
Mental Capacity Act Implementation Policy

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Name of originator /author (s):	Clare Holder Specialist Nurse Adult Safeguarding and Quality
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Author(s) Contact(s) for further information about this document	Clare Holder Specialist Nurse Adult Safeguarding and Quality Maxine Lomax Designated Nurse Safeguarding
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Mental Capacity Act Implementation Policy

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References

Terminology

EMT	Executive Management Team
FOI	Freedom of Information
NHSLA	National Health Service Litigation Authority
CCG	Clinical Commissioning Group

Recommendations:

Note the receipt of and adopt the Mental Capacity Act Implementation Policy by NHS Bury Clinical Commissioning Group.

NHS Bury Clinical Commissioning Group is asked to note the legislative requirements of the MCA policy and to actively seek out assurance as part of contractual monitoring.

1. Introduction

1.1

Bury Clinical Commissioning Group (CCG) is required to take account of the principles within the Mental Capacity Act (2005) and to ensure that health providers from whom it commissions services (both public and independent sector) have a comprehensive policy relating to implementation of the Mental Capacity Act (2005) and if appropriate Mental Capacity Act Deprivation of Liberty Safeguards (2009).

1.2

The function of this policy is to detail the roles and responsibilities of Bury CCG as a commissioning organisation and that of its employees and GP member practices.

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 Purpose

This policy aims to ensure that no act or omission by Bury CCG as a commissioning organisation, or via the services it commissions, is in breach of the Mental Capacity Act (2005) or Mental Capacity Act Deprivation of Liberty Safeguards (2009) and to support staff in fulfilling their obligations.

The Mental Capacity Act (2005) sets who can, and how to, make decisions relating to care and treatment for those who lack capacity to make such decisions. The Act covers decisions relating to finance, social care, medical care and treatments, research and everyday living decisions, as well as planning for the future.

The policy applies to Bury CCG as a commissioning organisation and an employer of those who directly assess individuals for care requirements alongside it's GP member practices.

3 Principles

3.1

In developing this policy Bury CCG recognises that implementation of the Mental Capacity Act (2005) is a shared responsibility with the need for effective joint working between agencies and professionals. In order to achieve effective joint working there must be constructive relationships at all levels, promoted and supported by:

3.1.1

The commitment of senior managers and board members to implement the Mental Capacity Act into practice.

3.1.2

Clear lines of accountability within the organisation for work relating to Mental Capacity Act implementation.

3.1.3

Service developments that take account of the need to implement the Mental Capacity Act into practice, and is informed where appropriate by the views of service users.

3.1.4

Staff training and continuing professional development so that staff have a clear understanding of their roles and responsibilities in relation to implementing the Mental Capacity Act.

3.1.5

Effective interagency working, including effective information sharing.

3.2 Definitions

Mental Capacity - Within the Mental Capacity Act (2005) the term capacity relates to the person's ability to consent to or refuse care or treatment. The Act provides a two stage test for assessing a person's capacity and this must be used for each individual decision to be made.

Presumption of Capacity - There is a presumption that all young people (16 and 17 years of age) and adults have the ability to give valid consent to/refuse treatment. The Mental Capacity Act applies to all over the age of 16 years when concern is raised that the service user is unable to give valid consent to treatment due to an impairment or disturbance of the mind or brain.

3.3 Breaches of Policy

This policy is mandatory. Where it is not possible to comply with the policy or a decision is taken to depart from it this must be notified to Designated Nurse for Safeguarding.

3.4 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

4 Roles and Responsibilities of NHS Bury CCG as a Commissioning Organisation

4.1 NHS Bury CCG has a responsibility to assure robust arrangements are in place that demonstrates compliance with the Mental Capacity Act (2005). The ultimate accountability sits with the Chief Officer who discharges responsibility through The Governing Body and Safeguarding.

4.2 NHS Bury CCG will ensure compliance to the following:

4.2.1 Health commissioned services embed the Mental Capacity Act into practice and this is discharged effectively across the whole health economy through NHS Bury CCG commissioning arrangements.

4.2.2 Mental Capacity Act implementation is identified as a key priority area in all strategic planning processes.

4.2.3 Mental Capacity Act implementation is integral to clinical governance and audit arrangements.

4.2.4 All health providers from whom services are commissioned have comprehensive policies and procedures for Mental Capacity Act implementation and (where applicable) Mental Capacity Act Deprivation of Liberty Safeguards and are easily accessible to staff at all levels.

4.2.5 All contracts for the delivery of health care include clear standards for implementing the Mental Capacity Act; these standards are monitored thereby providing assurance that the Mental Capacity Act is being correctly implemented.

4.2.6 Staff in contact with children, young people and adults who may lack capacity or carers of those who lack capacity in the course of their normal duties are trained and competent to work within the guidelines of the Mental Capacity Act Code of Practice.

4.2.7 Any system and process that includes decision making about an individual patient (e.g. funding panel/treatment options) clearly demonstrates compliance with the Mental Capacity Act; this includes ensuring that assessment of capacity is documented relating to any decision in line with the best interest process.

