

Guidelines for the Role and Function of Care Managers

**Under the Intellectual Disability
(Compulsory Care and
Rehabilitation) Act 2003**

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It is important readers note that these guidelines are not intended as a substitute for informed legal advice. Any issues in relation to interpretation or application of the IDCCR Act should be discussed with your own legal advisors.

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Introduction

These guidelines are intended to provide care managers with information and guidance on the role of the care manager under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the IDCCR Act).

For general guidelines on the IDCCR Act, please refer to *A Guide to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003* (Ministry of Health 2004).

For other more specific information on the role of district inspectors or compulsory care co-ordinators, the following Ministry of Health guidelines should be consulted:

- *Guidelines for District Inspectors*
- *Guidelines for the Role and Function of Compulsory Care Co-ordinators.*

What is a Care Manager?

Care managers are health and disability professionals who have undergone training in, and are competent in, the assessment, care and rehabilitation of persons with intellectual disability.

All care managers must have completed (or be enrolled in) the Diploma in Care Management and Co-ordination (High and Complex Needs) and be employed by Regional Intellectual Disability Supported Accommodation and Secure Services (RIDSAS and RIDSS) or Community Liaison Team Services.

Care managers are designated by the compulsory care co-ordinator (the co-ordinator) for each individual under the IDCCR Act. They are legally entrusted with the care and rehabilitation of individual care recipients and are responsible for developing and implementing an individual's care and rehabilitation plan and for ensuring that regular clinical reviews of care recipient's condition take place.

Care manager powers include:

- seclusion and restraint of care recipients in accordance with guidelines issued by the Director-General of Health
- granting leave for care recipients *no longer subject to the criminal justice system*
- retaking care recipients absent without leave.

The Care Manager's Role in Needs Assessment and Care and Rehabilitation Planning

Every person undergoing needs assessment and care and rehabilitation planning under **Part 3** of the IDCCR Act must have a care manager designated by the co-ordinator.

Wherever possible the co-ordinator will consult with the care recipient care manager during the course of the needs assessment.

When the co-ordinator has completed the needs assessment they will instruct the care recipients care manager to prepare a care and rehabilitation plan. The care and rehabilitation plan must identify the following matters and the manner in which they can be met:

- the social, cultural, and spiritual needs of the care recipient
- any medical or psychological treatment that the care recipient requires
- any requirements for medication needed to manage the care recipient's condition
- the circumstances in which the care recipient is likely to behave in a manner that endangers the health or safety of the care recipient or of others
- any aptitudes or skills of the care recipient that should, if practicable, be maintained and encouraged
- any special concerns or aversions of the care recipient
- any special dietary needs of the care recipient
- any other special needs of the care recipient.

The care and rehabilitation plan must also take into account the needs identified in the care recipient's cultural assessment and identify the kind of supervision required to avoid undue risk to the health or safety of the care recipient and of others.

The care and rehabilitation plan must also set out a care programme that identifies the following:

- the objectives of the care proposed and the approach/es to be followed to achieve those objectives
- the general nature of the care proposed to be provided
- the degree of security required
- any other matters considered appropriate.

The care and rehabilitation plan may also contain any other matters that the care manager (or co-ordinator) considers should be included.

Once completed the co-ordinator must approve the care and rehabilitation plan.

The co-ordinator and responsible care manager may vary the care and rehabilitation plan as long as the variation is consistent with any court order that applies to the care recipient. An order from the Family Court under section 45 of the IDCCR Act is required for the care recipient to be made subject to a compulsory care order.

The Status and Rights of Care Recipients

The care recipients' status and rights are upheld are set out in **Part 5** of the IDCCR Act.

Care managers are entrusted with the compulsory care of the care recipient and the care recipient must comply with every lawful direction given by their care manager.

As soon as a court order is made, care managers must explain to care recipients what their rights are under the Act. This information must be provided in a manner that the care recipient is most likely to understand. For example, the care manager may need to communicate with plain language and pictorial documentation.

The care manager must also inform and provide the care recipients' guardian, or principal caregiver if the care recipient does not have a guardian, with a written statement of the care recipient rights.

