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Bwrdd Iechyd Prifysgol
Abertawe Bro Morgannwg
University Health Board



Meeting Date	7th February 2019	Agenda Item	4a
Meeting	Mental Health Legislation Committee		
Report Title	Mental Capacity Act 2005 Update		
Report Author	Jodie Denniss, Interim Deputy Head of Safeguarding		
Report Sponsor	Cathy Dowling, Interim Deputy Director of Nursing and Patient Experience		
Presented by	Gareth Howells, Director of Nursing & Patient Experience		
Freedom of Information	Open		
Purpose of the Report	The Mental Health and Capacity Act Legislative Committee has requested a monitoring report to assure the Board of Abertawe Bro Morgannwg University Health Board compliance with the Mental Capacity Act 2005.		
Key Issues	The Health Board (HB) supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of the Mental Capacity Act throughout the HB, for example training, the use of the Independent Mental Capacity Advocacy Service (IMCAs) and HB involvement in Court of Protection Cases		
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance
			✓
Recommendations	The Committee is requested to acknowledge this report and to consider the proposed methods of assurance for future reporting.		

Governance and Assurance										
Link to corporate objectives <i>(please ✓)</i>	Promoting and enabling healthier communities		Delivering excellent patient outcomes, experience and access		Demonstrating value and sustainability		Securing a fully engaged skilled workforce		Embedding effective governance and partnerships	
			✓						✓	
Link to Health and Care Standards <i>(please ✓)</i>	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources			
		✓	✓							
Quality, Safety and Patient Experience										
<p>The Health Board (HB) supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of Mental Capacity Act throughout the HB. For example training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).</p>										
Financial Implications										
The report does not note any financial implications for the Health Board.										
Legal Implications (including equality and diversity assessment)										
<p>In March 2018, the government announced it will proceed with legislation to alter the Mental Capacity Act, which in the main will involve changes to the Deprivation of Liberty Safeguards. However, there will be some significant changes to other aspects of the MCA.</p>										
Staffing Implications										
<p>There is currently no dedicated lead for MCA and DoLS issues although there is a MCA/DoLS officer Band 4 who works within the Corporate Safeguarding Team who co-ordinates training and distributes case law updates; queries relating to MCA/DoLS are handled by safeguarding specialist within the team who can refer to legal services for support if required.</p>										
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)										
Collaboration – Working together ensure safeguarding of patients.										
Report History		N/A								
Appendices		N/A								

ABM University Health Board	
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Subject	Mental Capacity Act 2005 Update
Prepared by	Jodie Denniss, Interim Deputy Head of Safeguarding
Approved by	Gareth Howells, Director of Nursing & Patient Experience
Presented by	Gareth Howells, Director of Nursing & Patient Experience

1.0 Situation

The Mental Health and Capacity Act Legislative Committee has requested a monitoring report to assure the Board of ABMU HB's compliance with the Mental Capacity Act 2005.

2.0 Background

The Mental Capacity Act 2005 (MCA) came into force in October 2007 but was amended to include the Deprivation of Liberty Safeguards (DoLS) in April 2009.

The HB supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of MCA throughout the Health Board, for example through training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).

3.0 Assessment

3.1 Legislative Update

In March 2018, the government announced it will proceed with legislation to alter the Mental Capacity Act, which in the main will involve changes to the Deprivation of Liberty Safeguards. However, there will be some significant changes to other aspects

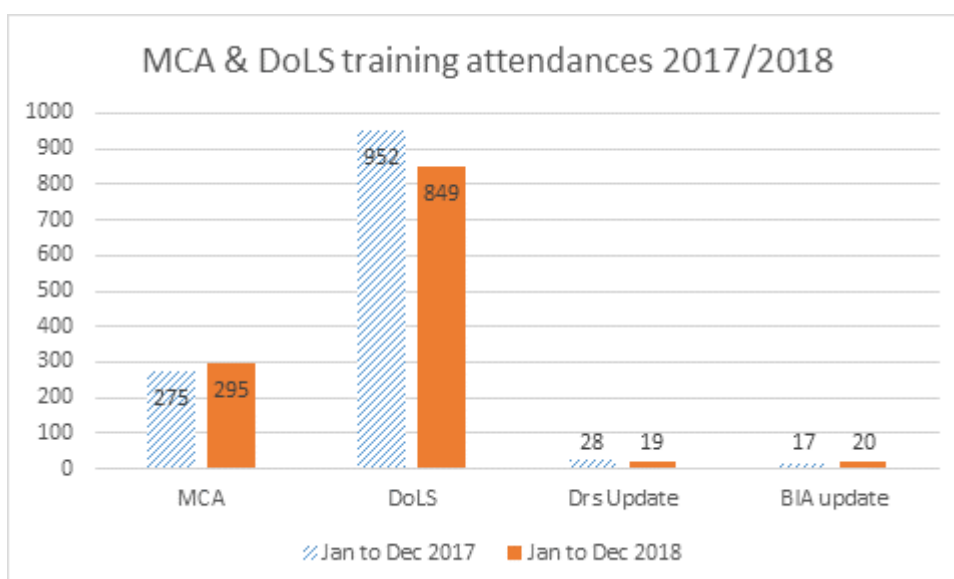
of the MCA. This process has now begun and the Mental Capacity (Amendment) Bill is currently proceeding through the House of Lords. There is currently no anticipated date for Royal Assent.

