Hope Citadel Healthcare

Mental Capacity Act Policy

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Statement

Hope Citadel Healthcare requires all employees to be aware of their duties and responsibilities under the MCA (2005) and DoLs 2009 regardless of job role or area of work. All staff will operate in accordance with the MCA, DoLs and the code of practice and will stay up to date with training and procedures.

This policy outlines the roles and responsibilities for Primary Care in respect of the MCA 2005 and Deprivation of Liberty Safeguards (DoLS) 2009, in conjunction with other relevant legislation such as:

- Mental Health Act 1983 / 2007
- The Care Act 2014

1. Introduction

The Mental Capacity Act (2005) is designed to protect and empower people who may lack mental capacity to make decisions about their own care and treatment. This applies to people aged 16 or over.

Examples of people who may lack capacity include people with:

- Dementia
- A severe learning disability
- A brain injury
- A mental health condition
- A stroke
- Unconsciousness caused by anaesthetic or a sudden accident

The MCA is accompanied by a statutory Code of Practice that explains how the act works. The Code of Practice provides guidance to everyone who is working with and/or caring for adults who may lack capacity to make particular decisions.

2. Responsibilities

The overall responsibility to ensure that the policy is fit for purpose is of the Medical Director and Chief Executive.

Line Managers are responsible for ensuring that staff are aware of and are complying with the policy.

All staff are responsible for following the guidance of the MCA Code of Practice.

Staff involved in the care of patients have an obligation to act in accordance with the principles of the act and in the best interests of a person lacking capacity. If there are any doubts around capacity staff should seek advice from their line manager or clinical team.

Responsibilities of Primary Care:

- They meet their statutory requirements for people who lack capacity to consent to care and treatment
- All relevant employees are aware of their responsibilities under the MCA 2005 and DoLS 2009 framework
- Staff operate at all times in accordance with the MCA 2005 and the accompanying statutory code of practice

- The organisation complies with the CQC (care quality commission) requirements for training of MCA and DoLS

Who can make an assessment of capacity?

Anyone may be in a position where they need to make an assessment of capacity. In particular people working in Health and Social Care settings may find themselves having to assess someone's capacity to make a decision.

Managers should ensure that all staff have access to the acts Codes of Practice and they have reviewed these as and when needed.

In the Codes of Practice the person who decides whether someone has the capacity to make a certain decision are referred to as 'assessors'. This is not a formal legal title. Assessors can be anyone.

3. Five Statutory principles of the Mental Capacity Act

If a Healthcare Professional is considering undertaking a mental capacity assessment around a specific decision to be made the assessment must be **time and decision specific.** If there is more than one decision to be made, a capacity assessment should be made for each decision.

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person must not be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.
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 their best interests.
5. Before any action is taken, or any decision made, regard must be given to whether the purpose for which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

4. Testing for Capacity: Time and decision

Stage one: Functional test

Consider if the individual is able to:

- Understand the information being given to them
- Retain the information (for long enough – this is a professional judgement)
- Use or weight that information as part of the decision making process
- Communicate the decision (whether by talking, using sign language or any other means)

Stage two: Diagnostic test

- Does the individual have the signs, symptoms or behaviours that indicate an impairment or disturbance in the functioning of their mind or brain (either permanent or temporary)

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At the end of the assessment the assessor needs to make a judgement as to whether the person is unable to make the decision because of the impairment or disturbance of their mind or brain. If this is the case then they lack capacity to make the decision for the purposes of the MCA. Sometimes a person is unable to make a decision for some other reason e.g., they are being subjected to undue influence from another person.

Staff should speak to the safeguarding lead of their practice or the Caldicott Guardian (Dr John Patterson) if they think this may be the case. In these cases the MCA does not apply but other safeguards may be available.

For some people their ability to meet some or all of these criteria may fluctuate over time and it is therefore important that abilities to make decisions are reviewed regularly.

An individual may be competent to make certain decisions, but at the same time not have the capacity to make other, more complex decisions. The MCA flowchart provides information on decision making.

