Guidance for the Covert Administration of Medication
Introduction

This guidance relates to the covert administration of medicines to individuals who are unable to give informed consent to treatment and refuse to take tablets/capsules or liquid preparations when they are offered openly.

The NMC position statement on covert administration of medicines 2001 states that:

“Disguising medication in the absence of informed consent may be regarded as deception. However a clear distinction should always be made between those patients or clients who have capacity to refuse medication and whose refusal should be respected and those who lack capacity. Among those who lack capacity, a further distinction should be made between those for whom no disguising is necessary because they are unaware they are receiving medication, and others who would be aware if they were not deceived into thinking otherwise.”

The Royal College of Psychiatrists has also issued a statement on the covert administration of medicine which states:

- The importance of respecting the autonomy of individuals who refuse treatment
- That there may be times when severely incapacitated individuals can neither consent nor refuse treatment
- Treatment should be made available to severely incapacitated individuals judged according to their best interests and administered in the least restrictive manner
- In exceptional circumstances it may be necessary to administer medication in foodstuffs without the individuals awareness that it is being done

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. It makes it clear who can take decisions in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity.

The Act is underpinned by five principles:

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests - anything done for or on behalf of people without capacity must be in their best interests; and
- Least restrictive intervention - anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.
The Act deals with two situations where a designated decision-maker can act on behalf of someone who lacks capacity

- Lasting powers of attorney (LPAs) - The Act allows a person to appoint an attorney to act on their behalf if they should lose capacity in the future. This is like the current Enduring Power of Attorney (EPA), but the Act also allows people to let an attorney make health and welfare decisions.
- Court appointed deputies - The Act provides for a system of court appointed deputies to replace the current system of receivership in the Court of Protection. Deputies will be able to take decisions on welfare, healthcare and financial matters as authorised by the Court but will not be able to refuse consent to life-sustaining treatment. They will only be appointed if the Court cannot make a one-off decision to resolve the issues.

The Act creates two new public bodies to support the statutory framework, both of which will be designed around the needs of those who lack capacity

- A new Court of Protection - The new Court will have jurisdiction relating to the whole Act and will be the final arbiter for capacity matters. It will have its own procedures and nominated judges.
- A new Public Guardian - The Public Guardian and his/her staff will be the registering authority for LPAs and deputies. They will supervise deputies appointed by the Court and provide information to help the Court make decisions. They will also work together with other agencies, such as the police and social services, to respond to any concerns raised about the way in which an attorney or deputy is operating. A Public Guardian Board will be appointed to scrutinise and review the way in which the Public Guardian discharges his/her functions. The Public Guardian will be required to produce an Annual Report about the discharge of his/her functions.

The Act also includes three further key provisions to protect vulnerable people

- Independent Mental Capacity Advocate (IMCA) An IMCA is someone appointed to support a person who lacks capacity but has no one to speak for them. The IMCA makes representations about the person's wishes, feelings, beliefs and values, at the same time as bringing to the attention of the decision-maker all factors that are relevant to the decision. The IMCA can challenge the decision-maker on behalf of the person lacking capacity if necessary.
- Advance decisions to refuse treatment - Statutory rules with clear safeguards confirm that people may make a decision in advance to refuse treatment if they should lose capacity in the future. It is made clear in the Act that an advance decision will have no application to any treatment which a doctor considers necessary to sustain life unless strict formalities have been complied with. These formalities are that the decision must be in writing, signed and witnessed. In addition, there must be an express statement that the decision stands "even if life is at risk".
- A criminal offence - The Bill introduces a new criminal offence of ill treatment or neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to imprisonment for a term of up to five years.
Policy

Staff should refer to the Humber Mental Health Teaching NHS Trust Policy on the Covert Administration of Medication.

Professional conduct

Registered practitioners should reflect on treatment aims of disguising medication. The treatment must be necessary to in order to save life, prevent deterioration or ensure improvement in the individuals’ physical and/or mental health.

Registered nurse involved in covert administration of medicines should be fully aware of the aims, intent and implications of such treatment. They should not act unilaterally and in isolation. Practitioners are personally accountable for their practice.

If a person is lawfully detained under a section of the mental health act, some forms of forced or disguised medication are recognised by law. Staff should refer to the mental health act and code of practice.

The decision to give covert medication should be a multi-disciplinary decision and be planned for. Those involved in the decision could be:

- Community Psychiatric Nurse/ Keyworker
- Prescriber
- Pharmacist
- Residential home staff
- Nurse
- Allied professional involved in the individuals’ care

In an emergency situation the prescriber and the nurse could make a decision to covertly medicate. This must be a joint decision and documented in the care file. A capacity form must be completed and signed by both parties making the decision, which should be reviewed at the earliest opportunity.

Documentation

- The discussions and decisions that take place when a decision to consider the covert administration of medicines should be recorded using the Covert Administration of Medication Best Interests Forum included in appendix 1.