Specifically the care recipient must be informed of:

- their legal status as a care recipient
- their right to have their condition reviewed by a specialist assessor under section 77 of the IDCCR Act
- their right to seek judicial inquiry under section 102 of the Act
- the function and duties of district inspectors set out in part 7 of the Act.

The obligation to provide this information is not a one-off. The care manager is under a continuing obligation to keep the care recipient informed about these matters in a manner that the care recipient is most likely to understand.

The right to receive visitors and communicate orally with persons outside the facility (section 56)

Only a care manager may limit a care recipients rights to receive some visitors and communicate orally with some persons outside the facility if they have reasonable grounds for believing that a visit or communication would be detrimental to the care recipient's interests or care.

The decision by the care manager to limit the care recipient's rights to visits and communication must not interfere with the care recipient's right to contact a specialist assessor or to receive a second opinion or to communicate with a lawyer.

The right to receive and send written communications and other items (refer to sections 57 to 59)

Every care recipient is entitled to send and receive written communications in a way that safeguards their privacy.

Where a care manager has reasonable grounds for believing that the receipt by, or dispatch of, written communications or other items could be detrimental to the interests or care of the care

recipient or other persons, they may, with approval from the co-ordinator, check and withhold communications.

Note: This latter provision does not apply to written communications or other items sent by, or on behalf of, or addressed to:

- a) a lawyer
- b) a member of Parliament
- c) a judge or officer of the court, or a member or officer of another judicial body
- d) an ombudsman
- e) the Privacy Commissioner
- f) the Health and Disability Commissioner
- g) a Human Rights Commissioner
- h) in the case of a care recipient who is a child or young person, the Commissioner for Children
- i) the Director-General of Health
- j) a district inspector
- k) the care manager
- l) a specialist assessor from whom the care recipient has sought a second opinion under section 53.

Where a care manager withholds a written communication or other item (either sent to, or sent by, the care recipient) the care manager must return the written communication or other item to the sender. If the address of the sender is unknown, or the sender is the care recipient, then the care manager must either send the written communication or other item to the responsible district inspector or produce it when the district inspector next visits the facility.

If a written communication or other item is withheld or not sent, the care manager must inform the care recipient unless the care manager believes that this would be detrimental to the interests and care of the care recipient.

Power to seclude care recipients (section 60)

Seclusion is defined under the Act as the placing of a care recipient alone in a room or other area that provides a safe environment but does not allow the care recipient to leave without help.

A care recipient may only be placed in seclusion if it is necessary to prevent the care recipient from endangering the health or safety of the care recipient or others, or seriously compromising the care and wellbeing of others.

A care recipient may only be placed in seclusion with the authority of their care manager. The exception to this is that in an emergency a care recipient may be secluded by a person who has been delegated by the care manager as having immediate responsibility for the care recipient. In this instance the care manager must be notified immediately.

Seclusion must be carried out in accordance with the guidelines issued by the Director-General of Health under section 148 of the IDCCR Act. The duration and the circumstances of each period of seclusion must be recorded in a register kept for this purpose. District inspectors will monitor entries in the register.

Power to restrain care recipients (section 61)

A care manager may only restrain a care recipient if it is necessary to prevent the care recipient from:

- endangering the health or safety of themselves or others
- seriously compromising the care and well-being of others
- seriously damaging property.

Mechanical restraint may not be used if one or more authorised individuals are personally able to restrain the care recipient and it is reasonably practicable for them to do so.

A care recipient may only be restrained with the authority of their care manager. The exception to this is that in an emergency a care recipient may be restrained by a person who has been delegated by the care manager as having immediate responsibility for the care recipient. In this instance the care manager must be notified immediately.

Restraint must be carried out in accordance with the guidelines issued by the Director-General of Health under section 148 of the IDCCR Act. The circumstances of the restraint must also be entered in the register referred to in the commentary above about seclusion.

Care managers' authority to grant leave

Care managers may grant a care recipient no longer subject to the criminal justice system up to two weeks leave from a facility on any terms and conditions. The care manager may then extend this leave for a further period of up to two weeks.

No care recipient may be on leave from a facility for a continuous period of more than four weeks.

The care manager may cancel leave at any time, while they are on leave by notifying the person who is caring for the care recipient. If there is no such person then the care manager must notify the care recipient.

