OA Reablement service	OA Day Care	OA Residential Care	Domiciliary Services	DMH Day Services	DMH Supported Living	DMH Residential Services	EIA'd
✓	✓	✓	✓	✓	✓	✓	✓

M1
MENTAL CAPACITY ACT

POLICY

To ensure compliance with the requirements of the Mental Capacity Act 2005 and the Mental Capacity Act Code of Practice, by providing guidance for employees to ensure they meet their roles and responsibilities and respond immediately and appropriately to issues of capacity, deprivations of liberty and restrictive practices.

This policy should be applied by making reference to the Mental Capacity Act Code of Practice.

TO BE READ IN CONJUNCTION WITH THE FOLLOWING POLICIES

- D7 Deprivation of liberty (DoLS)
- M2 Managing behaviour
- A10 Admission to the service
- S14 Safeguarding
- D3 Duty of Candour

VALUE STATEMENT

The Mental Capacity Act is designed to empower people to make decisions for themselves wherever possible and to protect people who lack capacity. The ethos of the act is to have a person centred approach to decision making by ensuring the individual is as involved as possible and at the centre of all decisions made in their best interests. It sets out who can make best interest decisions on behalf of people who lack capacity, and makes it clear how they should go about this. The act also enables people to plan ahead for a time when they may lose capacity.
We fully embrace this ethos and place people who use these services at the heart of everything we do. Therefore the following values will be adhered to by the organisation and its employees:

- People will be empowered to be fully involved in decisions about their care and support wherever possible.

- Any decisions taken by the organisations employees on behalf of a person lacking capacity, will be in the best interests of the individual. As set out in the Mental Capacity Code of Practice. Following the statutory checklist at Appendix 1

- Cumbria Care will meet its duty of care to people who use its services by protecting them from physical, psychological, emotional or welfare harm.

- Any restrictive practice used will be to prevent harm, and will be a proportionate response to the likelihood and seriousness of harm. Ensuring any decision made on behalf of the person is in their best interest.

- Cumbria Care will develop and implement relevant Policy and Procedures which adhere to the requirements and recommendations of the Department of Health Positive and Proactive Care: reducing the need for restrictive interventions, ensuring the least restrictive practice is put into operation.

SCOPE

1. This Policy & Procedure is applicable to all Cumbria Care Services.

2. The good practice guidance it contains should be read in conjunction with national and local guidance relating to the Mental Capacity Act and its associated code of practice. The Deprivation of Liberty Safeguards code of practice and Department of Health Positive and Proactive Care: reducing the need for restrictive interventions.

3. Do not assume the individual lacks capacity

DEFINITIONS

LACK OF CAPACITY

The act defines a lack of capacity as:

'A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'

This means that a person lacks capacity if:

- The impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

BEST INTERESTS

The act defines best interests as:

> *'An act done, or decision made, under The Mental Capacity Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.'*

To help work out what is in a person's best interests use the statutory legal checklist Appendix 4. To record a best interest meeting you can use the Appendix 5.

M1

DECISION MAKER

The decision maker is the person who is proposing to carry out an act or make a decision a person's best interest. Who the decision maker is will depend on the person's circumstances and the type of decision being made.

LASTING POWER OF ATTORNEY - LPA

Lasting power of attorney is a legal document that can be arranged before capacity is lost. Sometimes one person will want to give another person authority to make a decision on their behalf. It means that the decision they make on behalf of the person is as valid as if they had made it themselves. The attorney is responsible to make sure they are acting in the persons best interest and only making decisions where the person themselves lack capacity to do so. An LPA must be registered with the Office of the Public Guardian (OPG) and before it can be used. There are two types of LPA's, a) Health Welfare b) Property and Affairs. For more information see LPA section in the MCA 2005 Code of Practice.

INDEPENDENT MENTAL CAPACITY ADVOCATE - IMCA

IMCA's provide independent safeguards for people who lack capacity to make certain important decisions and, at the time such decisions need to be made, have no-one else (other than paid staff) to support or represent them or be consulted. IMCAs have the right to see relevant healthcare and social care records. Any information or reports provided by an IMCA must be taken into account when making best interests decisions.

ASSESSMENT OF CAPACITY

1. When assessing a person's capacity to make decisions for themselves the person assessing capacity needs to implement the key principles contained in the Mental Capacity Act 2005.

2. The five principles are:

    - A person must be assumed to have capacity unless it is established that they lack capacity.

    - A person is not to be treated as unable to make a decision unless all practicable steps to help make the decision have been taken without success.

    - A person is not to be treated as unable to make a decision merely because the decision made maybe seen as unwise or eccentric.

    - Any act done, or decision made on behalf of a person who lacks capacity must be done, or made, in his best interests.

- Before the act is done, or the decision is made, it must be considered whether it is the least restrictive option of the person's rights and freedoms.

3. The presumption of capacity is fundamental to the Act. It is important to remember that the person being assessed has to 'prove' nothing. Proving a lack of capacity always lies with the decision maker. It will always be for the decision-maker to prove that it is more likely than not (on the balance of probabilities) that the person lacks capacity. See the Appendix 1and 2.

