Mental Health Act 2016

Chief Psychiatrist Policy

Treatment and care of minors

Contents

Queensland Government

General

The *Mental Health Act 2016* (the Act) recognises and promotes the best interests of minors receiving mental health treatment and care. Under the Act, a minor is an individual who is under 18 years of age.

Minors should have their specific needs, wellbeing and safety recognised and protected, including by receiving treatment and care separately from adults if possible.

Scope

This Policy is mandatory for all authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act **must** comply with this Policy.

This policy **must** be read in conjunction with the relevant provisions of the Act and the *Queensland Health Guide to Informed Decision-making in Health Care* in relation to informed decision-making and consent for children and young people.

The policy **must** be read in conjunction with the Chief Psychiatrist Policy - Treatment and care of patients.

Clinicians should work collaboratively with and in partnership with patients to ensure their unique age-related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. Clinicians should consider the timely involvement of appropriate local supports and provide treatment and care with a recovery-oriented focus.

This policy **must** be implemented in a way that is consistent with the objects and principles of the Act.

Policy

1 Treatment criteria and 'Less Restrictive Way'

The application of the treatment criteria and the assessment of capacity of minors to consent to being treated is guided by the Chief Psychiatrist Policy - Treatment Criteria, Assessment of Capacity, 'Less Restrictive Way' and Advance Health Directives, and the Queensland Health Guide to Informed Decision-making in Health Care.

For a minor, treatment under a less restrictive way includes circumstances where a parent provides consent for the treatment.

Under the Act, a parent includes:

- a guardian of the minor, or
- a person who exercises parental responsibility for the minor, other than on a temporary basis, or
- for minors of an Aboriginal background, a person who, under Aboriginal tradition, is regarded as a parent of the minor, and
- for a minor of Torres Strait Islander background, a person who, under Island custom, is regarded as the parent of the minor.

Key Points

- A Recommendation for Assessment may only be made, after an examination of a minor, if it is likely that the minor would not be able to receive treatment or care with the consent of a parent.
- Providing treatment with the consent of a parent should apply as far as possible.
    - The authorised doctor must make reasonable efforts to discuss the minor's treatment and care needs and, where clinically appropriate, seek consent from the parent.
        - However, the authorised doctor's primary consideration is to ensure the minor receives appropriate clinical care. There may be circumstances where the treatment and care needs cannot be appropriately met by seeking the parent's consent.
    - 'Reasonable efforts' will take account of the clinical circumstances including, for example, urgency and any risks associated with delaying treatment.
        - If timely contact with a parent is not possible, the contact should be made at the earliest possible time.
    - In seeking consent, the authorised doctor should be satisfied that the person providing consent is a parent as defined in the Act.

The authorised doctor **must** provide all of the information required to enable the parent to make an informed decision.

If consent is given, the consent authorises the actions necessary to provide treatment and care including the use of force that is necessary and reasonable in the circumstances.

- If the person needs to be detained as an inpatient for treatment, explicit consent for the detention is required.

A parent cannot consent to the minor being secluded, mechanically restrained or to the administration of electroconvulsive therapy (ECT).

If consent has been sought from a parent and the parent decides not to give consent, the reasons for the decision **must** be taken into account.

However, the authorised doctor may make a Treatment Authority if the treatment criteria are met and:

- the doctor considers treatment is necessary, and
- the decision is in the child's best interests.

1.1 Capacity

In relation to capacity to consent to be treated for a mental illness, the Act does not affect common law provisions relating to:

- the capacity of a minor to consent to treatment, or
- a parent consenting to treatment of a minor.

Key Points

A minor is presumed not to have capacity to give their own consent, unless there is sufficient evidence (e.g. an assessment of capacity by a clinician) they have such capacity to consent.

This is referred to as 'Gillick competence'. Part 3 of the Queensland Health Guide to Informed Decision-making in Healthcare provides information about decision-making and consent for minors.

The following considerations are relevant for determining whether a minor has capacity to consent to treatment for a mental illness:

- the age, attitude and maturity of the child or young person, including their physical and emotional development,
- the child or young person's level of intelligence and education,
- the child or young person's social circumstances and social history,
- the nature of the child or young person's condition,
- the complexity of the proposed health care, including the need for follow-up or supervision after the healthcare,
- the seriousness of the risks associated with the healthcare, and
- the consequences if the child or young person does not have the health care.

The more complex the treatment or serious the consequences, the stronger the evidence of the minor's capacity to consent to the specific treatment will need to be.

A minor is not able to make an Enduring Power of Attorney or an Advanced Health Directive.

2 Notifications

The Act makes specific requirements regarding notifications when a patient is a minor.

