University Hospitals of Leicester NHS
NHS Trust

Covert Administration of Medication to Adult Inpatients

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REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

V1-November 2018: New policy

June 2022- **PROCESS FOR MONITORING COMPLIANCE amendment**

KEY WORDS

Covert medication administration

Concealed medication

Mental Capacity

1 INTRODUCTION AND OVERVIEW

1.1 This document sets out the University Hospitals of Leicester (UHL) NHS Trust Policy and Procedures for the covert administration by any route of medication to adult inpatients, aged 18 years and over, who lack the capacity to make the specific decision regarding refusal of prescribed medication. Where a patient lacks capacity clinicians will have an on-going obligation to reassess that mental capacity of the patent. When the patient gains their mental capacity, this policy will no longer apply.

1.2 Covert administration of medicines (i.e. getting the patient to take medication without their knowledge by mixing in food/ drinks etc) is only justifiable in exceptional circumstances, when it is judged to be in the person's best interests (in line with the Mental Capacity Act (MCA) 2005).

1.3 The Leicestershire Medicines Code Chapter 6 notes that in exceptional circumstances covert administration may be considered.

1.4 Disguising medication simply for the convenience of the healthcare team is unacceptable and may be unlawful as unwarranted administration of covert medication infringes a person's Article 8 rights under the Human Rights Act and may constitute an assault.

1.5 Reasonable efforts must be made to establish if the patient has appointed a valid and applicable 'Health and Welfare' Lasting Power of Attorney (LPA) as per s9 of MCA; or has a valid and applicable Advance Decision to Refuse Treatment (ADRT) as per s24-26 MCA.

2 POLICY SCOPE –WHO THE POLICY APPLIES TO AND ANY SPECIFIC EXCLUSIONS

2.1 This policy applies to all Registered and non-registered practitioners, Doctors, Nurses, Midwives, Nursing Associates, Pharmacists, Medicines Administration Pharmacy Technicians and AHPs (Allied Health Professionals) working within the UHL on either permanent, temporary, or honorary contracts. This includes bank and locum staff, but specifically excludes agency nurses who do not typically have long term attachments in single areas/departments. Agency staff may only administer a medicine covertly if directed by a registered practitioner who has been involved in the decision to administer a medicine in this manner.

2.2 Any registered professional making a decision regarding covert administration of medication must have completed the Trust's Mental Capacity Act and Deprivation of Liberty (DoLS) e-learning modules..

2.3 This policy applies to patients aged 18 years and over who are assessed to lack capacity with regard to decisions regarding medication administration, and who are assessed to be at risk of significant harm by not complying with their medication prescription. For any patients aged 16/17 years advice should be sought from Corporate and Legal Affairs on ext. 18615 or the UHL Child Safeguarding Team on ext. 15770.

2.4 Any patient who has capacity regarding decisions about medication administration is free to make an **informed** decision to decline medication if the issue has been thoroughly discussed with the patient. This discussion should be recorded in the person's medical notes, (See Section 5). In such cases covert administration **must not** be undertaken.

Advance Decision to Refuse Treatment (ADRT) - A decision to refuse specified treatment made in advance by a person (aged 18 and over) who has capacity to do so. This decision will then apply at a future time when that person lacks capacity to consent to, or refuse, that treatment. Where they involve life sustaining decisions they must be in writing, signed and witnessed and must be expressly worded. Please refer to the UHL Advance Decisions and Lasting Power of Attorney Policy for further information (Trust Reference Number: B21/2004).

Allied Health Professional (AHP)

Best Interests - Any decision made, or action taken, on behalf of someone who lacks the capacity to make specific decisions, must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests (these are set out in section 4 of the Mental Capacity Act and in the Code of Practice, section 5.13)

Covert administration – medication given to a patient without their consent or knowledge

Decision Maker - Under the Act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the specific decision is referred to as the **'decision-maker'**, and it is the decision maker's responsibility to work out what would be in the **best interests** of the person who lacks capacity.

