

Briefing

Capacity in the older service user



Practitioners will appreciate the crucial importance of ensuring that the service user consents to any examination and any treatment that may be provided.

A failure to obtain consent will be a breach of the standards set out in the Health and Care Professions Council. In the Standards of conduct, performance and ethics it states in standard 1.2 that:-

You must work in partnership with service users and carers, involving them, where appropriate, in decisions about the care, treatment or other services to be provided.

And, in standard 1.4 that:-

You must make sure that you have consent from service users or other appropriate authority before you provide care, treatment or other services.

When does an adult have capacity to make consent to treatment?

When treating an adult who has the capacity to understand the information you provide, retain that information, use it to make their decision and to communicate a decision to you, then obtaining consent is likely to be straightforward.

Adults are legally assumed to have capacity unless there is clear evidence that they lack capacity. The mere fact that a person is in a care home tells you nothing about their capacity to make decisions. However, the staff ought to be aware of any concerns about the person's capacity, and any formal

arrangements in place for surrogate decision-making – such as powers of attorney. It is sensible to explore these issues with the staff before you visit a new patient who is a care home resident.

It is your obligation to talk to the service user and any carer or family members to make your own assessment of their capacity before undertaking any treatment.

You should listen to carers or family members who know the service user, particularly if you have concerns about the patient's capacity to provide consent. Do be mindful however that carers or family members may not have the legal authority to provide consent to the proposed examination or treatment.

Patients without capacity to consent to treatment

If you determine that the patient does not have capacity to consent to treatment you must consider whether there is an alternative means of obtaining valid consent. You should check whether there is a lasting power of attorney in place.

Two different types of powers of attorney may be relevant. A person who holds a health and welfare power of attorney can consent on the patient's behalf. However, a financial power of attorney is required to authorise payment from the patient's funds.

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Where such powers of attorney exist for a resident, the care home would be expected to have copies available for you to inspect.

That leads to the important point that capacity is not always straight forward; the service user may have the capacity to provide consent for podiatry or chiropody treatment but may not have the capacity to manage their finances.

You must always assess the service user's capacity to make the particular decision at the time it needs to be made, and remember that you should not assume that because they lack the capacity to make a decision on a particular occasion that they will lack the capacity to make any decisions at all now or in the future.

If you are in any doubt then it is best to talk to the service user and to speak with family or carers as to what the patient can and cannot decide, and to deal with the right person before providing treatment or taking payment.

Any consent should be recorded in the records along with the details of who has provided the consent, and their authority to do so if it is not provided by the service user. You must also record the steps taken to obtain consent, including the discussion and confirmation that you are satisfied that consent has been provided.

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