2.1 General

Any written notice that may be provided to a minor may also be provided to one or more of the patient's parents in addition to, or instead of, the information being provided to the minor if:

- the minor may not understand or benefit from receiving the notice, and
- giving the notice to the parent appears to be in the minor's best interest.

When determining whether giving notice to a parent is in the minor's best interest, the views and wishes of the minor should be taken into account.

Additionally, where an oral explanation or discussion with the minor is required (for example prior to accessing community leave), the explanation may also be provided to the minor's parent/s.

However, this requirement does not apply if:

- the minor requests, at a time when they have capacity, that the communication not take place, or
- the parent is not willing or readily available for this to occur, or
- the communication with the person is likely to be detrimental to the minor's health and wellbeing.

2.2 Notifications to the Public Guardian

The Act requires the Public Guardian to be notified about:

- the admission of a minor to a high security unit or an inpatient mental health unit of an AMHS other than a child and adolescent inpatient unit, and
- the use of mechanical restraint, seclusion or physical restraint in an AMHS on a patient who is a minor.

2.2.1 Admission of minor to high security unit or inpatient mental health unit other than child and adolescent inpatient unit

The administrator of an AMHS is responsible for ensuring the Office of the Public Guardian receives timely notification of a minor's admission to a high security unit or an inpatient unit of an AMHS other than a child and adolescent inpatient unit.

The purpose of the notification is to enable the Office of the Public Guardian to consider the need for the involvement of a Community Visitor.

Notice is to be given as soon as practicable but **must** be provided within **seventy-two (72 hours)** after the minor's admission.

Notice is provided via email to OPGvisitingpractice@publicguardian.qld.gov.au and is to include:

- the name of the facility to which the minor has been admitted (AMHS and treating unit),
- the minor's age,
- CIMHA identification number, and
- the name, designation, phone number and email address for an appropriate contact person at the AMHS (e.g. Nurse Unit Manager, Shift Coordinator).

Further information about the minor's admission is to be provided on request from the Office of the Public Guardian or the Community Visitor.

2.2.2 Use of mechanical restraint, seclusion and physical restraint

The Office of the Chief Psychiatrist provides monthly reports to the Office of the Public Guardian about the use of mechanical restraint, seclusion or physical restraint of a minor.

The reports, drawn from data entered in CIMHA, are also provided to AMHS administrators.

The use of mechanical restraint, seclusion or physical restraint **must** be recorded against the consumer's CIMHA profile as soon practicable to enable the reporting requirements to be met.

Administrators **must** ensure that there are processes and resources in place to enable the timely entry of data relating to mechanical restraint, seclusion and physical restraint in CIMHA.

2.3 Notifications to the Mental Health Review Tribunal (MHRT)

The MHRT **must** be notified of the admission, or discharge, of a minor to a high security unit (see section 5.1).

3 High Security Unit admissions

Key Points

Prior approval **must** be provided by the Chief Psychiatrist before a minor can be admitted to a high security unit. This applies for any minor admitted as:

- a classified patient
- by way of a transfer from another AMHS, or
- under a judicial order made by a Supreme or District Court.

When determining whether the minor should be admitted to a high security unit, the Chief Psychiatrist **must** have regard to:

- the minor's mental state and psychiatric history
- the minor's treatment and care needs, and
- the security requirements for the minor.

Once the Chief Psychiatrist has provided approval, the administrator of the AMHS may consent to the minor being admitted to the high security unit only if satisfied the unit has the capacity to assess the minor or provide the minor with the required treatment and care.

If the minor is being admitted as a classified patient, the *Chief Psychiatrist Policy - Classified Patients* **must** be complied with.

3.1 MHRT review

The MHRT **must** review the detention of a minor in a high security unit within **seven (7) days** of their admission. This does not apply to admissions under a Judicial Order made by the Supreme or District Court.

Key Points

The administrator of the AMHS must give the MHRT written notice of the admission as soon as practicable. This notice is provided by forwarding a copy of one of the following to the MHRT (whichever applies):

- Custodian Consent (Classified Patient) form – with section 4 completed, or
- Patient Transfer form.

The MHRT will determine whether the minor should continue to be detained in the high security unit or if they should be transferred to another AMHS.

The MHRT **must** also regularly review the minor at intervals of not more than **three (3) months.**

An application for review may also be made for the minor by an interested person (e.g. their parent, carer or legal representative) at any time.

If the minor stops being detained in the high security unit, the administrator **must**, as soon as practicable, give the MHRT written notice of the discharge by providing a copy of either the:

- Notice Event (Classified Patient) form, or
- Patient Transfer form.

