HLTH Group
CQC Compliance, HR and Health & Safety

Consent and Mental Capacity Policy

Re-Pat Ltd

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Consent and Mental Capacity Policy- Re-Pat Ltd

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Policy Signed By	RICHARD DRAKEFORD

1.Introduction

This policy sets out the requirement for all Re-Pat Ltd staff to obtain informed consent from patients for their care and including them in the decision-making process. It is based on the legal and ethical rights of all patients.

If a patient is unable to consent to their treatment, it must be clearly documented on the Patient Report Form (PRF) associated with their treatment. It should never be assumed that a patient is unable to consent to treatment and the Mental Capacity Act 2005 sets out clear guidelines relating to the assessment of patients' capacity to consent to treatment.

2.Aim

Re-Pat Ltd aim to provide staff with the information necessary to be able to effectively and safely care for patients during their care. It is essential that all staff members have a clear understanding of what consent is and the processes around receiving informed consent. This policy will provide this information.

3.What is Consent

Re-Pat Ltd acknowledge that patients may show different methods to communicate whether they are consenting to treatment or not.

Non-Verbal Consent. An example of this would be when a patient holds out their arm for checking of blood pressure following an explanation of the process is an example of non-verbal consent. However, for consent to be valid, the patient must thoroughly understand why the examination or treatment is necessary and what is involved.

For the consent to be valid, the patient must feel they have the option to refuse treatment, transport, or examination. Therefore, wherever possible consent should be sought prior to the procedure starting. This may not always be possible in an emergency, in this case staff may treat without prior consent to save the patients life or prevent serious harm. The patient should always be informed as soon as possible.

Consent to treatment should be recorded on all Patient Report Forms including any continuation sheets. If at any time the patient withdraws consent, this must also be documented on the form including, if possible, the reason for refusal. If the patient is unable to read or write, they should be encouraged to leave their mark on the Patient Report Form to identify that they have given and/ or refused consent. This should preferably be witnessed by another health professional or care giver.

Valid Consent

To be valid, consent must be given voluntarily and freely without pressure or influence being placed on the person. Practitioners and care givers should be aware that possible influences can come from healthcare professionals as well as partners and relatives of the patient.

4.Procedures

Consent with children

People ages 16 or over are entitled to consent to their own treatment. Like adults, young people aged 16 or over are presumed to have capacity to decide on their own treatment, unless there is sufficient evidence to suggest otherwise.

Children under the age of 16 can consent to their own treatment if they are believed to have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment under The Fraser Guidelines. This is known as being Gillick Competent.

Otherwise, someone with parental responsibility can consent for them. This could be:

- The child's mother or father
- The child's legally appointed guardian
- A person with a residence order concerning the child
- A local authority designated to care for the child
- A local authority or person with an emergency protection order for the child

Parental Responsibility

A person with parental responsibility must have the capacity to give consent. If a parent refuses to give consent to a particular treatment, this can be overruled by the courts if treatment is thought to be in the best interest of the child.

By law, healthcare professionals only need one person with parental responsibility to consent.

In an emergency, where the life of the child or if the child is at risk, treatment can be provided without consent.

Refusal to consent

If an adult with capacity makes in informed, voluntary decision to withdraw consent to treatment and or transportation, their decision must be respected.

For an adult to refuse consent they must:

- Be 18 or over
- Have the capacity to make the decision
- Be clear on which aspects of treatment or transport they are refusing

A person with capacity is entitled to withdraw consent at any time. If this should happen during treatment:

- the practitioner should stop the procedure as soon as practicably possible
- establish the patients concerns and explain the possible consequences of refusing treatment
- If at this time the patient still refuses to give consent and is deemed to have the capacity to make the decision to withdraw consent, this decision must be respected.

Assessing capacity during a procedure may be difficult due to factors that can temporarily affect a person's capacity to consent such as fear, panic, and shock. The health professional carrying out the procedure should attempt to assess the patient's capacity to withdraw previously given consent. If it is established that the patient is lacking capacity, it may sometimes be appropriate to continue with the procedure by acting in the patients' best interests

Advanced Decisions

Healthcare professionals must follow an advance decision if it is valid and applicable, even if it may result in the person's death. If they do not, they could face criminal prosecution or civil liability. The Mental Capacity Act (MCA) 2005 protects a health professional from liability for treating or continuing to treat a person in the person's

best interests if they are not satisfied that an advance decision exists which is valid and applicable.

The Act also protects healthcare professionals from liability for the consequences of withholding or withdrawing a treatment if at the time they reasonably believe that there is a valid and applicable advance decision.

If there is genuine doubt or disagreement about an advance decision's existence, validity or applicability, the case should be referred to the Court of Protection. The court does not have the power to overturn a valid and applicable advance decision. While a decision is awaited from the courts, healthcare professionals can provide life-sustaining treatment or treatment to stop a serious deterioration in the patient's condition

Capacity

The Mental Capacity Act (2005) applies to everyone who works in health and social care and is involved in the care, treatment, or support of people over 16 years of age who may lack capacity to make decisions for themselves.

It creates a single, coherent framework for decision-making, including decisions about treatment. The Act imposes a duty on health professionals (and other healthcare staff) to have regard to the Code of Practice. The Act makes it clear that when determining what is in a person's best interests a healthcare professional must not make assumptions about someone's best interests merely based on the person's age or appearance, condition or any aspect of their behaviour.

