Further information

The DoLS Administrator
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Public Guardian
Website: www.publicguardian.gov.uk telephone: 0845 330 2900

Your local Citizens’ Advice Bureau
01384 816222 (central advice line)

NHS choices website
http://www.nhs.uk/CarersDirect/moneyandlegal/legal/Pages/
MentalCapacityAct.aspx

Other publications giving information about the Mental Capacity Act 2005:

What is mental capacity?
Health and social care assessments - information for carers

If you require any assistance with regard to this document or would like to request an interpreter, large print or audio version, please contact the equality and diversity unit on 01384 813400
What is a deprivation of liberty?

Some people who live in hospitals and care homes cannot make their own decisions about their care or treatment because they lack the mental capacity to do so. They need more care and protection than others, to ensure they do not suffer harm.

Sometimes, caring for and treating people who need extra protection may mean restricting their freedom. For instance, it might be necessary to stop a person from leaving the hospital or the care home. If there are a lot of restrictions like this, it may be that the person is being deprived of their liberty.

Hospitals and care homes should always try to avoid this, but sometimes there is no alternative but to deprive a person of their liberty because it is in their best interests.

What are the deprivation of liberty safeguards?

The deprivation of liberty safeguards is a new law which came into force from April 2009. They apply to anyone who:

- is aged 18 or older
- is suffering a disorder or disability of the mind
- lacks the capacity to give consent to their care/treatment
- is receiving care or treatment that might amount to a deprivation of liberty under Article 5 of the European Court of Human Rights.

If there is no other way but to deprive such a person of their liberty, the new deprivation of liberty safeguards say that a hospital or care home must apply to the council (for care homes) or to the Primary Care Trust (for hospitals) for authorisation. The council or Primary Care Trust are known as the supervisory body.

The supervisory body must assess the person concerned to see whether they are deprived of their liberty and whether this is in their best interests.

If the supervisory body authorises a deprivation of liberty, this will be for a limited time (up to a maximum of 12 months) and the supervisory body may put conditions in place to ensure the person’s welfare. The body will also ensure that the person being deprived has a representative who will keep in the touch with the person, support them in all matters regarding the authorisation, and ask for a review of the authorisation when necessary. This representative could be a family member, a friend, or a paid advocate.

The safeguards also allow people the right of appeal against a decision.

Further information is available from http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095895

What are authorities’ duties under the safeguards?

Hospital and care homes (these are called managing authorities) have a duty under the safeguards to:
- provide care and treatment in ways that do not deprive a person of the liberty, or if this is impossible...
- apply to the supervisory body for authorisation of the deprivation of liberty

The council and the Primary Care Trusts (these are called the supervisory bodies) have a duty under the safeguards to:
- assess anyone when the managing authorities make an application
- authorise a deprivation if it is needed in the best interests of a person to who the safeguards apply
- make sure that the person’s care/treatment meets their needs and best interests
- set a timescale for how long a deprivation can last
- keep records of who is being deprived of their liberty

What should I do if I feel a person is being deprived of their liberty?

Talk about the issues with the hospital or care home. They may be able to change a person’s care or treatment to ensure the person is not being deprived, or they may be able to tell you why the person is not actually deprived of their liberty. Also you can ask that the supervisory body reviews the person, to see whether they are being deprived of their liberty.

This request can be in writing, or by phone. Contact details are overleaf.