4. To help ascertain if an individual lacks capacity see Appenidx 6.

PROCEDURE

1. Identify the specific decision to be made.

2. Presume the person has capacity to make this decision (Principle 1).

3. With this in mind the decision maker must support the person by every means possible to make that decision (Principle 2):
   - Follow the Appendix 1 and 2.
   - Give relevant information as the person needs to make the decision,
   - Think about the realistic risks and what measures can be put in place to reduce these risks thinking about the least restrictive option
   - Use appropriate forms of communication for example; could information be explained or presented in a way that is easier for the person to understand, have different methods of communication been explored if required including verbal / non-verbal, could anyone else help with communication (for example, a family member,
   - Use the best environment available for the person
   - Consider the best time for the person and don't rush them
   - Who would be the best person to support them to understanding the information?

   (Chapter 3 of the MCA code of practice talks through this in more detail.)

4. Use this discussion and the information gathered to build a personalised risk assessment for equipment etc and person centred care plan.

5. Explore any decision that may seem unwise or unadvisable as part of the risk assessment. Clearly set out what support can and cannot be provided by Cumbria care. Remember an unwise or eccentric decision is not a lack of capacity in itself.

6. If at this point there are no concerns about the person's capacity to make the decision they should take ownership of their decision by signing up to the care

plan and the risk assessment. All services users must be involved with developing their person centred care plan's and risk assessments. These must be reviewed in line with the support plan / person centred care plan and/ or as and when required responding to changes in circumstances to fulfil our duty of care.

7. However if during these discussions the decision maker becomes concerned about whether the person is able to make part of or all of the decision then a capacity assessment should take place.

8. To avoid discrimination stage 2 of the capacity assessment must be applied before stage 1, see below.

Stage 2 – Using the information gathered at point 3 of the procedure above

Can the person:

- Understand information about the decision to be made
- Retain that information
- Use or weigh that information as part of the decision-making process
- Communicate their decision (by talking, using sign language or any other means).

If they are unable to do any part of this and the answer to stage 1 below is yes, they will be assessed as lacking capacity.

Stage 1

- Do they have an impairment or disturbance (for example, a disability, condition or trauma) that affects the way their mind or brain work? If they do not then they do not lack capacity under the MCA.

And

- Does the impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

Remember you must be able to demonstrate how that disturbance or impairment prevents the person from making this decision.

11. Appendix 1 and 2 is a tool to prompt you through the capacity assessment but is not an exhaustive list of the areas to consider. Use appendix 3 to record in detail all steps taken.

12. A decision in best interests must now be made. Where a lack of capacity has been established we have a duty of care to ensure the health, safety and wellbeing of the person who lacks capacity (See Appendix 1 and 2). We must not neglect them by leaving the need unmet or decision unmade

    (Chapter 4 of the MCA code of practice talks through this in more detail.)

13. In the event of emergency situations for example, where a person collapses for some unknown reason, urgent decisions in the person's best interests will have to be made.

14. In these situations, it may not be practical or appropriate to delay the treatment while trying to help the person make their own decisions, or to consult with any known attorneys or deputies. However, even in emergency situations, healthcare staff should try to communicate with the person and keep them informed of what is happening.

BEST INTERESTS

1. Where a person lacks capacity a decision must now be taken that is reasonably believed to be their best interests. This should give the best outcomes and be the least restrictive option for the person.

2. Use Appendix 4 as a guide.

3. Follow the Identify the decision maker:
   - Is there a LPA (chapter 7 of the code of practice)
   - Is there an advance decision (chapter 9 of the code of practice)

4. If the person is entitled to an IMCA make a referral to the IMCA service (chapter 10 of the code of practice.) The decision maker must take in to account the information provided by the IMCA when making the decision.

5. Then using the best interest checklist Appendix 4, work out what is in a person's best interests by weighing up all of the factors:

   - Encourage participation
   - Identify all relevant circumstances
   - Find out the person's views
   - Avoid discrimination
   - Assess whether the person might regain capacity
   - Consult others
   - If the decision concerns life-sustaining treatment
   - Avoid restricting the person's rights
   - Take all of this into account

6. If there are disputes or conflicting ideas about the decision that has been made the decision-maker will need to find a way of balancing these concerns or deciding between them. (chapter 5 of the code of practice)

   - Review all elements of the best interests checklist with everyone involved, including the person who lacks capacity.

   - Consider holding a review meeting to air everyone's concerns. Ultimate responsibility for working out best interests lies with the decision-maker and the decision must be in the person's best interests (chapter 5 code of practice)

7. Using Appendix 5 to record in detail all steps taken, the outcome and those consulted with.

8. Record on the person centred care plan and risk assessment that a decision has been taken in best interests. Indicate where the capacity assessment and best interest recording form can be found.

MORE INFORMATION

Mental capacity act code of practice

http://www.scie.org.uk/mca-directory/

The see saw - http://www3.hants.gov.uk/mca-see-saw.pdf

REFERENCES

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