3.2 MCA Training

MCA Level 1 & 2 training is available for all ABMU HB staff via e-learning. Compliance figures should be available from ESR but there continue to be difficulties in obtaining these; however, work related to this is continuing. The Service Delivery Units (SDUs) currently monitor MCA training levels as part of their overall training compliance, reporting to the Safeguarding Committee on a bi-monthly basis. MCA level 3 is taught as a workshop directed at ward managers, senior nurses and senior clinicians whereby there is the ability to discuss cases and raise concerns. This training session is delivered each month, under the HB educational contract by law lecturers from Swansea University. The Corporate Safeguarding Team Band 6 Practice Education facilitator, will be involved in developing evaluation mechanisms, training needs analyses in conjunction with the SDUs and also reviewing training content in conjunction with Swansea University once the new legislation is passed.

Table 1

MCA/DoLS training breakdown below for Jan - Dec 2017 and Jan - Oct 2018



The graph above identifies other forms of training associated with the Mental Capacity Act. This training is delivered to both the Health Board and the three Local Authorities (Table 1 illustrates Health Board attendances).

Attendance levels at MCA L3 and DoLS L2 sessions remains fairly consistent.

3.3 Independent Mental Capacity Advocates (IMCA)

IMCAs are independent advocates who represent people who lack capacity in order to support them in making important decisions. They were introduced by the Mental Capacity Act to act as a person's legal safeguard and are usually instructed when there is no other independent person (e.g. a relative or friend) to act on the person's behalf. The IMCA Service that is currently contracted to the HB is provided by Mental Health Matters Wales. This service provides quarterly monitoring reports to ABMU HB and has reported an overall increase in instructions compared to the previous quarter. Between October and December 2018 they received 25 instructions for an IMCA from the HB (Table 2).

Table 2: Breakdown of reasons for instruction of an IMCA

Local Area	Serious Medical Treatment	Long term move of accommodation	Care Review	Vulnerable Adult	39a*	39c*	39d*
Bridgend	1	7	1	0	0	0	0
Swansea	6	4	0	3	0	0	1
Neath Port Talbot	1	2	0	0	0	0	0
	8	13	1	3	0	0	1

* These different categories are, when a person who is deprived of their liberty, does not have a representative e.g. a friend, family member or advocate

3.4 Best Interest Decisions

If a patient has been assessed as lacking in capacity then any action taken or decision made on behalf of that individual must be made in his or her best interests. There are many factors within the MCA to consider in deciding what is in a person's best interests. It is good professional practice to record these particularly as these decisions may be challenged. These best interest decisions happen on a frequent basis and can vary from simple to very complicated. Currently the Service Delivery Units (SDUs) do not collate the number of occasions where best interest decisions are made. The Primary Care and Community Service Delivery Unit has recently appointed two substantive Best Interests Assessors, and in conjunction with the DoLS Improvement and Support Group the Corporate Safeguarding Team are currently working with the SDUs to establish an effective way to record this information in order to provide assurance to the Board by reporting through the Safeguarding Committee.

3.5 Court of Protection

The Court of Protection is a key decision making component of the Mental Capacity Act and has jurisdiction over property, financial affairs and the welfare of people who lack capacity. It has the same powers, rights, privileges and authority as the High Court. The Corporate Safeguarding Team intends to work with the legal team and Service Delivery Units to ensure a clear process whereby all Court of Protection cases involving ABMU HB engaged as a party, are brought to the attention of the team; also that subsequent actions required to have clear lines of co-ordination and that any learning from judgements are identified and disseminated via the Safeguarding Committee. There are currently 13 ongoing DoLS cases that the legal team are engaged involving ABMU HB.

3.6 Dedicated HB MCA/DoLS Lead.

Due to changes within the Local Authorities which resulted in them having their own DoLS/MCA teams, and the retirement of the HB DoLS/MCA lead earlier this year, LA funding for the post was withdrawn. There is currently no dedicated lead for MCA and DoLS issues and this has been entered on the risk register. The Corporate

Safeguarding Team has retained a MCA/DoLS officer Band 4 who co-ordinates training and distributes case law updates and handles queries. This role remains jointly funded by the 3 LAs; however following the impending boundary change in April 2019, funding from Bridgend will be withdrawn and this will be a cost pressure for the Corporate Safeguarding Team. MCA/DoLS advisory role is incorporated within the roles of the Safeguarding Specialists within the team.

4.0 RECOMMENDATIONS

The Committee is requested to acknowledge this report and to consider the proposed methods of assurance for future reporting.