

Mental Health Act: New Duties from 1st April

A Briefing on the Responsibilities of NHS Trust Boards under Section 131A of the Mental Health Act 1983, due to come into force on 1st April 2010

This briefing has been prepared for board members and chief executives of NHS Trusts that provide in-patient adult mental health services. It explains the scope, purpose and importance of a new duty under the Mental Health Act 1983 (the MHA 1983) that comes into force on 1st April 2010. It then suggests some questions for the NHS Trust Board to consider when reviewing its compliance with this duty.

This 'age appropriate environment duty' underpins the Government's commitment that by April 2010 no one under the age of 18 will be admitted on to an adult psychiatric ward inappropriately.

What are the duties of Hospital Managers under s131A MHA 1983?

The age appropriate environment duty is set out in section 131A of the MHA 1983. It requires hospital managers to ensure that: "the patient's environment in the hospital is suitable having regard to his age (subject to his needs)". This duty applies to all patients under 18, whether they are detained under the MHA 1983 or admitted to the hospital informally. It also includes minors placed on community treatment orders (CTOs) who are recalled to hospital or who agree to informal admission while subject to a CTO.

When considering how to meet this requirement, the managers of the hospital must consult someone who appears to them to be suitable because they are experienced in CAMHS (children and adolescent mental health services) cases.¹

The Code of Practice to the Mental Health Act 1983 for England (2008) highlights the factors to be considered when deciding whether the ward environment is suitable for the child or young person concerned. They should have:

- Appropriate physical facilities
- Staff with the right training, skills and knowledge to understand and address their specific needs as children and young people
- A hospital routine that will allow their personal, social and educational development to continue as normally as possible
- Equal access to educational opportunities as their peers, in so far as they are able to make use of them, considering their mental state.

This is also reflected in the Code of Practice for Wales (2008).

Could admission to an adult psychiatric ward ever be appropriate?

This will depend on the person's age and the particular circumstances of the case.

- **Children under 16 years should never be admitted to an adult psychiatric ward:** As from 1st December 2008 Government policy is that no child under 16 is to be placed on an adult mental health ward. Any such admissions are treated as Serious Untoward Incidents (Department Health, June 2007) and must be reported to your Strategic Health Authority.
- **Young people aged 16 and 17 may be admitted in limited circumstances:** Young people should be admitted to a CAMHS facility, unless their circumstances fall within one of two categories of exceptional circumstances:
 - (i) **Emergency Admissions:** the admission to an adult ward is the most appropriate means of meeting the young person's needs at that time. While such admissions may be justified when responding to a crisis situation, this will only be acceptable in the short term.
 - (ii) **Atypical Admissions:** given the young person's particular circumstances the best place for the young person is an

adult ward. For example, a young person is nearly 18, has left school and is being treated by the Early Intervention Psychosis team which has beds on the ward to which the young person will be admitted (RCP 2009(a)).

Whether the admission is due to an emergency or because it is an 'atypical' case, appropriate safeguards must be in place to ensure the young person's welfare and safety. The suitability of the ward environment for the young person must be kept under regular review.

Links with other duties concerning children and young people

The age appropriate environment duty is underpinned by the following core duties of public bodies, including Local Authorities and NHS bodies.

- **Duty to put in place arrangements to safeguard and promote the welfare of children and young people:** this is set out in section 11 Children Act 2004.
- **Protecting the human rights of children and young people:** when carrying out their statutory functions, organisations must ensure that they comply with the rights set out under the European Convention on Human Rights (ECHR). They should also take into account the United Nations Convention on the Rights of the Child. Article 37(c) states: '...every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so...'

Further information

Department of Health, letter to SHA Chief Executives, 29th June 2007 (Gateway Number 8390)

Department of Health, Code of Practice to the Mental Health Act 1983, 2008, London, TSO

Royal College of Psychiatrists, CCQI, Safe and Appropriate Care for Young People on Adult Mental Health Wards Pilot programme report, July 2009(a)

Royal College of Psychiatrists, Safe and Appropriate Care for Young People on Adult Mental Health Wards (AIMS-SC4Y) (2009(b))

Welsh Assembly Government, Mental Health Act 1983, Code of Practice for Wales, 2008

The National Mental Health Development Unit has produced a range of materials to assist agencies in their work to meet this duty – see: www.nmhdu.org.uk

¹ See section 131A MHA 1983 and the Code of Practice to the Mental Health Act 1983 for England (2008)



Is your NHS Trust ready for the age appropriate environment duty?

