Health Service Circular

NHS Executive

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Good practice in consent

Achieving the NHS Plan commitment to patient-centred consent practice

For action by:
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Good practice in consent

Achieving the NHS Plan commitment to patient-centred consent practice

Summary

The NHS Plan identified the need for changes in the way in which patients are asked to give their consent to treatment, care or research, in order to ensure that the process becomes properly focussed on the rights of individual patients and their relatives. The importance of patient-focussed consent procedures also emerged as a key theme in Bristol Royal Infirmary Inquiry Report. The Department's *Reference guide to consent for examination or treatment*, which summarises the current law on consent to treatment, was published in March 2001. This circular focuses on the action necessary to ensure that the principles set out in the *Reference guide* are reflected in day-to-day NHS practice by:

- announcing the publication of the *Good practice in consent implementation guide: consent to examination or treatment*, containing new model consent forms and a new model consent policy;
- setting out the timescales for the implementation of this documentation; and
- clarifying what flexibility in design and use is acceptable.

In January 2001, the Government also accepted the Chief Medical Officer's recommendation that standardised consent forms for obtaining consent to hospital post-mortems and any subsequent retention of tissue and organs should be provided for use throughout the NHS (see *The removal, retention and use of human organs and tissue from post-mortem examination: advice from the Chief Medical Officer* published in January 2001 and *Interim guidance on post-mortem examination*, issued in March 2000). The Department of Health, in association with stakeholders, is in the process of developing these model forms, and these will be published as soon as the consultation and pilot phase is completed.

Action

NHS Trusts and primary care organisations, as appropriate, are asked to:

- introduce the new consent to treatment forms and the accompanying patient information 'About the consent form' into their organisation by 1 April 2002;
- adopt the model consent to treatment policy by 1 October 2002.

The development of the new consent to treatment forms does not change the current position on *when* written, as opposed to oral, consent to treatment is necessary. It is a matter of local determination what form of consent is appropriate for individual procedures, within the broad guidelines set out in the model consent to treatment policy.

Further information

Consistency of approach

The NHS is a national health service, and both patients and staff may move between a number of different NHS organisations. It is therefore important that both the consent forms and the consent policy in use across the NHS should be recognisably the same. In order to achieve this, the content of these model documents should be regarded as a core minimum which should not be amended or removed. It is, however, recognised that local needs may arise which cannot be reflected in national

documentation. The *Good practice in consent implementation guide* makes clear what degree of flexibility is acceptable.

Application of consent to treatment forms to mental health trusts

The consent to treatment forms will clearly be applicable where patients are being treated other than under Part IV of the *Mental Health Act 1983* (eg where patients are 'voluntary' patients, or where the treatment in question is not for their mental disorder). While the forms were not specifically designed to be used where patients are being treated under Part IV of the Act, Trusts may nonetheless find them helpful and are encouraged to use them to supplement the statutory documentation where appropriate.

Information leaflets on treatment options

Both the consent to treatment forms and the consent policy point to the importance of making written information available to patients on their treatment options, to back up what they have been told face to face. Annex A lists a number of organisations (both within and outside the NHS) who have developed or are developing a wide range of such information and may be useful contacts. Clinical Negligence Scheme for Trusts (CNST) assessors should also be able to offer advice on sources of good practice. NHS Trusts, PCTs and PCGs are, however, reminded that it is *their* responsibility to ensure that they are content with the standard of information provided to patients in their organisation.

Support through clinical governance

It is recognised that the implementation of genuinely patient-focussed consent practice will be a developmental process. The National Clinical Governance Support Team will be including consideration of consent issues within its programmes.

Background

The NHS Plan promised action to ensure that consent procedures recognise the central importance of the rights of each patient. Seeking consent to treatment must be about enabling patients to make healthcare choices which are right for them, and recognising that different patients will make different choices in apparently similar situations. This commitment to improve consent practice has been taken forward through the 'good practice in consent' initiative, a one-year project supported by an external Advisory Group representing a range of patient, clinical and managerial interests. As part of the initiative, a range of guidance documents on the legal and good practice requirements of consent to treatment have been published (see below).