Some decisions can never be made on someone else's behalf, for example about:

- Marriage
- Civil partnership
- Divorce
- Sexual relationships
- Adoption
- Voting
- Consent to fertility treatment

Mental Capacity Act Flowchart

This flowchart supports the MCA procedures for all staff

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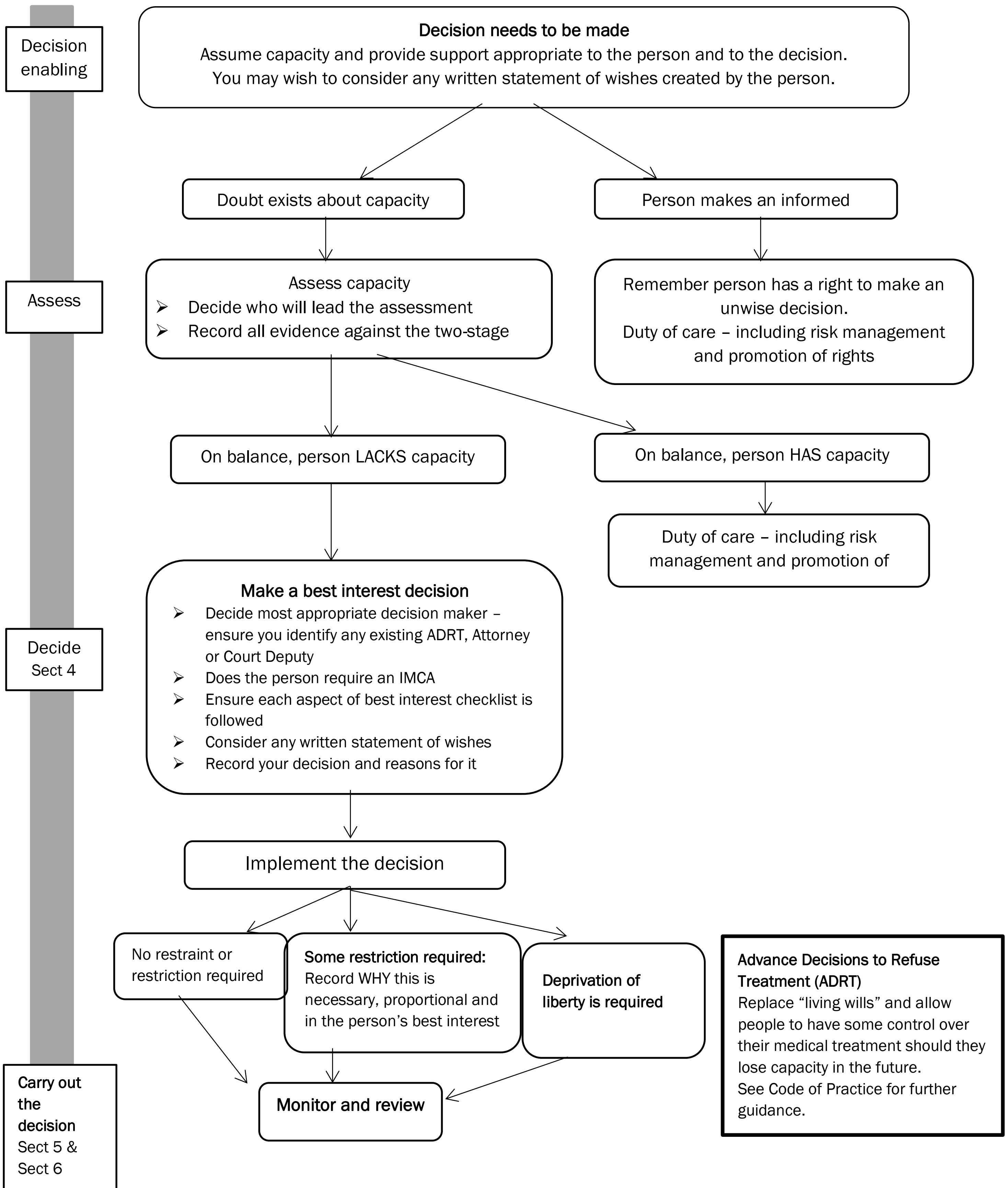

5. Assessment Outcomes

Decisions made using the MCA should be recorded in the patient's notes. Assessors should use their judgement over whether assessments made are significant enough to need a formal, written assessment of capacity.

