

CQC Fundamental Standards

Regulation Number	Regulation Details
Regulation 11:	The intention of this regulation is to make sure that all people using the service, and those lawfully acting on their behalf, have given consent before any care or treatment is provided. Providers must make sure that they obtain the consent lawfully and that the person who obtains the consent has the necessary knowledge and understanding of the care and/or treatment that they are asking consent for.

Key Lines of Enquiry

KLOE	How this applies to Consent
Safe	This policy demonstrates 'safe', because if the issue of consent arises and individuals need to be supported to make their decisions, then anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms in order to ensure their safety.
Effective	'Effective' is also demonstrated within this policy, as robust processes and attitudes regarding service users' consent allows us to find the correct carer to suit the service user's needs. Once a carer has been placed Careville Ltd will work with them to complete individual care plans which are specific to the service user's routine.

Related Documents

This policy should be read in conjunction with our:

- CM39 - Mental Capacity Act Implementation Policy
- HS08 - Risk Assessment Policy
- CP02 - Care Planning Policy
- CM03 - Autonomy and Independence Policy



Policy Aims

To clarify that Service users have a fundamental legal and ethical right to determine what happens to their own bodies. Careville Ltd will not support any service user without their express consent, and will act in a way which is informed by them. Valid consent to treatment is also central in all forms of healthcare.

Careville Ltd shall **always assume that a service user has mental capacity** unless the contrary can be established and will take all practicable steps to help the service user to make their own decisions about all elements of their care and support that Careville Ltd have been asked to provide. **The wishes and the involvement of the service user are paramount.** In the event of a lack of mental capacity a service user's **prior wishes and beliefs should be respected** in coming to any decision on their behalf, and **such decisions should always be made whilst considering their best interests.**

Careville respects the right of everyone to take decisions for themselves, or

empowered to take decisions, including those that may appear to be unwise. Careville Ltd strive to ensure that service users have **as much liberty as possible** and participate in decisions about their lives. Where a decision is taken for someone that lacks capacity, this can only be done by following the best interests principles as laid out in the **Mental Capacity Act Code of Practice**.



Key Question: What exactly is consent?

Careville Ltd defines consent as the service users' ability to understand, appreciate and agree particular decisions and recognises that actions must be assessed in the context of the law; the Mental Capacity Act 2005.

Consent and decision-making does include daily activities such as washing, dressing (including what to wear), eating (including deciding what and when to eat), where the service user lives and who with. It also includes hobbies, social activities that the service user wants to engage in and the financial and medical decisions that they make.

Consent does not have to be written, it can be verbal. With general decisions, a service user can imply consent from gestures or other forms of communication, of which their care and support staff should have good understanding. If there are communication needs and/or difficulties these must be recorded on a support plan in the service users Care and Support Agreement so that it is clearly understood by staff how the service user will make their decisions.

Legislation

The Mental Capacity Act 2005 provides a legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make decisions for themselves. Everyone working with and/or caring for an adult who may lack capacity to make specific decisions must comply with this act when making decisions or acting for that person, when the person lacks the capacity to decide for themselves. The same rules apply whether the decisions are life-changing events or everyday matters.

Careville Ltd recognises the five key principles underpinning the Mental Capacity Act:

- **presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise
- **Individuals being supported to make their own decisions** – a person must be given all practicable help before anyone treats them as not being able to make their own decisions
- **Unwise 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
- **Best interests** – an act done or decision made under the Act for or on behalf of a person who lacks capacity must be done in their best interests
- **Least restrictive option** – anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms

Assessment of Capacity

Careville Ltd will always assume at assessment that the service user has capacity to make decisions. If the service user's service is purchased by a commissioning body, then they have a responsibility to ensure that Careville Ltd is fully aware of the service user's capacity to make a decision following their assessment of the service user's needs. As the purchaser, they also have the right to be informed by Careville Ltd if there are any future concerns with the service user's ability to make their own decisions.