The model consent forms and consent policy published with this circular aim to help NHS Trusts, PCTs and PCGs to ensure that the principles set out in the guidance documents become a reality in their organisations. Following consultation over the summer on draft documentation, there are four model forms for consent to treatment:

- consent form 1: for patients able to consent for themselves
- consent form 2: for those with parental responsibility, consenting on behalf of a child or young person
- consent form 3: both for patients able to consent for themselves and for those with parental responsibility consenting on behalf of a child/young person, where the procedure does not involve any impairment of consciousness. The use of this form is optional.
- consent form 4: for use where the patient is an adult unable to consent to investigation or treatment.

A review of the law on the taking and use of human organs and tissue is currently in progress as part of the follow-up to the Liverpool and Bristol Inquiry reports. Pending the outcome of this review, the model consent for treatment forms do not yet include a section on consent for the use of tissue removed during medical procedures, but the model policy makes clear that NHS organisations must have clear procedures in place to ensure that patients have the opportunity to refuse permission for such use if they wish.

Associated Documentation

The following documents on consent to treatment can be downloaded from www.doh.gov.uk/consent or ordered from 08701 555 455:

- *Reference guide to consent for examination or treatment*, March 2001
- *12 key points on consent: the law in England*, March 2001
- *Consent – what you have right to expect*, July 2001 (leaflet for patients, with versions for adults, children/young people, people with learning disabilities, parents and relatives/carers)
- *Seeking consent: working with children*, November 2001
- *Seeking consent: working with older people*, November 2001
- *Seeking consent: working with people with learning disabilities*, November 2001
- *Good practice in consent implementation guide* (contains model policy and forms), November 2001

The following documents on consent to hospital post-mortem and removal, retention and use of human organs and tissue from post-mortem examination can be obtained as indicated:

- Interim guidance on post-mortem examination to the NHS, March 2000 (www.doh.gov.uk/publications/pointh.html or ordered from 08701 555 455)
- *The removal, retention and use of human organs and tissue from post-mortem examination: advice from the Chief Medical Officer*, January 2001 (www.doh.gov.uk/orgretentionadvice or obtained from Stationery Office bookshops)

This Circular has been issued by:

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Annex A

The following list gives contact details of organisations (both inside and outside the NHS) who have been in touch with the 'good practice in consent' initiative during the past year and who have developed a range of information materials for patients. Clearly this list is not comprehensive. The Advisory Group assisting the 'good practice in consent' initiative was not constituted to endorse individual information products, and mention in this list should not be construed as endorsement.

- Birmingham Heartlands and Solihull NHS Trust: have developed 'patient passports' identifying what information patients need at various points in their journey through care. Contact Dilys Williams, Quality Co-ordinator, 0121 424 5500.

- Doctor Online: range of 1300 patient information leaflets, FAQs on 600 medications and children's stories explaining common diseases, hosted on the NHS Web at nww.doctoronline.nhs.uk. Contact Dr. Grace Lomax, 01202 666 366 or drlomax@doctoronline.nhs.uk.

- Feelgood Publications: commercial company developing photostories to show patients what particular procedures involve. Contact Dr. Liz Wilkinson, 0207 565 6186 or liz@feelgoodmagazine.com.

- Medic Notes Ltd: commercial company providing operation-specific 'informed consent documents' including diagrams. Contact Simon Parsons FRCS, simonparsons@medicnotes.net.

Sources of advice on good practice

- CNST assessors can put Trusts in touch with others who have developed good practice in particular CNST standards, including the consent standard.

- NHS Direct Online (www.nhsdirect.nhs.uk) provides both direct advice/information on self-care and signposts the availability of information about clinical conditions produced by a range of organisations, with an assessment of its quality.

Regardless of whether they develop their own written information, or use an external provider, NHS organisations remain responsible for satisfying themselves as to the quality and accuracy of the information they provide to patients.