Mental Capacity and Liberty Deprivation Safeguards

1. Introduction

• This policy sets the standards staff members are expected to follow in implementing the principles of the Mental Capacity Act 2005 and the guidance in the Act's Code of Practice.

• Nothing in the Mental Capacity Act, taken alone, gives staff member's powers to coerce, compel or

control families in their care of their family members. The duty is to work in partnership to promote the autonomy, safety and best interest of those who lack capacity. In many situations the family members will be the decision makers and staff member's role will be to support them.

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• The policy aims to promote the dignity, capacity, choice and participation of service users who may lack capacity to make particular decisions at some point. It is expected that this is an approach taken throughout the planning and delivery of care. Specifically, all staff should consider how their intervention will impact upon the capacity and participation of the service user. In doing so, staff will be expected to appropriately encourage the participation of carers and family and give a thorough consideration of any safeguarding issues in line with the company safeguarding policy.

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• The Mental Capacity Act 2005 (MCA) requires that organisations identify when people lack, or are thought to lack, mental capacity in making decisions in order that special measures can be employed to assist them.

The Act defines five statutory principles.

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

1.2. A person is 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.

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

1.4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his/her best interests.

1.5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which

it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and

freedom of action.

These principles must be clearly demonstrated when people who lack capacity need to have decisions made on

their behalf.

2. Principles

People may lack capacity with regard to specific decisions. The following people may lack capacity:

- **People with a learning disability**
- **People with a cognitive impairment (e.g. with dementia)**
- **People with a brain injury**
- **People under the influence of drugs or alcohol**
- **People with a delirium (acute confused state)**
- **People with a mental health problem**

This list is not exclusive and practitioners should always be alert to others who may lack capacity,

whether temporarily or due to a more chronic underlying cause.

3. Assessing Capacity

When assessing a person's capacity the five principles of the Act, stated above, must be followed.

3.1. Particular regard should be given to a person's communication needs, and the impact of the people

involved in the assessment, the time of day it is undertaken and the environment in which a person is

assessed.

3.2. A person's capacity must be assessed specifically in terms of their capacity to make a particular decision

at the time it needs to be made.

3.3. It must not be assumed that a person lacks capacity because they make an unwise decision.

3.4. A person's capacity must not be judged simply on the basis of their age, appearance, condition or an

aspect of their behaviour.

3.5. The Act sets out a 2 stage capacity test:

Stage 1: Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?

Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when

they need to?

3.6 A person is unable to make a decision if they cannot:

• understand information about the decision to be made (the Act calls this 'relevant information')

- retain that information in their mind
- use or weigh that information as part of the decision-making process, or
- communicate their decision (by talking, using sign language or any other means)

4. Responsibilities

Korus Health carries out medical care as directed by the referral form from the patient's GP or lead medical practitioner. The referrer is responsible for assuring the capacity of the patient is assessed at the point of referral. The same applies to vulnerable adults.

Where scans are booked directly with Korus Health, this treatment is usually requested by the patient themselves.

In line with the confidentiality policy, Korus Health only shares medical information with the referring GP or lead practitioner or the patient themselves where it has deemed it appropriate to do so.

All staff who come into contact with patients, their relatives and carers and the public are responsible for being aware of the requirements of the Act and their responsibilities under the terms of the Act.

If there is any indication that coercion exists, the safeguarding lead needs to be notified.

The HR Manager is responsible for updating the guidelines in the light of any relevant legislation, case law or change in policy.

5. Ill treatment and willful neglect of a person who lacks capacity

Ill treatment and Willful Neglect of a Person who lacks Capacity

5.1. The Act introduces two new criminal offences: ill treatment and willful neglect of a person who lacks capacity to make relevant decisions (section 44).

5.2. The offences may apply to:

- anyone caring for a person who lacks capacity – this includes family carers, healthcare and social care

staff in hospital or care homes and those providing care in a person's home

- an attorney appointed under an LPA or an EPA, or
- a deputy appointed for the person by the court.

6. Deprivation of Liberty Safeguards (DOLS)

The DOLS procedures are intended to be safeguards for those who lack capacity to consent to admission in hospital or residence in a care home. They are intended to ensure that when restrictions on a person amount to a deprivation of liberty then they only continue if necessary and if certain conditions are met.

Under no circumstances, would Korus Health be involved in admission procedures.

7. Distribution and Implementation

This document will be made available to all staff via the Korus Health website.

Any member of staff with safeguarding concerns for a person who lacks capacity should follow the company safeguarding policy.

8. Associated policies

- Confidentiality Policy
- Privacy and Dignity Compliance (PUS 11)
- Patient consent Policy