Deprivation of Liberty (DoL) – This is a term used in the European Court of Human Rights (ECtHR) about circumstances when a person is deprived of their liberty and freedom. A distinction is drawn between deprivation of liberty of an individual (which is unlawful unless authorised) and restrictions on the liberty of movement of an individual. In March 2014 the Supreme Court (*P v Cheshire West and Chester Council and P and Q v Surrey County Council*) confirmed that **the 'acid test' of what may amount to a deprivation of liberty is whether:**

i. The person is under **continuous supervision and control; and**

ii. The person is **not free to leave.**

Independent Mental Capacity Advocate (IMCA) - This is someone who provides support and representation for a person who lacks capacity to make specific decisions. An IMCA is not the same as an ordinary advocate. The Act imposes a **legal duty** on NHS bodies to instruct and consult with an IMCA for people lacking capacity who have no-one appropriate to support or represent them (other than paid staff), whenever:

- *hospital staff are proposing to provide serious medical treatment*

- *the patient will stay in hospital longer than 28 days*

Lasting Power of Attorney (LPA) - Allows an individual (the donor) to give another person (the attorney or donor) the authority to make a specific decision(s) on their behalf. Under a power of attorney, the chosen person (the attorney) can make decisions about the donor's personal welfare (including healthcare) and / or deal with the donor's property

and affairs. In order to be valid an LPA should be executed on the prescribed form and registered with the Office of the Public Guardian. Please refer to the UHL Advance Decisions and Lasting Power of Attorney Policy for further information (Trust Reference Number: B21/2004).

Mental Capacity Act (MCA) provides the legal framework for people who lack capacity to make decisions for themselves or who have capacity and want to prepare for a time when they may lack capacity in the future. Everyone working with and / or caring for a person aged 16 and over years of age must comply with this Act when making decisions or acting for that person, when they lack the capacity to make a particular decision for themselves. The same rules apply whether the decisions are life-changing events or everyday matters.

Mental Capacity – mental capacity is the ability to make a decision or take an action for yourself. A person who lacks capacity means 'a person who lacks the capacity to make a **particular decision** or **take a particular action for themselves** at the **time the decision** or **action needs to be taken'** (MCA Code of Practice, 2007, p. 3).

4 ROLES – WHO DOES WHAT

4.1 Responsibilities within the Organisation

a) The Executive Director with overall responsibility for this policy as 'Contact director' is the Chief Nurse.

b) The Senior Nurse for Medicines Management will support the implementation process with the UHL Adult Safeguarding team providing additional support, on a case-by-case basis, if required in respect of the Mental Capacity Act.

c) Any practitioner recognising the potential need for covert medication will escalate that to the person's medical team / Consultant in charge and the ward or department lead/ Matron. The ward /department pharmacist must be involved in determining if medication is suitable to be given covertly, this is required as some medications will change their release profile and speed of action if, for example, crushed or dissolved.

d) All registered practitioners leading a decision to undertake covert medication administration must be up to date with the Trust's MCA/ DoLS training.

e) Any decision regarding covert medication must be a multidisciplinary one, and if the Best Interest decision maker is a member of medical staff they must be Registrar or above, if a member of the nursing team the decision maker must be band 7 or above.

5. POLICY IMPLEMENTATION AND ASSOCIATED DOCUMENTATION

Procedure	
1.	Patient declines to take medication • Provide information, in the most appropriate way for each individual patient, regarding the medication. This should include what the medication

