Mental Capacity Act (2005) Decision Making Pathway

All adults should be presumed to have capacity unless the opposite has been demonstrated. Consent must be obtained by the person undertaking the procedure and is specific to the decision to be made.

Issue requiring person to give informed consent

Do you think the person has the capacity to consent

Following assessment of Capacity – No; person does not have capacity

Is there an Advance Statement/Directive?

Is there a Lasting Power of Attorney or deputy?

Yes

Respect the wishes of the person.

A person with Capacity has the right to make what might be seen to be eccentric or unwise decisions

Does the decision involve a serious medical treatment or The NHS arranges Hospital stay for 28 days or more or The arrangement of accommodation for 8 weeks or more

Yes

You must seek legal advice

No

No

Test for Capacity:

• Understand the information given to them
• Retain the information long enough to make the decision
• Weigh up the information available to make the decision
• Communicate the decision

Valid Consent is:

• Given by a competent person
• Be given voluntarily
• Given following receipt of adequate information

All practicable steps:

• Consider use of real objects or photographs/hierarchy of symbolic development
• Arrange visits to treatment areas
• Develop information packages that are accessible
• Give the person extra time

Least restrictive option: Anything done for or on behalf of the person without capacity should be the least restrictive to their basic rights and freedoms

Best Interests: Anything done for and or on behalf of a person without capacity must be in the person’s best interests

This does not always have to be a face to face meeting as long as the decision maker follows the guidance and consults with all relevant others [See Best Interests Pathway]

An Independent Mental Capacity Advocate (IMCA) must be involved if the person lacks capacity and has no relatives and or close friends and requires:

• Serious medical treatment: which involves providing, withdrawing or withholding treatment in specific circumstances where; In what is being proposed, there is a fine balance between the likely benefits and the risks to the person, or where there is a choice of treatments, and a decision as to which one to use is finely balanced or what is proposed would be likely to involve serious consequences for the person
• Or the NHS arranges a hospital stay for 28 days or more
• Or the NHS or Local Authority arrange accommodation for 8 weeks or more
• Deprivation of Liberty Order
• Safeguarding Adults Procedures

Every person has the right to be supported to make their own decision

Has/ ensure that all practicable steps been taken to ensure understanding

Ensure that all who are involved in the persons welfare are consulted

Is there an alternative

Yes

No

Consider best interests

Is this in the person’s best interests

Yes; go ahead

Yes

Arrange a best interests meeting;

No

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