

## Brief guide: Assessment by inspectors of how a provider applies the Mental Health Act

### Context and policy position

The Mental Health Act 1983 (MHA) and its Code of Practice (2015) apply to all providers registered to assess and treat patients detained under the Act. CQC reviews how the MHA is applied and carries out investigations where appropriate. The Code of Practice states what good looks like for the care and treatment of detained patients and should inform our inspections and influence our ratings of services.

CQC expects all clinical staff in every MH inpatient setting to have had training in MHA. We would therefore expect providers to consider this training as 'essential' or 'mandatory'. As a rule of thumb, CQC would expect at least 75% of clinical staff working on mental health wards to have undertaken MHA training with a clear plan for refresher and updates in place. If the uptake of training is below this level, and we find evidence that this has an impact on care, we should consider issuing a requirement notice.

### Evidence required

Inspectors should undertake a 'basic' assessment of MHA functions during the ward tour, records' reviews, interviews with staff and patients. They should assess whether:

- Staff have training in MHA and the providers' training programme reflects this.<sup>1</sup>
- Staff can describe the basic principles of the Act.
- The provider has relevant policies and procedures that have been developed in line with the most recent guidance and staff know how to access them.
- Staff have easy access to the Code of Practice and local MHA policies and procedures.
- Patients have easy access to Information about independent mental health advocacy.
- There is evidence that learning from MHA audit and review is implemented.
- There is a record that patients' rights are explained to them in a way they can understand and repeated as required.
- Patients have access to a range of provision including section 17 leave and second opinion appointed doctors if necessary.
- Copies of the patients' detention papers and associated records i.e. Section 17 leave forms are available for all staff and stored correctly.
- Information is provided to tell informal patients that they can leave the ward freely.

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<sup>1</sup> *The MHA Code of Practice expects training on the Act to be provided to registered medical practitioners ('doctors'), approved clinicians, managers and staff of providers and approved mental health professionals on how they should proceed when undertaking duties under the Act. This may mean the MHA is not considered mandatory for the entire organisation but there should be a clear training programme for the staff listed above. (MHA COP 2015 p12)*

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.

During an inspection, we also assess whether a provider has appropriate governance arrangements in place to monitor and review how the Act is applied. The Mental Health Act reviewer or the governance sub-team will usually do this for an inspection of an NHS trust or a large independent health provider.

## Intelligence

Use the pre-inspection briefings, provider information requests, and other data sources, such as the MHA factsheets, to support your findings. The MHA factsheets are available at ward and provider level, and give information from our routine analysis.

## Reporting

- In the **‘Information about the service’** section state how many MHA monitoring visits there have been to wards in the core service since the last inspection and list the MHA issues raised from a previous inspection or MHA monitoring visit. Include examples of where the provider has met the requests in the action statements produced following MHA monitoring visits.
- In the **‘MHA responsibilities’** section, give a summary of your findings relating to MHA.
- In the **‘Adherence to the MHA and the MHA Code of Practice’** section of **‘effective’**, describe your findings for each of the bullet points in the ‘Evidence required’ section of this brief guide.
- In the **‘Good governance section’** of **‘well led’** comment on whether the provider’s governance framework ensures that MHA procedures are followed and, for a provider report, whether hospital managers are fulfilling their duties and powers under the MHA.

## Link to Regulations

**Regulation 18** might be breached if staff are not adequately trained in the MHA or if staff are not suitably competent or skilled in supporting people who are detained under the MHA.

**Regulation 17** might be breached if the governance arrangements for monitoring the MHA are poor.

## Further reading and guidance relevant to the MHA

- [Mental Health Act 1983: Code of Practice 2015](#)
- [Consent to treatment: medication & consent review for detained patients](#)
- [MHA reporting - admission papers](#)
- [Adjudications over the withholding of mail and telephone monitoring](#)
- [Seclusion rooms](#)
- [Restraint \(physical and mechanical\)](#)
- [In patient search policies](#)

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