| Procedure |

	is, what it is for, the type / route, the risks and benefits of the medication, and how long it is required for.
2.	If patient still declining to take medication assess their mental capacity using the 2 stage test of capacity. Document outcome using the Trust's mental capacity and best interests' assessment form on Nerve Centre (paper version available on INsite for Alliance areas and Nerve Centre downtime). Refer to UHL MCA Policy for details.
3a	If patient deemed to have capacity • reaffirm information given • Document in notes • Inform doctor • Continue to offer medication and reassess capacity as situation changes Patients may decline medication for a variety of reasons and if they have capacity that decision must be respected. However, it is important to explore those reasons to determine if the decision to decline medication can be changed. There are a wide range of possible reasons, and there is no absolute requirement that the patient explains their decision to decline; however, examples of common reasons for refusing medication which may be reversible are: • Religious objection to components within the medication (consider seeking guidance from religious representatives, UHL or external • Fear of side effects, both real and imagined • The preparation i.e., patient afraid of choking when swallowing a tablet • Not understanding why this medication is required **Actions to be taken in the event patient with capacity declines medication** a) Discuss with patient reasons for declining medication explaining reasons for its prescription and consequences of declining. b) Speak to ward pharmacist if reasons relate to preparation or constituents of the medication as there may be alternative preparations or formulations available c) Inform medical staff that patient is declining medication, this is particularly important in the case of critical medications. d) Document both the refusal and your actions/ explanations given in the medical or nursing notes
3b	If patient assessed to lack capacity regarding medication refusal

Procedure

	• Determine if patient has a valid and applicable ADRT. • If not: A best interest decision must be made in consultation with (minimum of all below) o The Doctor in charge of the patient's care o Nurse o Pharmacist o Patient's closest family member / significant others/ IMCA if needed Any valid Health and Welfare Attorney or Court appointed deputy (if one has been appointed) • Use Best Interests Checklist to guide decision making (available on the UHL Mental Capacity Assessment form and INsite) • Ensure a decision is reached. • Record outcome on the Trust's mental capacity and best interests' assessment form on Nerve Centre (paper version available on INsite for Alliance areas and Nerve Centre downtime) or in Medical Notes • Refer to UHL MCA Policy • Seek guidance from UHL Legal Services (ext. 18960) area Matron and / or UHL Adult Safeguarding Team (ext. 17703) if required • Consider if re-assessment is required
4	If outcome of Best Interest meeting is to administer Covert medication ➢ Ensure suitable and appropriate medication prescribed, in consultation with pharmacist. ➢ Doctor to review and rationalise medication where prescribed, recording on the drug administration chart as to route/ preparation e.g. *crushed and mixed in diet* ➢ Ensure review date is added to chart ➢ Document in medical notes ➢ Record on Nerve centre in the Nursing notes section stating, '**Covert medication administration agreed'** and state the preferred method e.g. prefers with yoghurt
5	Consider if patient meets criteria for DoLS authorisation as per UHL DoLS Policy. If so, immediately complete DoLS application form.

Associated Documents.

UHL Mental Capacity Act Policy (B23/2007)

UHL Deprivation of Liberty Safeguards Policy and Procedures (B15/2009)

6 EDUCATION AND TRAINING REQUIREMENTS

6.1 Staff engaged in direct patient facing clinical care must complete Consent, MCA and DoLS training evidenced on HELM.

7 PROCESS FOR MONITORING COMPLIANCE

7.1 The table below provides details on monitoring

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Review of any Datix in relation to Covert Administration	Senior Nurse Medicines Management	Datix	Monthly	Medicines Optimisation Committee

8 EQUALITY IMPACT ASSESSMENT

8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.

8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES

General Pharmaceutical Council (Dec 2015) Pharmacy and Care Homes. Report by Webber J commissioned by the GphC addresses issue of covert medication page 27

Leicestershire Medicines Code chapters in PAGL

NICE Guidance (2015) Medicines Management in Care Homes - Quality Standard 85; Quality Statement 6 Covert Medication Administration

UHL Mental Capacity Act Policy (B23/2007)

UHL Safeguarding Adults Policy and Procedures (B26/2011)

UHL The Deprivation of Liberty Safeguards Policy and Procedures (B15/2009)

Mental Capacity Act Code of Practice, 2007

10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW

This document will be uploaded onto sharepoint and available for access by staff through INsite.

The policy will be reviewed after the first year by the Senior Nurse for Medicines Management, and thereafter 3 yearly, the updated version of the Policy will then be uploaded and available through INsite Documents and the Trust's externally accessible Freedom of Information publication scheme. It will be archived through the Trust's PAGL system.