4.2.8 All service plans/specifications/contracts invitations to tender etc include reference to the Mental Capacity Act and Mental Capacity Act Deprivation of Liberty Safeguards.

4.3 CCG Individual Staff Members with Direct Service User Contact

4.3.1 Are to be aware of patient groups who may require assessment under the Mental Capacity Act due to an impairment or disturbance of the mind or brain. Any treatment decisions that follow an assessment of capacity must be fully documented to ensure the best interest process has been followed.

- 4.3.2** Are to undertake training relevant to role, including attending regular updates so that they maintain their skills when assessing capacity and are familiar with the legal requirements of the Mental Capacity Act.
- 4.3.3** Understand the principles of confidentiality and information sharing in line with the Mental Capacity Act and are to contribute when requested to do so, to the multi-agency best interests meetings when related to funding of placements/on-going decisions

5 Local Implementation

- 5.1** The Executive Lead for Safeguarding is the Designated Lead Officer for The Mental Capacity Act.
- 5.2** The Specialist Nurse Adult Safeguarding and Quality is the operational lead for the Mental Capacity Act implementation across the health economy and links in with The Mental Capacity Act/Deprivation of Liberty Safeguards Co-ordinator at Bury Local Authority.
- 5.3** Ensure that learning from cases where mental capacity has been an issue will be used to inform future commissioning and practice.
- 5.4** NHS Bury CCG will monitor implementation of the Mental Capacity Act through the completion of the annual NHS Safeguarding Audit and submission of data at The Quality and Risk Committee.

6 Training Strategy for Bury Health Economy

6.1 Statutory Context

- 6.1.1** The Mental Capacity Act (2005) provides a legal framework for making decisions on behalf of, and acting on those decisions for, individuals who lack capacity to make a particular decision for themselves.
- 6.1.2** By following the Mental Capacity Act (2005) health professionals can provide care and treatment to those patients/clients who lack capacity to consent if the treatment decision can be evidenced as to be in the best interests of the patient/client at that specific time.
- 6.1.3** All staff who provide care and/or treatment to patients/clients who may lack capacity to consent need to be able to competently complete an assessment of capacity using the two stage process, and evidence through their record keeping the best interests decision, highlighting how the decision was made and actioned.
- 6.1.4** There is a statutory obligation to refer a person, who meets the criteria to the Independent Mental Capacity Advocacy (IMCA) service, and to have full understanding of the Act and have regard to the accompanying codes of practice.

6.2 Training Responsibilities

- 6.2.1 Bury MBC receives central finances from government to assist with the delivery of Mental Capacity Act basic awareness training across all health and social care services.
- 6.2.2 Each individual health organisation has responsibility to provide additional awareness sessions to meet their staff requirements.
- 6.2.3 NHS Bury CCG will seek assurance from provider services commissioned by them that the training delivered meets the following framework. Commissioned provider services will also be expected to maintain data in relation to numbers of staff who have received each level of training. This will inform the Quality and Risk Committee and also support the provider in sharing evidence with Care Quality Commission and Monitor (for Foundation Trusts).

6.3 Levels of Mental Capacity Act Training requirements

1. Induction

All new starters to any organisation within health care:

- Signpost to relevant Mental Capacity Act/Deprivation of Liberty Safeguards policy
- The 5 principles and consent to treatment
- Responsibilities to assess capacity and documentation
- Best interest checklist
- How to seek support and guidance with mental capacity related issues

Induction training will be required on commencement of post and it is expected that the organisation will deliver.

2. Basic Awareness –

All patient facing staff (clinical and non-clinical)

- Mental Capacity Act and the Law
- What the MCA means in practice
- The 5 principles
- Who should assess capacity and when
- How to correctly document a capacity assessment
- The best interest checklist

- The Independent Mental Capacity Advocate
- Criminal offences
- Lasting Powers of Attorney/Court Appointed Deputies
- The meaning of restriction and restraint
- What is deprivation of liberty safeguards
- It is expected that staff in this group will receive basic awareness training on a “once only” basis. Organisations may deliver this through e-learning.

3. Training for decision makers

Clinical staff who make care and treatment decisions for patients and staff who complete patient related investigations/complaints:

- How to implement the MCA into practice
- The 5 principles in practice
- Assessing capacity and making a best interest decision
- The MCA and the safeguarding overlap
- The use of restriction and restraint in practice
- The difference between restraint and deprivation
- The process of applying Deprivation of Liberty safeguards

It is expected that staff who make decisions (including non-complex decisions) will complete this training 3 yearly to ensure competence when applying the Act into practice. The organisation is responsible to deliver this training.

7 References

Care Quality Commission (2009) Guidance about compliance: Essential Standards of Quality and Safety

Department for Constitutional Affairs (2007) Mental Capacity Act 2005: Code of Practice. TSO: London

Ministry of Justice (2008) Deprivation of Liberty Safeguards Code of Practice to supplement Mental Capacity Act 2005. TSO: London

Safeguarding Vulnerable People in the Reformed NHS (2013) – Accountability and Assurance Framework - NHS Commissioning Board