

**NHS VALE OF YORK CLINICAL  
COMMISSIONING GROUP**

**GOVERNING BODY MEETING**



Vale of York  
Clinical Commissioning Group

**Meeting Date: 7 March 2013**

**Report Sponsor:**

Mrs Caroline Wollerton, Executive Nurse

**Report Author:**

**Report Author:**

Chris Brace, Adult Safeguarding  
MCA/DOLS Officer  
Caroline Wollerton, Interim Executive  
Nurse

**1. Title of Paper:**

**Mental Capacity Act Policy**

**Mental Capacity Act / Deprivation of Liberty Safeguards Policy and Procedure**

**Mental Capacity Act / Deprivation of Liberty Safeguards: Learning and development strategy**

**2. Strategic Objectives supported by this paper**

Achieving high quality care for patients. Mental Capacity Law, Safeguarding and Mental health law are particularly relevant to domains 4 and 5 of the NHS Outcomes Framework 2012/13, and 2013/14, patient experience and protecting people from avoidable harm and has been significantly reinforced in the Winterbourne review.

**3. Executive Summary**

The three policies put before the Governing Body for approval concern the policies and practice that surround The Mental Capacity Act (MCA) 2005 (the "Act") and The Mental Capacity Act Deprivation of Liberty safeguards that were introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007, and the responsibilities of the Clinical Commissioning Group in respect of our directly employed staff and the organisations from whom we commission services, including a strategy for ensuring CCG staff are trained and aware of their duties in relation to the frameworks.

The legislation provides a statutory framework to empower and protect vulnerable people. It sets out a framework for assessing whether an individual has the necessary capacity to make a particular decision, and it makes provision for people who have capacity to plan ahead for a time when they may lack capacity and gives a power to staff (and others) working with people who lack the capacity to consent, to make decisions in the individual's best interest.

With effect from 1st April 2009 all Primary Care Trusts and Local Authorities, all registered hospitals, and other institutions such as hospices and care homes were legally required to have a policy and procedure in place to provide for adults who lack capacity. With effect from 1 April 2013 the Supervisory Body responsibility in respect of hospitals transferred from Primary Care Trusts to Local Authorities. CCGs will oversee these responsibilities and have a responsibility around training and MCA compliance. CCGs should also be involved in joint local strategic leadership related to MCA & DOLS.

The safeguards cover persons in hospitals, and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements. The safeguards are designed to protect the interests of an extremely vulnerable group of users.

#### **4. Evidence Base**

Each of the three policies includes underpinning references and bibliography

#### **5. Risks relating to proposals in this paper**

N/A

#### **6. Summary of any finance / resource implications**

Any future investment in learning and development will need to be agreed by the CCG however implications contained within report are cost neutral as resources will transfer from the PCT.

#### **7. Any statutory / regulatory / legal / NHS Constitution implications**

The legal framework for protecting vulnerable adults exists in the Mental Capacity Act 2005 (MCA) and Deprivation of Liberty Safeguards (DoLS), for adults assessed as lacking capacity, and interfaces with Safeguarding Adults Policy and The Mental Health Act 1983. The MCA created the criminal offence of wilful neglect or ill-treatment of a person who lacks capacity. Other measures include: the establishment of a superior court – the Court of Protection; clarification of the law of best interests; a new welfare lasting power of attorney and advance decisions refusing treatment. Although these statutes and policies interface and in some cases overlap, they exist to serve different purposes. Other relevant statute includes the Health Act, 2009 and Corporate Manslaughter and Homicide Act 2007. As an outcome of the health and social care bill the NHS will shortly be statutory members of Safeguarding Adults Boards (SAB).

#### **8. Equality Impact Assessment**

Completed as part of policy development.

**9. Any related work with stakeholders or communications plan**

Included as part of policies.

**10. Recommendations / Action Required**

The Governing Body is asked to note and accept the three policies.

**11. Assurance**

Matters relating to the relevant statutes and safeguarding adults will be discussed and considered at the Quality and Performance Committee, and matters will be escalated to the Governing Body as necessary. MCA /DoLS and Safeguarding policies are included in all provider contracts and are monitored through the monthly Contract Management Board structures. Multi agency progress is coordinated and reported via the Local Safeguarding Adult's Board structures at which the CCG is represented by one of the three CCG Lead Nurses in North Yorkshire (employed by Harrogate and Rural District CCG).

For further information contact  
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