Mental Capacity Act (MCA) and Deprivation of Liberty in the Community (DOLIC's)

Policy and Procedure

Statement and Purpose of Policy

The Mental Capacity Act 2005 (MCA) which incorporate Deprivation of Liberty (DOLS) applies to everyone who works in health and social care and is involved in the care, treatment or support of people aged 16 and over who live in England and who are unable to make all or some decisions for themselves. The inability to make a decision could be caused by a psychiatric illness a learning disability, mental health problems, a brain injury or a stroke. Staff working for Serenta Homecare will come into contact with Clients that are affected by the MCA and need to understand the impact on the way they deliver care.

Mental Capacity Definitions

Having mental capacity means that a person is able to make their own decisions. The Mental Capacity Act 2005 says that a person is unable to make a particular decision if they cannot do one or more of the following four things

- Understand information given to them.
- Retain that information long enough to be able to make the decision.
- Weigh up the information available to make the decision.
- Communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

We all have problems making decisions from time to time, but the Mental Capacity Act is about more than that. It is specifically designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected, for instance, by illness or disability, or the effects of drugs or alcohol. It is very important that you remember at all times that lack of capacity may not be a permanent condition. Assessments of capacity should be time and decision specific i.e. a person with Dementia may struggle on some days to make decisions but be able to make decisions on other days.

Consent is the voluntary and continuing permission of the person to the intervention or decision in question. It is based on an adequate knowledge and understanding of the purpose, nature, likely effects and risks of that intervention or decision, including the likelihood of success of that intervention and any alternatives to it. Permission given under any unfair or undue pressure is not consent.

Decision Maker is anyone who is making a health and welfare decision on behalf of another person. This can be a carer or relative who makes a decision about everyday events such as food ordering or dressing. More serious decisions should be made by people in more senior roles.

Best Interests is not defined as such in the Act but is about ensuring that everything done for (or on behalf of) a person who lacks capacity is in their best interests. The Act provides a checklist (2) of factors that assessors must work through, and decisions must be documented in care plans.

Mental Capacity Act 2005

The Mental Capacity Act is based on best practice and creates a single, coherent framework for dealing with mental capacity issues and an improved system for dealing with personal welfare issues and the property and affairs of people who lack capacity. It puts the individual who lacks capacity at the heart of decision making and places a strong emphasis on supporting and enabling the individual to make his/her own decisions.

There must always be the presumption that people we provide care or treatment for have capacity to make decisions for themselves. Where they cannot staff must in collaboration determine what is in the 'best interests' of a person lacking capacity. The MCA sets out the obligation for staff to consult, where practical and appropriate, people who are involved in caring for the person who lacks capacity, and anyone interested in their welfare (for example family members, friends, partners and carers) about decisions affecting that person. If there is an Attorney under an Lasting Power of Attorney (LPA), a Deputy appointed by the Court or named person, staff will consult with them.

All Serenta Homecare staff will be trained in the Mental Capacity Act 2005.

Processes

When a client needs to make a decision as part of the care planning process or as part of day-to-day care; staff must start from the assumption that the person has capacity to make the choice. Staff should make every effort to encourage and support the person to make the decision themselves and you will have to consider a number of factors to assist in the decision making. Think about if presenting them with more facts may help, or if using simpler language or in a different format would enable them to make their own decisions.

Under the Mental Capacity Act, staff should always carry out an assessment of capacity before delivering care. However, the formality will depend upon the gravity of the decision. So, for example if a Client deciding to stop receiving any support from anyone and capacity is questioned, then this would require a formal assessment with a manager present to decide on the next stage. In comparison a client not having the capacity to choose what to have to eat on certain days would require an entry into the care record along the lines of 'Mr P lacked capacity today to decide what to eat, so a decision about this was made in his best interests.' If Mr P had family, or others involved in his care and lacked capacity more frequently, they would be consulted with when making choices about his diet.

It is always important to document why decisions were made and under what circumstances to demonstrate compliance with the MCA.

Decisions that are made should where practicable involve those who have care responsibilities, are relatives and the person with the LPA. This should always happen with complex decisions, but may not be practicable for day-to-day decisions with people with fluctuating capacity i.e choosing what to eat one any given day, but direction can be sought on what meals the Client enjoys and what food is bought and this can be entered into Mobizio to support Care Workers who attend.

DOLICS

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS), which came into force in England on 1 April 2009, provides a legal framework to prevent unlawful deprivation of liberty occurring. They protect vulnerable people who lack the capacity to consent to the arrangements made for their care and/or treatment but who need to be deprived of their liberty in their own best interests to protect them from harm. When the safeguards initially came into force, they were focused on people in care homes and hospitals but recent case law has now confirmed that they should also cover people cared for in supported living and in their own community (DOLICs).

As Serenta Homecare only works with people in their own homes, staff will only usually come in contact with Clients where DOLIC's not DOL's applies. The definition of DOLIC's is deprivation of liberty in a domestic setting WHEN the state is responsible for imposing the restrictions. If a Deprivation of Liberty in the Community (DOLIC) is identified, the Care Worker must inform their manager on-call who will flag the issue to the Local Authority. They can then refer to the Court of Protection for Deprivation of Liberty in the Community (DOLIC) if deemed appropriate.

If the Client objects to the information being shared confidentiality can be breached, if the benefits to the person that will arise from sharing the information outweighs both the public and the individual's interest in keeping the information confidential.

All Serenta Homecare staff will be trained in DOLs.

Document Control

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