Further information

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

Christine Rowely, carers’ co-ordinator
Telephone: 01384 818723

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

NHS choices website

Other publications giving information about the Mental Capacity Act 2005:
What is mental capacity?
Deprivation of liberty safeguards

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
Information about health and social care assessments

You have been given this leaflet as a family member or friend of someone who may lack the capacity to make certain decisions. Its purpose is to explain the process of assessing them for health or social care services, in order to comply with the Mental Capacity Act 2005.

What is mental capacity?

Mental capacity is the ability to make your own decisions. The new law says that a person is unable to make a particular decision if they cannot do one or more of the following:

- 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.

This law is designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected by illness or disability, eg stroke (or other brain injury), dementia, mental illness or learning disability.

Key principles

There are five key principles in the Act:

- Every adult has the right to make his or her own decisions and must be assumed to have the capacity to make them unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

How will capacity be assessed?

The Act states that capacity must be determined for each decision that needs to be made. (For example, someone may have the capacity to decide what to eat but not where they should live). The decision-maker who needs the decision made, is responsible for assessing capacity (eg a social worker to decide about social care services, a nurse in relation to nursing services or a doctor in relation to medical treatment).

After making every attempt to support the person to make a decision for themselves, the decision-maker will determine if the person can understand, retain and weigh up information in relation to the decision and then communicate it. If they are unable to do one or more of these then the person lacks capacity to make the specific decision so the decision-maker must make the decision in their “best interests”

This assessment of capacity will not necessarily be completed by a doctor or psychiatrist.

How is a ‘best interests’ decision made?

The decision-maker must encourage the participation of the person who lacks capacity and consult others (including you) to explore the person’s past/present wishes before coming to a ‘best interests’ decision.

Although most involved family and friends have the best interests of their loved one at heart, the Act clearly states that concerned family and friends (including next of kin) do not have the automatic legal authority to take health or social care decisions unless stated within a Lasting Power of Attorney for personal welfare matters. An Enduring Power of Attorney given before the implementation of the 2005 Mental Capacity Act in 2007 only gives authority to make financial decisions so will not be valid for this purpose. The process of assessing capacity and determining best interests must be undertaken for each decision.