The Mental Capacity Act defines a person who lacks capacity as a person who is unable to decide for themselves because of an impairment or disturbance in the functioning of their mind or brain. It does not matter if the impairment or disturbance is permanent or temporary.

A person lacks capacity if:

- They have an impairment or disturbance (for example a disability, condition or trauma or the effect of drugs or alcohol) that affects the way their mind or brain works.
- That impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

An assessment of capacity should be made on the person's ability to decide at the time it needs to be made, not in their ability to make decisions in general. A person is unable to decide if they are unable to:

- Understand the information given to them
- Retain the information long enough to decide
- Use the information to make an informed decision
- Communicate their decision (may include verbal or non-verbal communication)

A person's capacity to consent may be temporarily affected by factors such as:

- Communication difficulties e.g. language barriers
- Impairment
- Confusion
- Panic
- Shock
- Fatigue
- Pain
- Medication

However, the existence of such factors should not lead to an automatic assumption that the person does not have the capacity to consent. The Mental Health Act 2005 states that making an "unwise decision" does not mean that the person lacks capacity to decide. A person is entitled to make a decision that may appear to others as irrational or unwise if they have the capacity to do so.

Best Interest Decision

The Mental Capacity Act provides protection for healthcare professionals from both criminal and civil liability for acts and decisions made in the best interests of a patient that lacks capacity.

The act specifies that no assumptions should be made about a person's best interests based on:

- Age
- Appearance

Any aspect of their behaviour and all relevant circumstances must be considered when considering a person's best interests.

The Mental Capacity Act stipulates that when considering the relevant circumstances, the following must be considered:

- Consider whether the person is likely to regain capacity and if so whether the decision can wait.
- Involve the person as fully as possible in the decision that is being made on their behalf.
- Consider: the person's past and present wishes and feelings (if they have been written down) any beliefs and values (e.g. religious, cultural or moral) that would be likely to influence the decision in question, and any other relevant factors) and the other factors that the person would be likely to consider.

As far as possible, consult other people if it is appropriate to do so and consider their views as to what would be in the best interests of the person lacking capacity, especially:

- Anyone previously named by the person lacking capacity as someone to be consulted

- Anyone engaging in caring for or interested in the person's welfare
- Any attorney appointed under a Lasting Power of Attorney
- Any deputy appointed by the Court of Protection to make decisions for the person

If the decision concerns the provision or withdrawal of life-sustaining treatment, the person making the best interest's decision must not be motivated by a desire to bring about the person's death

Lasting Power of Attorney

Under English Law, no person other than those with Lasting Power of Attorney or have the authority of a court to make treatment decisions as a court appointed deputy, are permitted to provide consent on behalf of an adult that lacks capacity.

Therefore, parents, relatives and carers are not able to provide consent to treatment or assessment unless they also hold Lasting Power of Attorney or are a court appointed deputy. However, the Mental Capacity Act sets out circumstances in which it will be lawful to carry out such assessments.

Consent and self-harm/Suicidal Ideation

Where the person can communicate, an urgent assessment of their capacity should be undertaken. If the person is found not to have capacity, then they must be treated in their best interest based on temporary incapacity.

Similarly, when considering unconscious patients that have attempted suicide, emergency treatment must be provided if there is any doubt as to their intentions or their capacity when they attempted suicide and patients with capacity do have the right to refuse life sustaining treatment both at the time it is offered and in the future. The right to refuse treatment does not apply for treatment of mental disorder under the Mental Health Act 1983.

Making a decision that will or may result in death does not make a person suicidal or mean that they lack capacity, however, if the patient is obviously suicidal their capacity must be considered.

If a person with capacity self-harms a prompt psychological assessment will be required and should be offered. If a person that has self-harmed has the capacity to make the decision to self-harm, and the use of the Mental Health Act 1983 is not appropriate, the patient's wishes must be respected. Similarly, if the health professional has reason to believe that the decision to end their life was made and the patient had capacity at the time, and the Mental Health Act 1982 is not applicable, the wishes of the person must be respected, and treatment must not be forced upon them. However, attempts should be made to encourage the person to seek help.

Documentation

To document the assessment of a person's capacity to consent, all staff must complete the section of the Patient Report Form (PRF) to signify that the patient's capacity has been assessed. Each patient must sign the Patient Report Form relating to their care either to consent to treatment or to withdraw consent. If the patient does not give consent or refuses to sign the PRF, their refusal must be documented and the PRF signed by all persons involved in the patients' care.

5.Roles and Responsibilities

At Re-Pat Ltd it is everyone's responsibility to ensure informed consent is gained prior to any treatment or care. Staff should work within their competence and receive informed consent relating to their specific role.

6.Training requirements

Staff at Re-Pat Ltd will receive annual training, this may be provided face to face or online.

7.Monitoring

Auditing tools may be used at Re-Pat Ltd to monitor and record consent forms and documentation to ensure informed consent has been received. It is the responsibility of the Registered Manager to ensure that any issues with informed consent are communicated to the wider team.

8.Related Policies and Procedures

Safeguarding Adults and Children Policy

9.Legislation and Guidance

Mental Capacity Act (2005)
Department of Health and Social Care (2009) Reference Guide to Consent for Examination or Treatment (Second Edition)
NHS England. Children and Young People- consent to treatment
The Mental Health Act 1983
The Children Act 1989

10.Appendix (Optional)