The following questions will help you to review whether your NHS Trust is compliant with the age appropriate environment duty:

- 1. What is the NHS Trust's policy on the admission of young people on adult psychiatric wards?**
Even if there are enough CAMHS beds in the local area, which make an admission to an adult ward very unlikely, robust safeguards must be in place to ensure that if such admissions occur the young people concerned feel safe and receive the appropriate care and support throughout their stay on the ward.
- 2. Is there a named person or committee with the responsibility of taking the necessary work forward and reporting regularly to the Board?**
Information on the measures taken to ensure compliance will need to be reported to the Board so that it can be satisfied that the NHS Trust has fulfilled its statutory responsibilities. All admissions of young people to adult wards, and the reasons for them, should be recorded. The Care Quality Commission will be monitoring compliance with s131A in relation to young people detained under the MHA 1983.
- 3. Has a ward (or wards if services are spread across different locations or sectors) been designated and has this information been disseminated to key agencies and professionals?**
The need to identify a ward or settings that would be better suited for young people was highlighted over 10 years ago in the Department of Health's National Service Framework for Mental Health (1999). The Royal College of Psychiatrists (2009(a)) points out that even a well managed adult ward cannot automatically provide safe or effective care for young people. Given that the necessary adaptations require planning, preparation and resources, it is better to focus on the ward(s) that have been designated for this purpose.
- 4. Will the local CAMHS service provide input to the care and support delivered to the young people during their stay on the adult ward?**
The Royal College of Psychiatrists (2009(a)) recommends that the local provider of CAMHS should designate a named CAMHS team and a named child and adolescent psychiatrist that will take lead responsibility for CAMHS input to support the care of young people admitted to the designated adult ward.

5. Are procedures in place to ensure the regular audit of the designated ward(s)?

This is necessary so that the NHS Trust can be satisfied that the designated ward(s) can provide a safe and therapeutic environment for young people. The audit should cover areas such as regular staff training on areas relevant to CAMHS, ensuring CRB (criminal record bureau) checks are up to date and the availability of age appropriate information. The Royal College of Psychiatrists' College Centre for Quality Improvement (CCQI), commissioned by the National Mental Health Development Unit, has developed standards and an accreditation programme to help adult mental health wards demonstrate their ability to provide safe and appropriate care for young people admitted onto adult wards. (Royal College of Psychiatrists, Safe and Appropriate Care for Young People on Adult Mental Health Wards (AIMS-SC4Y) (2009)(b))

6. Are assessment protocols in place to ensure that young people are admitted appropriately?

Such protocols would need to include information on how to contact the relevant CAMHS professional to advise on the suitability of the ward environment for that particular young person, having regard to their age and individual needs (including out of hours) and information on bed availability. Policies and protocols on the use of sections 135 and 136 MHA 1983 will also need to be reviewed in the light of section 131A MHA 1983.

7. Are clear care pathways in place for young people admitted to adult wards?

Care pathways will be required for both planned and emergency admissions.

8. For emergency admissions, are arrangements in place to expedite a young person's transfer from the adult ward to a CAMHS bed?

The admission to an adult ward should only be made on the basis that it is necessary to respond to a crisis and no CAMHS bed is available. The young person should be transferred to a CAMHS facility as soon as possible.

9. How is the Trust involving young people and their families in this work?

It will be essential to find out what young people and their families think will help them during their time on an adult ward. When advising on an 'Out of the Shadows?: A review of the responses to recommendations made in Pushed into the Shadows: young people's experience of adult mental health facilities' (11 MILLION and YoungMinds, October 2008), VIK (Very Important Kids) identified seven areas which they considered to be key to young people's safe and supportive care. Their 'markers of good practice' for each of these areas have informed the CCQI standards referred to in question 5 above.

- i. A safe and supportive environment
- ii. Provision of age-appropriate information
- iii. Involvement in care planning
- iv. Access to independent advocacy
- v. Access to education
- vi. Involvement in daily activities
- vii. Opportunities for participation

10. Is the Local Safeguarding Children's Board satisfied with the arrangements the NHS Trust has put in place?

This was one of the action points identified by the Department of Health (June 2007) for providers and commissioners to consider when making arrangements to meet the statutory obligations and safeguarding requirements under section 11 of the Children Act 2004.

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