

E-mailing MHA forms: Making sense of the changes coming soon

Published 7 October 2020

With a view to moving with the times and reflecting our increasing reliance on technology in light of Covid-19, the government is making some changes to the rules about how Mental Health Act forms can be sent and received.

From 1 December 2020, the regulations governing the completion of statutory forms under Part 2 MHA - including the forms needed for detention in hospital, treatment, guardianship and CTOs - will be amended to allow for these to be served electronically by e-mail in almost all cases, except where forms are being given to patients.

We look in more detail at what will be changing and when.

What is changing?

The existing provisions about statutory MHA forms are contained in the *Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008* which detail how the forms must be completed, signed and served in order to be legally effective. Amendments to those provisions set out in the *Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2020*, will take a step towards greater use of technology by allowing for these documents to be dealt with electronically in most cases.

The amendments will mean that, from 1 December 2020:

- Statutory MHA forms can be served on the relevant authority/body/person by e-mail, as an alternative to existing methods, provided the recipient has agreed to this in advance (but see applications for admission below).
- Applications for admission to hospital (which will in practice be made by AMHPs) can automatically be sent to hospital managers by e-mail without the need for prior agreement.
- The only exception to the new e-mail rules relates to documents served on patients themselves - e.g. CTO notices of recall - which must be provided to patients in hard copy (although they could be sent by e-mail as well), recognising that patients may not have access to the necessary technology to receive e-mails.
- E-mailed MHA forms will be considered to have been served immediately after the e-mail is sent, except in the case of Nearest Relative discharge orders and notices which will be deemed to have been sent at the beginning of the next business day.

Revised forms

The statutory MHA forms will be amended to provide for e-mail details to be added where forms are being served electronically.

Existing versions of the forms will need to have been replaced by 1 February 2021.

Signatures

The amended regulations allow for electronic signatures on statutory MHA forms. Under the rules governing electronic signatures, this can be '*anything in electronic form...which purports to be used by the individual creating it to sign.*' Essentially, therefore, 'anything goes' in terms of what an electronic signature should look like, provided the person intended it to have the effect of signing the document.

What next?

Before these changes come into effect on 1 December 2020, the government plans to publish guidance giving a practical steer on how they are to be implemented on the ground.

This guidance is expected to cover issues such as the working protocols and agreements which organisations will need to establish locally on the use of e-mail for MHA forms - e.g. the practicalities of hospital managers giving advance agreement and/or receiving forms electronically.

While the legal changes appear straightforward, the challenge will be in the practical detail, in making sure that new systems of working meet not only the MHA requirements but IT, IG and governance standards. It is assumed that many

organisations will look to use the various portals currently being marketed, and further clarity will be needed as to how the processes will work. Issues such as who receives application documents by e-mail at the admitting hospital out-of-hours will for example need to be addressed. Contingency plans are likely to be needed for some time.

Whilst the explanatory memorandum to the new regulations explains that these changes are part of the government's work to modernise the Mental Health Act, it is likely that we will have to wait a while longer for further news of reforms which may be taken forward as a result of the Independent MHA Review back in 2018, as the Minister for Mental Health, Suicide Prevention & Patient Safety recently indicated that there is still no date for the proposed White Paper on MHA reform, saying that this will be published 'as soon as it is possible to do so'.

How we can help

Our national team of mental health and mental capacity specialists have extensive experience in advising health and social care providers - both in the NHS and the independent sector - in relation to all aspects of the law in this area, including:

- Advice on all aspects of the Mental Health Act, including the impact of legislative changes;
- Advice on drafting and implementing policies that are compliant with legislative change and will withstand regulatory scrutiny;
- Representation at First Tier Tribunals;
- Advice on the interface between the Mental Capacity Act and Mental Health Act;
- Advice and representation in Court of Protection proceedings.

We also provide training on all aspects of the Mental Health Act and Mental Capacity Act, including induction and refresher courses for s.12 Approved Clinicians.

Authors



Gill Weatherill

Newcastle

+44 (0)191 404 4045

gweatherill@dacbeachcroft.com



Sarah Woods

Bristol

+44 (0) 117 918 2744

swoods@dacbeachcroft.com



Anna Eastwood-Jackson

Leeds

+44 (0)113 251 4721

aeastwoodjackson@dacbeachcroft.com