If there is no commissioning body involved then assessment of capacity must involve family, friends/carers or an Independent Mental Capacity Advocate (IMCA) if one has been appointed. A healthcare professional may also be consulted to ascertain the service user's capacity to consent to important decisions. In compliance with the Mental Capacity Act 2005 Careville Ltd are required to have an assessment of the service user's capacity prior to carrying out any care and support. The information regarding the service user's capacity must be recorded on the individual care plan.

Plans of Care and Support

Careville Ltd staff must take the service user's capacity to make decisions into consideration at the initial assessment meeting and whenever a review of the care and support service takes place. The assessment should take note of any prior wishes or beliefs that may help future decisions to be made.

The assessment documentation should include:

- Information on family members, friends, carers and advocates who may be consulted about the service user's choices.
- When these people can be consulted.
- Whether there are any officially appointed people e.g. an Attorney or Court Deputy, who are authorised to take decisions on behalf of the service user.
- Whether the service user has made advance decisions about their care and support and certain types of treatment if he/she lacks capacity in the future.

The information about any other person involved in the service user's decision making and any advanced decision making must be included in the service user's Care and Support Agreement.

Service users who have a lack of capacity at assessment must have an appropriate decision maker present to sign the following documents:

1. Individual Needs Assessment to agree how the service will be planned.
2. Capacity and Consent Form to verify who the decision makers are and what decisions they are responsible for.
3. Care and Support Agreement to agree the care and support to be provided and the decisions that can be made in the service user's best interests, by Careville Ltd.



Key Question: What happens if a Service User lacks capacity?

If a service user lacks capacity and it is agreed that their care and support staff can make day-to-day decisions on a regular basis, then no formal assessment is required each time the decision is made.

The agreement of those decisions being made by care and support staff must be evidenced in the service user's Care and Support Agreement. If a decision made by care and support staff is challenged, then staff must be able to demonstrate that the agreement has been made for decision making and to describe why they had reasonable belief in the person's capacity at that time that the decision was made. In all cases of decision making the service user must be helped to make their own decision as much as is reasonably practicable and if the decision is made for them then it must be evident that it was made in their best interests.

Supporting Service Users to Make Decisions

The following key principles in supporting service users who lack capacity to make decisions should be adhered to by care and support staff:

- Has the person got all the relevant information to make a decision?
- Has this been communicated to them in a way that the person will understand?
- Is the service user sufficiently comfortable to make a decision?
- Could the decision be deferred or postponed until there are circumstances which are right for them?
- Can anyone else who the service user knows help or support the service user to make choices or express a view?

Specific decisions

If specific decisions need to be made that are other than the approved decisions in the service user's Care and Support Agreement then Careville Ltd has a responsibility to contact the appropriate person identified on the Capacity and Consent Form and discuss the decision that needs to be made.

If the specific decision is linked to the service user's care and support and is not a serious decision but one of difference to the usual decisions made, then the Care and Support Worker can make that decision as long as they can evidence that it is in the service user's best interests. They must record all decisions made that are different to those specified in the Care and Support Agreement. The Care and Support Worker must consult the Capacity and Consent Form prior to making decisions for the service user to ensure that they are permitted to make the decision.

Best interests

The **best interests** principle in the **Mental Capacity Act 2005** states that any **act** done or decision made on behalf of an adult lacking **capacity** must be in their **best interests**. This can cover financial, health and social care decisions. The factors that must be taken into account when Careville Ltd staff have been authorized to make certain decisions are:

- Avoid making assumptions about someone's best interests merely on the basis of the person's age, appearance, condition or behaviour

- Consider a person's own wishes, feelings, beliefs and values and any written statements made by the person when they had capacity
- Take account of the views of family and informal carers
- Can the decision be put off until the person regains capacity?
- Involve the person in the decision making process
- Demonstrate that you have carefully assessed any conflicting evidence or views



Key Question: What happens if a Service User lacks capacity?

