

Please note the content of this training scenario is correct as of September 17. It is up to individuals using the scenario to confirm if there have been any subsequent changes in case law or guidance requiring inclusion prior to use.

Scenario 8 (Mental Health based)

Wendy is subject to Section 7 Mental Health Act – guardianship and is placed within a residential unit. Wendy has a clear diagnosis of mental illness and has been known to mental health services for many years. Wendy is also diagnosed with CA of the lung. Due to a delusional belief that she will be cured of her cancer, she states she has no need for any treatment. Following deterioration in her mental state Wendy was assessed as lacking capacity to consent to treatment relating to oncology and to consent to her placement at the residential unit. Wendy has been known to leave the unit and on one occasion was brought back to the unit by the police.

Questions

What would you do?
What legal implications might there be?
What do the procedures tell you?

Trainers notes

Practice guidance

The powers of the section 7 MHA (guardianship) would only require the service user to live at the residential unit and to be returned to the unit in the event the service user left. It does not have the powers to authorise more restrictive care, such as stopping the service user leaving the residential unit. As such consideration would need to be given to a DOLs authorisation. Section 7 MHA and a standard DOLs authorisation can run alongside each other. However attention must be given to the Mental Health act Code of Practice para 30.32 (ref below).

What process would need to be followed to authorise any treatment for Oncology treatment? Would this be authorised under the Section 7 MHA Guardianship.

The section 7 MHA Guardianship does not have the powers to authorise treatment for someone who lacks the capacity to consent to oncology treatment. As the service user is assessed as not having capacity to agree to the treatment for oncology then a best interest process under the MCA would need to be followed.

Who would be the decision maker?

Although the service user is under the care of the local Community Mental Health Team and is Care Coordinated by a psychiatric nurse, the MCA code of Practice para 5.8 states;

Where the decision involves the provision of medical treatment, the doctor or other member of healthcare staff responsible for carrying out the particular treatment or procedure is the decision-maker.

As such the oncologist would be the decision maker as to the oncology treatment. However, following the best interest process, the decision maker must consult with those involved with the care of the service user. As such the mental health professionals would support the oncologist around the impact of mental disorder on the service user.

For decisions about major medical treatment or where the person should live and where there is no-one who can advocate on behalf of the service user, then there is a duty to refer to an Independent Mental Capacity Advocate (IMCA who) must be consulted.

Section 7 Mental Health Act (Guardianship)

A guardianship application may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship under this section; and

(b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.

Section 7 Guardianship MHA statutory powers are:

(a) the power to require the patient to reside at a place specified by the authority or person named as guardian;

(b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;

(c) the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, or other person so specified. (section 8 MHA 1983 (rev 2007))

Mental Health act Code of Practice para 30.32 (ref below)

If the person lacks the capacity to decide where to live, they may be deprived of their liberty if this is authorised separately by either (a) a DOL authorisation in respect of a hospital or care home placement if they are 18 or over; or (b) by a Court of Protection order made by the Court of Protection under the MCA in respect of other community settings if they are 16 or over. If it is appropriate for deprivation of liberty to be authorised under the MCA, the local authority should consider whether guardianship remains appropriate, bearing in mind the need to apply the least restrictive option and maximising independence principle (see paragraphs 1.2 – 1.6 and paragraphs 30.2 – 30.7).