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on the day BRIEFING

NHS Providers

Care Quality Commission report on the Mental Health Act Code of Practice 2015: An evaluation of how the Code is being used

Introduction and summary

The Care Quality Commission (CQC) has published a report today evaluating the use of the Mental Health Act (MHA) code of practice across mental health services, since it was updated in 2015. The report is informed by data from CQC MHA monitoring visits to mental health services and interviews with patients and providers, in addition to engagement with commissioners, providers, police, social workers and local authority staff. CQC also looked at the impact on people's experiences of detention, care and treatment. This briefing summarises key points from the report, but for a comprehensive overview of findings and conclusions we encourage providers to read the report in full.

Key points:

- CQC conclude that the MHA code of practice (the code) is not being used as it was intended due to a lack of awareness and understanding of the statutory guidance amongst providers and staff.
- The following findings are highlighted in the report as particular issues:
  - Providers did not support staff well enough to enable them to have meaningful and productive conversations with patients.
  - There are ongoing difficulties with providing Independent Mental Health Advocate (IMHA) support.
  - Local areas should work together better to make sure that people receive the right care across organisations and timely access to a bed that is close to home.
  - Awareness of the code remains low among patients, families and carers.
  - The current format of the code it not easy for staff and professionals to use.
  - The quality, content and focus of training for staff on the code of practice varied.
  - The quality of governance and oversight of the MHA and the code also varied.
- Based on these findings, CQC has made a number of recommendations for the Department for Health and Social Care (DHSC) to lead on, as part of its response to the independent review of the MHA:
  - Develop standardised resources, support and training for patients, carers and staff so that they understand how the code applies to individuals, practice, services and local partnerships.
  - Promote the use of the guiding principles to improve practice and enable meaningful engagement with families and carers.
  - Make sure that the code of practice gives clear and consistent guidance on providers' governance arrangements.

- Improve the usability and access to the code of practice, taking into account the way the code is intended to be used in practical situations between patients and their care team.
- The report highlights the fact that any changes made to legislation, policy or practice following the independent review of the MHA will require a new code of practice. It stresses that the key areas of improvement and learning from the current code, highlighted in the report, must all be addressed in future revisions if the code is to provide a strong safeguard for patients, families, carers and support professionals and services.

How the code of practice is being used

Through the review, CQC saw services using and applying the code of practice in different ways. It found variation in the level of understanding about how the code should be applied and the perceived benefit of doing so. CQC looked at three key areas for more insight into the issues, which are outlined below:

Impact of the revised guiding principles on practice

- Overall, CQC found that the impact of the guiding principles was limited. In general, providers lacked understanding about how to promote, apply and report on the guiding principles. However, CQC did see some examples of providers applying the guiding principles well during its evaluation.
- CQC found that the guiding principles were not being routinely implemented to inform practice in the way they should in the following areas in particular: the least restrictive principle; respect and dignity, and purpose and effectiveness; and empowerment and involvement.
- CQC highlights in the report that it passed these findings directly on to the independent MHA review, which has since made recommendations to make the principles a statutory requirement to be applied in the MHA and to include reference to them in the statutory paperwork used when detaining people.

Action taken by providers to improve patient empowerment and involvement

- CQC have not found evidence that the code has prompted a substantial change in the way services are empowering and involving people in their care.
- CQC concluded that providers need to consider how they support staff to have meaningful and productive conversations with patients, so that they better understand individual patient's goals and how patients can use their qualities and strengths to take ownership of their recovery.
- CQC also identified ongoing difficulties with providing IMHA support. This included ward staff not always knowing when a referral should be made, a lack of knowledge about the differences between the various advocacy services available and a reduction in IMHA services nationally.

Impact of new guidance on local services working together

- CQC found there continued to be a lack of understanding on the roles and responsibilities of each organisation in implementing section 140 of the MHA.
- CQC also found revised guidance has not had an impact on making sure that there are locally agreed joint protocols in place to support the implementation of section 140.

- CQC concluded that commissioners are not doing enough to make sure that they are meeting their statutory responsibilities and applying the supporting guidance in the code.
- CQC highlights in the report that the independent review of the MHA made a number of recommendations to address issues around the application of section 140, specifically that:
  - NHS England, DHSC and CQC should work with CCGs, local authorities, the AMHP Leads Network and providers to understand how section 140 is being used currently.
  - Clear joint guidance should be issued to support commissioners to discharge their statutory duties under section 140.
- CQC added that, with changes being made to the way commissioning is delivered in practice and with organisations working more collaboratively, there is an opportunity to provide further practical tools and guidance to commissioners to support them to implement section 140 and the associated code guidance in Chapter 14.