4 Seclusion and restraint

The provisions of the Act in relation to seclusion, mechanical restraint and physical restraint apply to a minor who is a relevant patient in the same way as for an adult who is a relevant patient.

A parent **cannot** consent to a minor being secluded or mechanically restrained.

A relevant patient is a person, including a minor, subject to:

- a Treatment Authority,
- a Forensic Order,
- a Treatment Support Order, or
- a person who is absent without permission from an interstate mental health service and who has been detained in an AMHS.

If seclusion or restraint is used for a minor, staff involved **must** be aware of the vulnerability to significant psychological trauma from these practices for minors.

See Chief Psychiatrist Policy – Mechanical Restraint, Chief Psychiatrist Policy – Seclusion and Chief Psychiatrist Policy – Physical Restraint for further detail.

5 Electroconvulsive Therapy

The Chief Psychiatrist Policy - Electroconvulsive Therapy outlines the requirements for authorising the use of ECT in an emergency and with the approval of the MHRT.

A minor, or their parent, **cannot** provide consent for ECT.

Key Points

When determining an application for ECT in relation to a minor, the MHRT must have regard to:

- The views, wishes and preferences of the minor, and
- The views of parents.

The MHRT may only approve ECT for a minor if satisfied:

- The therapy is in the minor's best interest,
- Evidence supports the effectiveness of the therapy for the person's particular mental illness,
- Evidence supports the effectiveness of the therapy for a person of the minor's age, and
- As to the effectiveness of any past attempts, where applicable.

At the hearing for the application, the MHRT **must** appoint a lawyer at no cost to the minor.
The MHRT website provides further information regarding the process of appointing legal representation: www.mhrt.qld.gov.au.

6 Searches

The provisions of the Act in relation to searches apply to a minor in the same way as for an adult.

See Chief Psychiatrist Policy – Searches and Security for further detail.

7 Mental Health Court and MHRT Proceedings

7.1 Confidentiality

It is an offence for a person to publish information that identifies, or is likely to lead to the identification of, a minor who has been a party to Mental Health Court or MHRT proceedings.

Any hearing of the Mental Health Court where the proceedings relate to a minor is not open to the public. The Court may however grant leave for a person to be present during the hearing if satisfied it is in the interests of justice.

7.2 MHRT Proceedings

The Act establishes requirements for the composition of the MHRT when the proceedings involve a minor. If a psychiatrist member is required on the MHRT panel for an application or hearing involving a minor, the psychiatrist member **must** have relevant knowledge in child and adolescent psychiatry.

For any MHRT proceeding where the patient is a minor, the Act provides that the MHRT must appoint a lawyer to represent the minor at no cost to the minor.

Issued under section 305 of the *Mental Health Act 2016*.

Dr John Reilly
Chief Psychiatrist, Queensland Health
15 April 2020

Definitions and abbreviations

Term	Definition
AMHS	Authorised mental health service – a health service, or part of a health service, declared by the Chief Psychiatrist to be an authorised mental health service. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the Act for persons subject to involuntary treatment and care.
Child and adolescent Unit	An inpatient mental health unit of an AMHS that provides treatment and care only to minors or young adults.
CIMHA	Consumer Integrated Mental Health Application – the statewide mental health database which is the designated patient record for the purposes of the Act.
Inpatient mental health unit	The part of an AMHS to which patients are admitted for treatment and care and discharged on a day other than the day of admission.
Minor	An individual who is under 18 years of age.
Parent	Includes: A guardian of the minor A person who exercises parental responsibility for the minor, other than on a temporary basis for minors of an Aboriginal background, a person who, under Aboriginal tradition, is regarded as a parent of the minor, and for a minor of Torres Strait Islander background, a person who, under Island custom, is regarded as the parent of the minor.

Referenced documents and policies

- Queensland Health Guide to Informed Decision-making in Health Care
- Chief Psychiatrist Policy – Treatment and Care of Patients
- Chief Psychiatrist Policy – Classified Patients
- Chief Psychiatrist Policy – Mechanical Restraint
- Chief Psychiatrist Policy – Seclusion
- Chief Psychiatrist Policy – Physical Restraint
- Chief Psychiatrist Policy – Electroconvulsive Therapy
- Chief Psychiatrist Policy – Searches and Security

Referenced documents and policies

Form – Patient Transfer
Form – Notice Event (Classified Patient)
Form – Custodian Consent (Classified Patient)

Document status summary

Date of Chief Psychiatrist approval:	15 April 2020
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Attachment 1: Key contacts

Key contacts	
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Local Independent Patient Rights Adviser	Phone: Email:
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