ADMISSION TO HOSPITAL/REMAINING IN HOSPITAL – WHICH LEGISLATION?

Admission to Hospital/Preventing Someone from Leaving Hospital – Using the MCA, the MHA or the DoLS

The steps outlined below will not necessarily occur in a linear fashion or in the order suggested. This process applies only to patients who are 16 years or older as different arrangements are in place for under 16s.

Provide information to the patient about reason why it is of benefit for them to be in hospital and the risks should they not be in hospital to receive care and treatment (i.e. why the care and treatment cannot be delivered as effectively in the community).

Do you have reason to believe that the patient has not:

- Understood some or all of the information you gave them? OR
- Retained the information for long enough to make a decision? OR
- Weighed up the risks/ benefits of having/not having the care, examination or treatment or the various alternatives? OR
- Been able to communicate the outcome of their decision-making by any means?

OR

- Is the patient unconscious, heavily sedated or has a low GCS score?

Y

Document that in your opinion the patient does not have the mental capacity to decide whether to come into hospital/remain in hospital, as they are unable to: understand/ retain/ weigh-up/ communicate. *This should be documented on a standard pro-forma where required by organisational policy.*

Consider all the restrictions that will be or are being placed on the patient in order to deliver the care/ treatment proposed in hospital. Is the overall package of care (including any necessary restrictions) that will be or is being delivered primarily in the best interests of the individual patient or is it primarily to ensure the safety and protection of others?

To ensure safety and protection of others.

The Mental Capacity Act does not provide sufficient lawful authority for admitting the patient or keeping them in hospital. The Mental Health Act should be used where necessary and appropriate. Other considerations: criminal justice and/or safeguarding.

Best Interests of Individual patient.

N

Is the patient happy to be admitted to/remain in hospital in order that they can receive care and treatment?

Y

The patient will be/ is in hospital voluntarily and therefore must be free to leave at any point.

Where the proposed care and treatment is for mental disorder the Mental Health Act should still be used where there is a possibility the patient will change their mind and want to leave and this would not be appropriate due to risk, or the patient is likely to refuse treatment.

N

The Mental Health Act provides the only lawful authority for admitting the patient to hospital/ keeping them in hospital. If the Mental Health Act cannot be used the patient should not be admitted or should be allowed to leave. *Your organisation may require you to use a standard template for documenting a refusal to admission or self-discharge against medical advice.*

Think about the duration of, frequency of, force of and opposition to any restrictions on:

- Patient's ability to leave the ward
- Patient's contact with others
- Patient's free will, due to medication (e.g. sedation)
- Patient's movement, as a result of physical contact/restrictive equipment
- Patient's movement within ward environment
- Patient's discharge
- Patient's privacy
- Consultation with patient/family
- Patient's day-to-day activities

Might restrictions amount to a deprivation of liberty?
Is the person under continuous/complete supervision and control and not free to leave? (the 'acid test')
Use an organisational screening tool or checklist where required.

Y

Does the individual meet the criteria for detention under the Mental Health Act? AND
Is the individual seemingly objecting to being in hospital and/or to receiving some or all of their care and treatment for mental disorder?

Y

The Mental Health Act should be used as the lawful authority for admitting the patient to hospital/ keeping them in hospital.

N

The Deprivation of Liberty Safeguards process should be followed (for patients aged 18+) to determine if a Deprivation of Liberty Safeguards authorisation is required.

N

The Mental Capacity Act provides sufficient lawful authority for admitting someone to hospital/ keeping them in hospital. The Mental Health Act might still be used where the patient may regain capacity and want to leave/ refuse treatment.

Please contact our specialist, **Elaine Dower**, on **elaine.dower@nhs.net** to discuss how 360 Assurance can help you achieve the steps above.