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Bwrdd Iechyd Prifysgol
Abertawe Bro Morgannwg
University Health Board



Meeting Date	24th August 2018		Agenda Item	3a
Meeting	Mental Health Legislation Committee			
Report Title	Mental Capacity Act 2005 Update			
Report Author	Virginia Hewitt, Head of Nursing, 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 and the use of the Independent Mental Capacity Advocacy Service (IMCAs).			
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance	Approval
			✓	
Recommendations	The Committee is requested to acknowledge this report and to consider the proposed methods of assurance for future reporting.			

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) PROCESS UPDATE

1. INTRODUCTION

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

2. 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 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 MCA throughout the Health Board. For example training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).

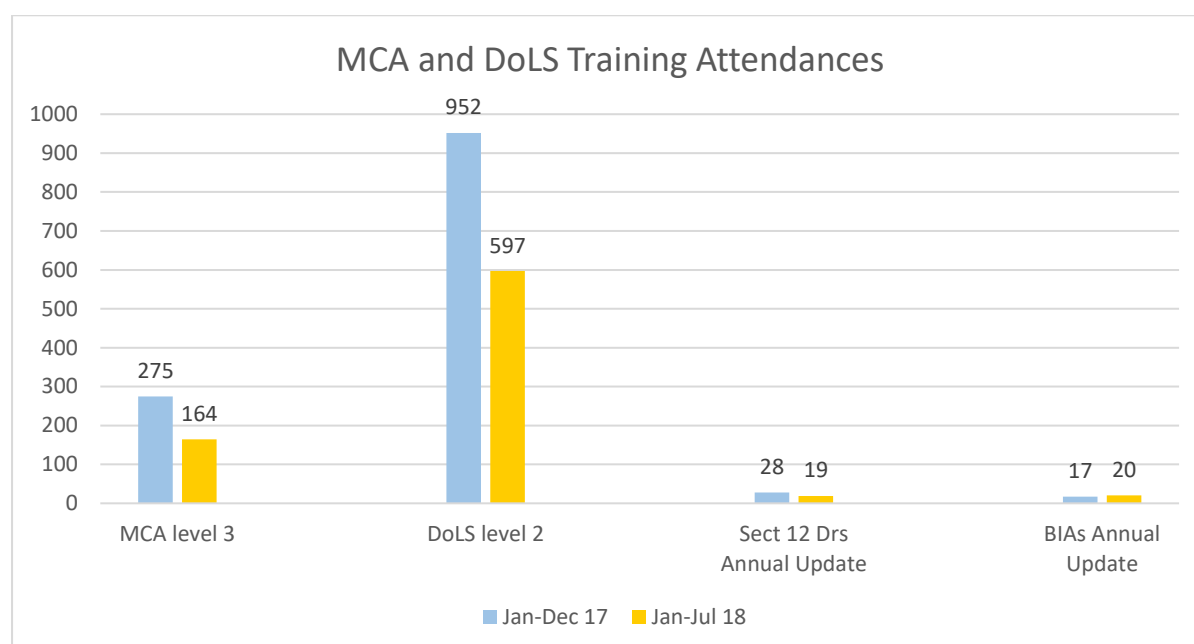
Legislative Update

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. GOVERNANCE AND RISK ISSUES

MCA Training

A training programme for staff with MCA Level 1 & 2 is available as e-learning for all ABMU HB staff. Compliance figures should be available from ESR but currently there is an on-going issue obtaining these. Work is continuing to ensure a single electronic recording, monitoring and reporting point that is available in the health board. The Service Delivery Units are currently monitoring training levels as part of their overall training compliance reporting to the Safeguarding Committee. 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. A training session is delivered each month under the Health Board educational contract by law lecturers from Swansea University.

Table 1**MCA/DoLS training breakdown below for Jan - Dec 2017 and Jan - Jul 2018**

The graph above also 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. However table 1 only illustrates health board attendances. Attendance at MCA L3 and DoLS L2 sessions for the first seven months of 2018 suggest the total attendance for the year may exceed that of 2017.

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. They are usually instructed when there is no other independent person to act, such as a relative or friend. The IMCA Service that is currently contracted to the HB is provided by Mental Health Matters Wales. This service provides quarterly reports to ABMU HB. Between April 2017 and March 2018 they received 72 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	POVA	39a*	39c*	39d*
Bridgend	4	9	2	0	3	0	5
Swansea	7	16	1	1	1	0	2
Neath/Port Talbot	0	14	2	1	0	2	2
TOTAL	11	39	5	2	4	2	9

* 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

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 Corporate Safeguarding Team (CST) 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.

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. All Court of Protection cases involving ABMU HB engaged as a party, are formally logged by the CST and any learning from judgements identified and disseminated via the Safeguarding Committee.

Dedicated HB MCA/DoLS Lead.

The Health Board has, for a number of years, been supported through part funding by the three Local Authorities (LAs) to employ a manager within the Corporate Safeguarding Team dedicated to the field of MCA and DoLS. This person provided specialist advice to staff within the four organisations. This role had changed significantly over the years with the LAs now employing their own DoLS/MCA teams. In addition, the HB DoLS/MCA lead retired from the HB in April 2018. As a result of this the LAs withdrew their funding to the post. 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 and handles queries. This role remains jointly funded by the 3 LAs.

4. FINANCIAL IMPLICATIONS

The report does not note any financial implications for the Health Board.

5. RECOMMENDATION

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 (please ✓)	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 (please ✓)	Staying Healthy	Safe Care	Effective Care		Dignified Care	Timely Care	Individual Care	Staff and Resources		
		✓	✓							
Quality, Safety and Patient Experience										
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).										
Financial Implications										
The report does not note any financial implications for the Health Board.										
Legal Implications (including equality and diversity assessment)										
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.										
Staffing Implications										
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 and handles queries.										
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								