



Newham Clinical Commissioning Group

NHS Newham Clinical Commissioning Group

Mental Capacity Act Policy

Document control

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Contents

Section		Page
1	Introduction	4
2	Policy Statement	4
3	Scope	4
4	Definition	5
5	Basic Principles of the Mental Capacity Act	5
6	Responsibilities of the CCG	5
7	Responsibilities of Providers	6
8	Governance and Accountability	6
9	Policy Review	6
Appendices	1 – Role description of a Mental Capacity Act Lead	



1.0 Introduction

The Mental Capacity Act 2005 (MCA) creates a framework to provide protection for people who cannot make decisions for themselves. It contains provision for assessing whether people have the mental capacity to make decisions, procedures for making decisions on behalf of people who lack mental capacity and safeguards. The underlying philosophy of the MCA is that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves must be made in their best interests.

Everyone working with or caring for an adult who may lack capacity to make a specific decision must comply with the Mental Capacity Act, irrespective of whether the decision relates to a life changing event or an everyday matter.

This policy details the roles and responsibilities of NHS Newham CCG as a commissioning organisation, with respect to mental capacity issues.

Various legislation and guidance is published that is relevant to this policy

- The Mental Capacity Act 2005
- The Mental Capacity Act: Code of Practice
- Deprivation of Liberty Safeguards (DoLS): Code of Practice
- The Mental Health Act 2003
- The Human Rights Act 1998
- The European Convention on Human Rights
- The Care Standards Act 2003
- The Children Act 1989

2.0 Policy Statement

NHS Newham CCG:

- Is statutorily responsible for ensuring that the organisations from which it commissions services provide a safe system which safeguards vulnerable children and adults, including adults who lack mental capacity.
- Will, therefore, ensure it commissions MCA compliant care and will ensure that providers meet their statutory responsibilities to the 2 million people who are without capacity to consent to care and treatment.
- Will ensure that all staff employed by them are aware of their responsibilities under the MCA and will ensure staff operate at all times in accordance with the MCA and the accompanying code of practice



3.0 Scope

When applying the MCA, certain categories of people are legally required to have regard to relevant guidance contained in the MCA code of practice.

These people include: 'Anyone acting in a professional capacity for, or in relation to, a person who lacks capacity' and 'Anyone being paid for acts for or in relation to a person who lacks capacity'

This policy therefore applies to all staff directly employed by NHS Newham CCG and will have implications for all commissioned services

This policy aims to ensure that no act or omission by the CCG as commissioning organisation puts an adult without mental capacity at risk and that robust systems are in place to safeguard and promote the rights of adults without capacity in commissioned services.

Where the CCG is identified as the lead commissioner it will notify associate commissioners of a provider's non-compliance with their responsibilities with respect to mental capacity issues, or of any serious untoward incident that relates to mental capacity issues.

4.0 Definition

The Mental Capacity Act 2005 defines lack of capacity in the following way: "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"

Capacity is decision specific, in other words assessing capacity refers to assessing a person's ability to make a particular decision at a particular moment in time, rather than being a blanket judgement about an individual's ability to make decisions in general.

5.0 Basic Principles of the Mental Capacity Act

A person must be assumed to have capacity unless it is established that he/she lacks capacity.

A person must not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success

A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision



Any action taken, or any decision made under the MCA for or on behalf of a person who lacks capacity must be done, or made, in his/her best interests

Before any action is taken, or any decision is made, regard must be given to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person

6.0 Responsibilities of NHS Newham CCG

In order to discharge its responsibilities with respect to the Mental Capacity Act NHS Newham CCG will:

- Identify a named MCA lead and ensure that relevant policy, procedure and organisational structures support their role as MCA lead.
- Ensure that all staff employed by the CCG are aware of their responsibilities with respect to the MCA and ensure that staff and member practices operate at all times in compliance with the act and the accompanying code of practice,
- Ensure that training with regard to the mental capacity act and its effective implementation is provided to CCG staff.
- Develop a clear line of accountability for mental capacity matters, built into internal CCG governance arrangements
- Engage with local Safeguarding Adults Board (SAB) and board sub-groups.
- Work with local agencies to provide joint strategic leadership on MCA and DoLS in partnership with Local Authorities, provider clinical governance teams and safeguarding leads, CQC, and where applicable, the police.
- Ensure that provider contracts specify compliance with MCA and DoLS legislation and that commissioned services are supported and contract monitored for compliance with MCA.
- Ensure that learning from cases where mental capacity has been an issue will be used to inform future commissioning and practice.
- Ensure that leads for safeguarding adults and mental capacity within the CCG have broad knowledge of healthcare for older people, people with dementia, people with learning disabilities, and people with Mental health problems,
- Ensure that safeguarding and MCA leads work within the local health and social care economies to influence local thinking and practice around MCA
- Ensure that best practice around mental capacity is promoted, implemented and monitored both within the CCG and within commissioned provider services.

7.0 Responsibilities of Providers

Provider organisations are responsible for: ensuring compliance with MCA legislation (including DoLS) within and across their organisation.



They must ensure that there is clarity as to who holds corporate responsibility for MCA and DoLS functions within the organisation, and that appropriate governance and safeguarding systems are in place to deliver best practice.

They must be in a position to provide assurance to CCGs that responsibilities with respect to MCA are being safely discharged.

The CCG will oversee these responsibilities.

8.0 Governance and Accountability

In terms of governance NHS Newham CCG has a Board level GP that is the Mental Capacity Act Lead. The role description can be seen in Appendix 1

Final accountability for compliance with CCG statutory responsibilities with respect to mental capacity sits with the Governing Body Chair of the CCG.

The Governing Body Chair will ensure that the health contribution to promoting the rights and welfare of vulnerable adults without capacity is discharged effectively across the local health economy, through the CCG's commissioning arrangements.

9.0 Policy Review

This policy will be reviewed every 2 years, and in accordance with the following on an as and when required basis:

- Legislative changes
- Good practice guidance
- Case law
- Serious Incidents
- Safeguarding Adults Reviews, (where applicable)
- Changes to organisational infrastructure



Appendix 1 – Role description of a Mental Capacity Act Lead

The Role

As the Lead for the Mental Capacity Act you will lead in the promotion of best practice in Safeguarding Adults in the area of Mental Capacity and Deprivation of Liberty Safeguards. You will provide practical advice and support to professionals and members of the public on Safeguarding Adults matters including the Mental Capacity Act and Deprivation of Liberty Safeguards.

Responsibilities

You will provide a safeguarding service to adults to include carrying out best interests assessments under the Deprivation of Liberty Safeguards (2009), rehabilitation teaching and reviews in accordance with relevant legislation, guidance and the Councils Equal Opportunity policy.

You will Chair appropriate review meetings and represent NHS Newham CCG on any appropriate adult safeguarding meetings

You will work closely with NHS Newham CCG's Adults Safeguarding Lead

You will act as the lead for ensuring the appropriate implementation of the processes and statutory systems in relation to the Deprivation of Liberty Safeguards in the following:

- referrals are recorded and effectively screened.
- the required assessments are conducted
- appointments of Independent Mental Capacity Advocates and the Relevant Person's Representative
- ensuring that reviews and re-assessments are conducted
- effective operational links to ensure consistent and appropriate decisions are made between statutory and other agencies in the operation of the Deprivation of Liberty Safeguards

The Requirements

Substantial experience in a Mental Health arena

Strong knowledge of the key principles of the NHS and Community Care Act, Mental Capacity Act (2005), Deprivation of Liberty Safeguards (2009) and other relevant Social Services legislation relating to the provision of services for adult client groups including people with physical and learning disabilities, mental health problems and older people.

Expertise within the safeguarding field will be complimented by excellent interpersonal skills and the ability to establish good working relations with colleagues, service users, carers and families.



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Experience at working within a multi- agency forum, along with your ability to lead and Chair discussion groups and meetings will enable you to contribute to team objectives.