Careville Ltd recognize that it is the Care and Support Worker at the front line who will be expected to help someone come to an everyday decision if they lack capacity to do so, and that it is impracticable for them to assess capacity for every day to day decision and then record each and every route taken to a decision and why the decision was taken on someone's behalf if they lacked capacity.

Care and support staff must record approved day to day decisions in the service user's log sheet and any specific decisions on the Record of Specific Decision, with a reference to that form in the log sheet.

Careville Ltd recognize that the Care and Support Agreement is a snapshot in time and that Mental Capacity can fluctuate and a service user's circumstances may change after the initial assessment is made. Careville Ltd will regularly quality assure, monitor and review the service users care and support service and ensure that their best interests are continually at the centre of all decision making processes.

Formal Appointees

There may be those that are formally appointed to look after someone who may lack mental capacity. It is important that Careville Ltd are familiar with any of these appointees as they may come into contact with any of these appointees when caring for someone with capacity issues. Information of the appointees, if appropriate, must be recorded on the service user's Capacity and Consent Form. Examples of these appointees are:

- Lasting Powers of Attorneys (LPA's): A Personal Welfare LPA will be the decision maker on all matters relating to the service user's care and treatment.
- Property and Affairs LPA: appointees who deal with property and financial affairs who can also be known as Enduring Powers of Attorney

If the service user has a Lasting Power of Attorney in place that can make decisions on their behalf once they have lost capacity then Careville Ltd must contact them regarding any decisions that need to be made about their care and support, other than those decisions that they are authorised to make.

Independent Mental Capacity Advocate (IMCA)

If a service user lacks capacity and has no family or friends and therefore has no one to support them with life changing decisions, other than paid staff, such as those employed by Careville Ltd then they may have or need access to an IMCA. This advocate is not a decision maker but operates to uphold the service user's rights and can challenge decisions. Careville Ltd must record details of the IMCA on the service user's Capacity

and Consent Form. Careville Ltd can help the service user to access the services of an IMCA by contacting the Local Authority or Health Board in their region.

Statements of wishes and preferences, and Advance decisions

This is a summary term embracing a range of written or oral records that a person can make in relation to future treatment and care. Careville Ltd will ascertain at the initial assessment if any statements are in place and must take these into account when making a decision in a service user's best interests. Careville Ltd have a 'Duty of Care' to question any advance decisions if they are unsafe for the service user and may result in a Safeguarding matter. Advance decisions should be recorded in the service user's Capacity and Consent Form, or a reference made on the form as to where the advance decisions can be found.

Restraint

If a service user makes an unwise decision that could place them at serious risk or in danger of being harmed, then a decision about the use of restraint may have to be made because the situation is one of emergency. Whilst Careville Ltd operate a 'non-restraint' service, in the event of an emergency restraint in the service user's best interests may have to be used e.g. stopping someone from running in the road and being hit by a car. Restraint must be carried out using the least restrictive option for the service user.

Care and Support Workers must at all times observe the principles of the Mental Capacity Act 2005 and must reasonably believe that it is necessary to restrain the service user to prevent them from coming to harm and that providing this form of urgent care is in their best interest and will stop them from being seriously harmed.

In the instance of restraint being used the Care and Support Worker must complete an Incident Form which states why the decision was made for restraint and evidence that it was in the service user's best interests.



Key Points to Take Away

- Careville Ltd shall always assume that a service user has mental capacity unless the contrary can be established
- In the event of a lack of mental capacity a service user's prior wishes and beliefs should be respected in coming to any decision on their behalf, and such decisions should always be made whilst considering their best interests.
- A healthcare professional may also be consulted to ascertain the service user's capacity to consent to important decisions
- In compliance with the Mental Capacity Act 2005 Careville Ltd are required to have an assessment of the service user's capacity prior to carrying out any care and support

Authorisation and Signature

This Policy is the authorised version agreed by the Directors of Careville Ltd. All employees are expected to follow this policy and failure to do so could result in disciplinary action.

Director's Signature

Director