Care managers do not have the authority to grant leave to special care recipients.

Reports and Submissions to Family Court

Care managers have the right to make submissions to the Family Court on the co-ordinator's report under section 72 of the Act.

The care manager may be required by the Family Court to submit a report, give evidence and produce documents for the purposes of a review under section 74 of the Act.

On concluding the review, the Family Court may make any recommendations that it considers appropriate, including recommendations to the care manager who must make every reasonable effort to implement the recommendations.

Regular clinical review of care recipients (section 77)

It is the care manager's responsibility to ensure that all care recipient's in their care receive regular clinical reviews in accordance with section 77 of the Act.

Inspections and Enquiries

Part 7 of the Act deals with inspections and inquiries.

Inspections, investigations, and inquiries by district inspectors

District inspectors must inspect facilities twice a year and act on complaints. They may also conduct formal inquiries. A detailed description of the powers, duties and functions of district inspectors is covered in the *Guidelines for District Inspectors*.

Part 7 also provides for district inspectors to report on the results of their findings after investigating an alleged breach of a care recipients rights under the IDCCR Act.

Where a care manager receives such a report identifying any deficiencies, the care manager is under a duty to take all reasonable steps to correct these deficiencies.

Inquiry by a High Court judge

The IDCCR Act provides the High Court with a supervisory role to further safeguard the rights of care recipients.

A High Court judge may make an order directing a care manager to bring a care recipient into open court or chambers for examination.

Authority to Take and Detain Care Recipients

Part 8 of the IDCCR Act establishes the legal authority to require a care recipient to stay in a facility and also sets out the powers available to the care manager and the police to retake a care recipient in specified circumstances.

Care managers have the power to retake care recipients who have either escaped from a facility, not returned from authorised leave, or not returned following authorised leave being cancelled.

The care manager may apply to a District Court judge, or, if no judge is available, a registrar, for a warrant authorising police to search a specified place and take a named person to a facility. The application for a warrant must be made in writing and on oath.

In certain circumstance police may enter a place without a warrant. Police may ask the care manager to accompany them and it is expected that the care manager will provide assistance as requested.

When accompanying a member of the police who is entering a place without warrant for the purpose of retaking an escaped care recipient, the care manager may use any reasonable force that may be required to enter and search the place and retake the care recipient.

Relationship with the Mental Health (Compulsory Assessment and Treatment) Act 1992

There will be some persons who have mental disorder as well as an intellectual disability, or develop a mental disorder during the term of their order.

To accommodate this fact, provision has been made in the IDCCR Act and in section 47A of the Mental Health (Compulsory Assessment and Treatment) MH(CAT) Act 1992 to allow for the transfer of persons between the two Acts.

Transfers from the IDCCR Act

If a care manager has reason to believe that a care recipient has developed a mental disorder, the care manager must apply to have the care recipient assessed under Section 8A of the MHCAT Act.

The care manager should send the application for assessment to the local Director of Area Mental Health Services. The application must include:

- a certificate from a medical practitioner issued under section 8B of the MH(CAT) Act 1992 that verifies a date of examination within the three days immediately before the date of the application
- a statement that the person to be assessed is over 18 years old
- a statement that the care manager has personally seen the person within the three days immediately before the date of the application
- a statement indicating the care manager's relationship with the person
- a statement explaining the grounds on which the care manager believes the person to be suffering from a mental disorder.

If a care recipient becomes a proposed patient under the MH(CAT) Act, their compulsory care order is suspended. The care manager must keep a record of the date of that suspension and of the unexpired term of the care recipient's compulsory care order.

A care recipient's compulsory care order will recommence on the date that they cease to be a proposed patient under the MH(CAT) Act, or are released from compulsory status under that Act.

Delegation of Powers

A care manager may delegate any of his or her powers, duties or functions (except this power of delegation) to a person who is suitably qualified to exercise them.

Where possible a person to whom a care manager delegates their powers, duties, or functions will have completed, or be enrolled in, the Diploma in Care Management and Co-ordination (High and Complex Needs).

Any delegation must be made in writing and signed by the care manager. If the care manager ceases to hold office the delegation will continue to run as if made by the care manager's successor.

A delegation continues until the care manager or their successor revokes it in writing.