Enablers and barriers to good practice

Feedback CQC received during the evaluation from stakeholders and experts identified a number of overarching themes that were common across its three key areas of focus. These included:

Awareness and understanding of the code - CQC states this continues to be one of the most significant barriers to implementing the code's guidance for both statutory requirements and advice on best practice.

Quality of staff training on the code - CQC found the quality, content and focus of training for staff on the code of practice varied nationally. Providers who took part in a webinar as part of the evaluation told CQC they would welcome a national training plan, which would help to make sure that there was consistency of training and that there were resources for local training needs.

Increasing usability for staff and professionals - CQC heard that the current format of the code is not easy for staff and professionals to use to support clinical or professional decision-making and practice. While some staff had downloaded electronic versions, the report highlights a call to create a more innovative digital version and develop it with clinical situations and use in mind. CQC also found that the code is not widely used by commissioners or other services involved with people who are or may be subject to the MHA. The report concludes that training for those beyond provider services is not happening in practice, or not consistently offered.

Clear and consistent governance, monitoring and reporting - CQC found that the quality of governance and oversight of the MHA and the code also vary nationally. CQC concluded it would be helpful for any revisions to the code to include a new chapter on best practice for governance of the MHA. This should include providing suggestions for governance structures and reporting templates.

Conclusion

CQC's evaluation highlighted that the MHA Code of Practice guidance and best practice expectations are not well understood or consistently being translated into practice, oversight or decision-making.

Based on the findings, CQC recommend that DHSC, as part of its response to the independent review of the MHA, take a lead in:

- Developing standardised resources, support and training for patients, carers and staff so that they understand how the code applies to individuals, practice, services and local partnerships.
- Promoting the use of the guiding principles to improve practice and enable meaningful engagement with families and carers. The guiding principles need to be recognised as a support tool for human-rights based approaches by staff and services.
- Making sure that the code gives clear and consistent guidance on providers' governance arrangements. This includes guidance on ensuring that how the MHA and code are being applied is reported on at senior leadership level.
- Improving the usability of and access to the code, taking into account the way the code is intended to be used in practical situations between patients and their care team. This should include considering how to make the code digitally accessible to patients, carers and clinicians. For example, a search function with accessible links to other relevant guidance would enable professionals to find relevant guidance quickly to support their day-to-day work.

In addition to the recommendations made above, CQC highlights steps it is currently taking, or planning to take following the publication of this report. These include:

- CQC's 'Getting it Right' programme, which responds to the recommendation in the MHA review that CQC develops new criteria for assessing and monitoring the physical and social environments of mental health wards.
- CQC MHA visits, which will continue to highlight specific issues with how the code is applied. The CQC will report on its findings in its MHA annual reports.
- Using findings from CQC activities to engage with senior stakeholders leading the next phase of the independent review of the MHA to influence future legislative reform and practice improvements.
- Sharing findings from this evaluation with DHSC to influence what can be done now to improve how the code is being implemented and how any future code could be improved in terms of content and implementation.

CQC also stressed that this report and its findings should be considered by those involved in leading the development of the Liberty Protection Safeguards in their development of the code intended to support and protect the rights of people being cared for using that legal framework.

NHS Providers view

We welcome today's report from CQC evaluating the use of the Mental Health Act (MHA) code of practice (the code) across mental health services. Although the report highlights some good examples of providers applying the guiding principles well and tailoring training on the code for different teams, it makes clear that there is still room for improvement in providers, commissioners and other services' understanding of the code and their translation of it into practice, oversight and decision-making.

We agree that local areas, including commissioners, local authorities, police and providers, should work more effectively together to make sure that people receive the right package of care including when care is provided by multiple organisations. As the report rightly highlights, this includes making sure that people in need of urgent care have timely access to a bed that is close to home, in line with the expectation of section 140 of the MHA. However, there is a risk that this will put further pressure on beds and require more capital investment than is currently available to trusts and their partners. To enact the change required, we must ensure mental health is appropriately resourced and adequate capacity in local services is commissioned, to ensure services are both available and appropriate to meet patients and service users' needs.

The recommendations that DHSC lead on developing standardised resources, support and training, and on improving the usability of and access to the code are particularly welcome. It will be important to involve NHS providers in taking forward the recommendations within the report, particularly around governance and the guiding principles, if we are to succeed in making sure that the MHA and code are used effectively in practice and the experience of people who are detained under the MHA is improved.

CQC rightly point out that any changes made to legislation, policy or practice following the independent review of the MHA will require a new code of practice. We look forward to the publication of the government's white paper on the review of the MHA later this year and working with national bodies and other partners on effectively taking the proposals it sets out forwards.

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