If the significance of a decision increases the assessment and decision-making process should become more detailed. Records regarding significant assessments and best interest decisions might become part of formal proceedings in the Court of Protection if they are challenged. They therefore need to be comprehensive and accurate.

Staff should review their assessments regularly to ensure they continue to meet the requirements of the act and the Codes of Practice.

6. Best Interest Decisions

Principle 4 of the MCA is that any action undertaken or decision made on behalf of someone who lacks mental capacity must be undertaken or made in the individual's best interest.

The only exception may be when an individual who lacks capacity has made an Advanced Decision to Refuse Specified Treatment.

Examples of a best interest decision **may** include:

- Changes to care and treatment
- Giving covert medication
- Restraint (physical and pharmaceutical)
- Disputes with the patient and/or family and friends
- Change of accommodation

7. Advance Decisions

If a person has made an advanced decision to refuse medical treatment at a time when they had capacity this will prevent a Healthcare Professional from giving them the same treatment in their best interest as long as the Advanced Decision remains valid and applicable to the circumstances.

Advanced care planning is a process by which people can plan ahead to make decisions and express preferences about what they wish to happen with their care and treatment if they lost capacity to make decisions for themselves.

8. Lasting Powers of Attorney

People over the age of 18 who have capacity can appoint other people to make decisions about their health, welfare, money and property if, in the future, they lose ability to do so themselves.

Personal Welfare attorneys can make decisions about health and welfare.

Property and Affairs attorneys can make decisions about money and other financial matters.

The same person can be both of these, or different people can be appointed to each.

The Mental Health act does not affect the powers of attorneys and deputies to make decisions for people. Apart from two exceptions:

- They cannot give consent for treatment where a person is liable to be detained under Part 4 of the Mental Health act.
- They cannot make decisions about where a person subject to Mental Health act guardianship should live, or refuse decisions that their guardian has a legal right to make

People may have an EPA (Enduring Power of Attorney), these can only cover property and financial matters. They have no power to make other kinds of decisions, such as those about health and welfare.

9. Independent Mental Capacity Advocate

The MCA establishes an advocacy service to provide safeguards for people for lack capacity to make a decision at the time it needs to be made and are un-befriended i.e., they have no friends or family to support them.

Local councils pay for IMCA services. Referrals to an IMCA service must be made by local council or NHS professionals when there is no family, friend, attorney or deputy to consult and:

- Medical professionals propose serious medical treatment
- Health service or local council staff want the person to be admitted to hospital for more than 28 days or a care home or more than eight weeks
- A care home or hospital wants to deprive someone of their liberty

There are also other circumstances where you **may** refer to an IMCA:

- There is no-one else available to represent the person during a care review.
- There is to be a multi-disciplinary adults safeguarding co-ordinating meeting concerning the person.
- A person's accommodation needs are being reviewed and they do not have the capacity to make choices for themselves.

10. Deprivation of Liberty Safeguards (DoLS)

For some patients who lack capacity to make decisions about their physical healthcare the framework is the DoLS.

Before a DoLS is applied for, there are three questions that should be asked (this is known as the Acid Test):

- Is the person subject to continuous supervision and control
- Is the person not free to leave
- Does the person lack the capacity to consent to these restrictions

11. Training

Clinicians have a responsibility to both keep up to date and undertake appropriate personal professional development. There is an expectation that each GP Practice has in place a safeguarding and MCA lead.

The CQC requirements are to check that Primary care should have a good understanding of the MCA and DoLS.

Managers have a responsibility to ensure all staff (especially those working with patients) should have up to date training in the MCA and DoLS. Training should be provided using online modules and in person if required.

Mental Capacity Act Code of Practice:

Mental-capacity-act-code-of-practice.pdf (publishing.service.gov.uk)

DoLS Code of Practice:

12369 Mental Capacity 18th.indd (cqc.org.uk)