- An example care plan for individuals who are being administered medication covertly is included in appendix 2.

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Approved capacity forms are available within Humber Mental Health Teaching NHS Trust. Outside the Trust decisions should be documented appropriately.
Consent

Each adult must be presumed to have the mental capacity to consent or refuse treatment, including medication unless he or she cannot;

a) Understand and retain the information relevant to the decision in question.
b) Believe the information.
c) Weigh that information in the balance to arrive at a choice.

Assessing capacity is a decision for the treating physician; a capacity form should then be completed\(^2\) which should record the reasons why mental incapacity is presumed. Practitioners have a responsibility to participate in discussions about this assessment. Capacity may fluctuate. The ability to consent should be reviewed at the most appropriate forum. This may be a multi-disciplinary team meeting. Capacity should be documented and a new form for capacity\(^3\) completed if capacity has changed.

The covert administration of medication to individuals with schizophrenia and other severe mental illnesses where individuals can learn and understand that they will be required to take medication is unacceptable

Covert administration of medication is not justified for research purposes

When individuals are capable of giving or withholding consent, no medication should be given without their agreement. They must be given information about the nature, purpose, associated risks and the alternatives to the proposed medication. A competent adult has the right to refuse treatment, even if refusal will adversely affect his or her health or shorten his or her life. Registered nurses must, therefore, respect a competent adult’s refusal in the same way as their consent.

Individuals may have indicated consent or refusal at some stage, whilst still competent, in the form of an advance directive or living will. Where these wishes are known Registered Nurses should respect them, providing that the decision in these directives or wills is clearly applicable to the present circumstances and there is no reason to believe the person has changed their mind.

The ultimate decision to administer medicines covertly must be one that has been informed and agreed by the multi-disciplinary team caring for the individual.

No one, not even a spouse, can consent for someone else, although the views of the relative and close friends may be helpful in clarifying the wishes of an individual and establishing their best interests.

Administration of medicines to individuals who lack the capacity to consent and are unable to appreciate they are taking medication, for example, unconscious individuals, should not need to be carried out covertly. If these individuals recover awareness, their consent should be sought at the earliest opportunity.

\(^2\) Approved capacity forms are available within Humber Mental Health Teaching NHS Trust. Outside the Trust decisions should be documented appropriately.
Covert administration of medicines

Covert administration of medicines is only likely to be necessary or appropriate when individuals actively refuse medication and who are judged not to have the capacity to understand the consequences of their refusal.

There are exceptional circumstances in which covert administration of medication may be considered in order to prevent an individual from missing essential treatment. In these circumstances and in the absence of informed consent, the following will apply:

- The individual must be incapable of consenting to the treatment.
- An individuals’ best interest must always be the first consideration.
- The medication must be considered essential for the individuals’ health and wellbeing, or for the safety of others.
- All other methods of administration have been tried unsuccessfully.
- Regular information and encouragement by a team member with whom the individual has a good rapport could encourage medication compliance.
- The decision to administer medicines covertly must not be routine and must be a contingency/ emergency measure that is planned for within a multi agency way.
- The risk and benefits of the proposed treatment must be documented within the individuals’ notes.
- The Multi-disciplinary team must discuss that this approach is required in these circumstances, the decision, action to be taken and all the parties present must be documented.
- A care plan should be implemented to reflect the proposed plan of treatment with a review date. (see appendices)
- The pharmacists opinion should be sought on the most appropriate form of medication administration e.g. syrups. The pharmacist should always be involved in the decision regarding covert administration of medication and the method of administration must be agreed with the pharmacist and recorded in the care plan at the earliest opportunity.
- A medicine with a product license would be used in an unlicensed manner if the dose, route or form were outside the licensed terms. A nurse who administers a medicine by crushing a tablet or opening a capsule would be using the medicine in an unlicensed form.
- Nurses who administer medicines in an unlicensed form independently would be personally liable and be required to justify their actions in the event of any adverse reaction.
- It is important to ensure that giving medication in food does not compromise the individuals’ nutrition or affect the properties of the medication; again the pharmacist will advise as to disguising medication in food.
- When necessary to disguise medicines they should be mixed in a small portion of food or liquid rather than a full meal or drink. Advice must be obtained from the pharmacist as to what food or drink is suitable.
- Generally medication should be administered at the end or after a meal except where the properties of the medication dictate otherwise.
Appendix 1

Best Interests Decision Record

If a person has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that person, must be made in his/her best interests – Principle 4

Date of Meeting: Name of Person:

NHS Number: Ward/Unit

Attendees at Meeting Apologies (written feedback received)

Is it likely that the person may regain capacity, can the decision wait until that time, if not why not

Yes No

(Give details)

What is the nature of proposed action or decision to be made ie examination and/or treatment or long term care provision?
Is there a least restrictive option (If yes, please explain this in full)

Yes  No

What is the justification for proposed action, examination and/or treatment or long term care?

