LINDSEY LODGE HOSPICE AND HEALTHCARE

Deprivation of Liberty Safeguards Policy

1 INTRODUCTION

Deprivation of Liberty Safeguards were introduced because some people who are in hospitals, care homes or hospices do not have the mental capacity to make their own decisions. They need additional protection to ensure that they do not suffer harm, especially where their personal freedoms may be restricted to the point of depriving them of their liberty.

The European Court of Human Rights has ruled that the rights of people, who are unable to make their own decision, especially when they need to be deprived of their liberty, need to be protected.

Here at the Hospice we must always deliver care without restricting people's personal freedoms wherever possible, it may be necessary to deprive someone of their liberty in order to give the care or treatment that is in their best interests and to protect them from harm.

There is a process for us to follow if it becomes necessary to deprive an individual of their liberty to deliver a specific care plan that is in their best interests.

By following the MCA DOLS, we can ensure that people are only deprived of their liberty when absolutely necessary and within the law.

MCA DOLS do not replace other safeguards in the MCA and any action taken under the MCA DOLS must take into consideration the five key principles of the MCA:

i. A person must be assumed to have capacity unless it is established that they lack it. A person must not be treated as unable to make a decision unless all practical steps have been taken to help them do so.
ii. A person cannot be treated as unable to make a decision because they may make one that is unwise.
iii. A decision made under this Act on behalf of a person who lacks capacity must be done in their best interests.
iv. Before the decision is made, regard must be given to the least restrictive option

DOLS were added to MCA 2005 by the Mental Health Act 2007 and came into force in April 2009

MCA DOLS allow the hospice to detain the person only in a specific place: it does not authorise care or treatment which still need to be carried out under the wider "best interests" provisions of the MCA (see above).

The Purpose:

i. To provide statutory safeguards for people in our hospice who do not have the mental capacity to make their own decisions. They are people who need additional protection to ensure that they do not suffer harm, especially in situations where delivering the necessary care requires their personal freedoms to be restricted to the point of actually depriving them of their liberty.

ii. People who need this additional protection may include those with severe learning difficulties, people with dementia or with neurological conditions such as brain injuries.

iii. An actively dying in-patient who has lost capacity or consciousness, and is receiving sedative medication to manage symptoms of their terminal phase.

iv. A delirious in-patient whose condition and capacity is fluctuating and who is receiving medication or support to manage their state, and hourly rounding is undertaken.

v. A wandering cognitively impaired in-patient at risk of falls who has a nurse call system that activates when the patient starts wandering.

vi. A patient with dementia requiring inpatient care who is prevented from leaving the hospice to ensure ongoing care.

2 DEPRIVATION OF LIBERTY

There is no standard checklist to identify when people can be deprived of their liberty as each case depends on the specific circumstances. However the following list is based on the judgements in several cases that have come before the ECtHR and UK courts. They indicate what circumstances have lead the to the courts deciding that patients have been deprived of their liberty

i. If restraint was used to admit a person to a hospice when the person was resisting admission

ii. If medication was given against the patient's will

iii. If staff took all decisions on an individual's behalf, including choices relating to assessments, treatments, visitors and where they live

iv. If hospice staff took responsibility for deciding if a person can be released into the care of others or allowed to live elsewhere in spite of the fact that the individual wanted to go home and was competent to make that decision

v. When carers requested that a person be discharged to their care hospice staff refused

vi. The person was prevented from seeing family and or friends because the hospice restricted the access to them

vii. The person was unable to choose what they wanted to do and how they wanted to live because the hospice exercised continuous supervision and control over them.

People are entitled to be cared for in the least restrictive way and professionals should always consider where there are other options to avoid deprivation of liberty. However if all alternatives have been explored and it is evident that the only course of action is to deprive the person of their liberty there is a standard process to follow.

MCA DOLS protect people by providing:

- a representative to act for them and protect their interests
- right to challenge via the Court of Protection the deprivation of liberty
- the right for their deprivation of liberty to be reviewed and monitored on a regular basis

If a person is to be deprived of their liberty we must have an authorisation from the supervisory body to continue with the care programme that deprives the individual of their liberty.

Authorisations can be standard or urgent:

KEY TERMS

- supervisory body: CCG's and local authorities
- managing authority: the individual or body with management responsibility for the hospital, hospice or care home in which the person is being or may be deprived of their liberty
- standard authorisation: this permits lawful deprivation of liberty and is issued by a supervisory body
- urgent authorisation: this permits lawful deprivation of liberty and is issues by a managing authority
- relevant person: the person who needs to be deprived of their liberty
- relevant person's representative: the person who represents the relevant person, usually a family member or someone known to the person. If no-one is available the supervisory body can appoint a representative.
- best interests assessor: the person who assesses whether or not the deprivation of liberty is in the person's best interests, is necessary to prevent harm and is a proportionate response to the likelihood and seriousness of that harm
- advance decision: the decision to refuse specified treatment made in advance by a person who has capacity to do so.
- donee of lasting power of attorney: the person appointed under a lasting power of attorney who has the legal right to make decisions on behalf of the person
- Independent Mental Health Advocate: person who provides support and representation for a person who lacks capacity to make specific decisions.

Lindsey Lodge Hospice staff should use the North Lincolnshire Monitoring and Reporting forms for all Deprivation of Liberty issues in addition to informing the CQC via the provider portal.

Any patient who has a DOLS in place, and the death is expected does NOT need to be referred to a coroner. However, if the death was not expected then a referral to the coroner must be made. These and further information can be obtained on:

http://nlgnet.nlg.nhs.uk
Staff Portal
Staff Intranet
Safeguarding Adults (List on right of screen)

You can also access the NL&G Safeguarding policies by clicking on documents and then policies.

REFERENCES: MCA 2005 & Deprivation of Liberty Policy (NL&G)				
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