication when transferring care, for example a transfer to an acute trust for treatment?
- Does the plan say when staff should review the covert treatment and how often? ([Royal College of Psychiatrists suggests weekly](#))
- Do reviews consider the benefits of the treatment and whether it is still necessary to use covert medication?

### Precautions

- Those administering a medicine covertly have additional responsibilities if crushing means the medicine that is being given outside of its licence. Pharmacists cannot approve whether others can give covert medication but staff must ask for, and document, their advice to help identify any risks.

### Reporting

CQC staff should report issues of capacity and consent in the ‘**Good practice in applying the MCA**’ and/or ‘**Good practice in applying the MHA**’ sections of ‘**Effective**’, depending on which legal framework provided authority for treatment.

### Link to regulations

Failure to comply with guidance and legislation in this area would fall under **Regulation 11**– Need for Consent.

### Further reading

- *Mental Health Act Code of Practice*. London: The Stationery Office, 2015: see chapters 24 and 25.
- *Mental Capacity Act Code of Practice*. London: The Stationery Office, 2007
- General Medical Council. *Consent: patients and doctors making decisions together* [http://www.gmc-uk.org/guidance/ethical\\_guidance/consent\\_guidance\\_index.asp](http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp)
- Department of Health, *Consent – What You Have a Right to Expect: A Guide for Adults*
- [College Statement on Covert Administration of Medicines/ BJ Psych Bulletin](#)