Are there any risks relating to proposed action, examination or treatment or long term care provision:  

Yes  No

(Please give details)

What are the person past and present wishes and feelings? (Check if these have been written down anywhere or have been expressed in either emotional responses and or behaviours)
Is there an Advance Decision/Statement? (Does this relate to the decision in question as this will override the need to carry out best interests?)

Yes          No

Are there any beliefs and or values that would be likely to influence the decision, if he/she had the capacity? (These could be religious, cultural or moral)

(Please give details )

Yes          No

Are there any other factors that need to be considered, factors that the person would be likely to consider if he/she were able to do so? (Emotional bonds or family obligations in deciding how to spend money or where to live)

Yes          No
What are the views of the other relevant people in the person’s life?

Have you consulted the Lasting Power of Attorney (L.P.A), deputy or person nominated by the person to consult?

Yes ☐ No ☐

What are the views of the L.P.A, Deputy or person nominated by the person to consult?
Is there a need to involve an **Independent Mental Capacity Advocate (IMCA)**? What are their views?

(Please give details)

Is there a dispute about best interests?

(Please give details)
Outcome of discussions; reasonable belief as to best interests
(The decision maker must take the above steps, amongst others and weigh up the factors in order to determine what decision of course of action is in the best interests of the person concerned)

The undersigned believe this to be a fair representation of the discussions that took place. We have reasonable grounds for believing that what is being planned is in the best interests of the person concerned at this point in time.

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**TREATMENT PLAN**

**PATIENT:**

**DOB:**

**CARE CO-ORDINATOR/PRIMARY NURSE:**

**SIGNATURE:**

**UNIT NUMBER:**

**ADDRESS:**

**SIGNATURE OF PATIENT:**  **SIGNATURE OF CARER (AS REQUIRED OR AGREED):**

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<th>DATE OF PLAN:</th>
<th>REVIEW OF ENTIRE PLAN:</th>
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<td>NO</td>
<td>PRESENTING/ASSESSED NEEDS:</td>
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<td>Client does not have capacity to understand the consequences of not taking medication</td>
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**Rationale**

Covert administration of medicines should only be undertaken in circumstances outlined in the Trust Policy on the Covert Administration of Medicines in patients who actively refuse medication and are judged not to have the capacity to understand the consequences of not taking medication.
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<th>PRESENTING/ASSESSED NEEDS:</th>
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<th>AIMS and OBJECTIVES</th>
<th>AGENCY/PERSON RESPONSIBLE</th>
<th>TIME SCALE OF REVIEW</th>
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| 2  | The patient is declining medication that has been offered in the usual way for a period of time and this is impacting on their physical and/or mental health. | - Based on factual assessment/data results – patient/carers needs  
- Type of intervention to be provided  
- What, Where and When  
- Discussion of patients' capacity and best interests within MDT meeting. Involvement by a relative/carer or advocate should be sought to establish what the patients wishes would have been if they remained competent.  
- Review of current medication by the prescriber  
- Contact pharmacist for advice on medication to explore alternative formulations.  
- Medication should be offered in the usual way to the patient | - What is the realistic/achievable goal of this plan  
- Incorporating client/carer/professional views  
- To ensure that the decision is taken in the patients best interests  
- To ensure that only necessary medication is continued.  
- To determine the most appropriate method of administration.  
- To maintain choice and dignity in taking medication. | Care Co-ordinator or CPN  
Prescriber  
Care Co-ordinator or CPN  
Nurse or Carer | - by when each component |

Care Co-ordinator/Primary Nurse: Signature  
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|    | - Based on factual assessment/data results – patient/carers needs | - Provide regular information, explanation and encouragement about taking medication.  
- If refused medication is deemed in the patient’s best interests by the MDT then medication is offered covertly, using the method advised by the pharmacist.  
- Document the method of administration in the patient’s notes.  
- Review of care plan for covert administration monthly or sooner should the patient choose to be compliant with medication.  
- Monthly discussion of care plan at MDT | - What is the realistic/achievable goal of this plan  
- Incorporating client/carer/professional views  
- To keep patient informed about their medication as much as is possible.  
- To prevent deterioration in physical or mental health  
- To ensure accurate record keeping  
- To determine that there is a continued need to administer medicines covertly and ensure that the method does not become routine  
- To ensure the continued need for covert administration is a multi-disciplinary decision. | Nurse or Carer  
Nurse or Carer  
Nurse or Carer  
Care Co-ordinator or CPN  
Care Co-ordinator or CPN | - by when  
- each component |

Care Co-ordinator/Primary Nurse: Signature  
Print  
Date
**TELEPHONE CONTACT POINTS**

THE PEOPLE LISTED BELOW ARE INVOLVED IN YOUR CARE AND TREATMENT PLAN.

PLEASE CONTACT IF YOU NEED TO

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<th>TELEPHONE AND TIMES AVAILABLE</th>
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NHS DIRECT LINE 0845 46 47 24 hours Confidential help line