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Initial Production

Name	Role/Department	RACI	Date

Change History

Version	Date	Details of Change	Author

Emergency Contact Details

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CQC Fundamental Standards

Regulation Number	Regulation Details
Regulation 13: Safeguarding service users from abuse and improper treatment	To safeguard people who use services from suffering any form of abuse or improper treatment while receiving care and treatment. Improper treatment includes discrimination or unlawful restraint.
Regulation 9/10/11/12	9. Person-centred care 10. Dignity and Respect 11. Need for consent 12. Safe care and Treatment

Key Lines of Enquiry

KLOE	How this applies to Mental Capacity Act 2005
Safe	How are the people who use the service protected from abuse and harm.
Effective	Are people's needs and choices assessed and care, treatment and support delivered in line with current legislation, standards and evidence-based guidance to achieve effective outcomes?

Related Documents

Relevant Legislation:

- The Mental Capacity Act
- The Human Rights Act 1998
- Mental Health Act Code of Practice

Policy Statement



Key Principles

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him / her to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done on a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his/her best interest.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the persons rights and freedom of action

Policy Statement

This document outlines Careville Ltd's policy relevant to implementing the principles of the Mental Capacity Act 2005 for the best interests of the service users:

1. It is not the purpose of this Policy to repeat the details of the Mental Capacity Act 2005. A copy of the Act is kept at the Careville Ltd and may be consulted at any time. This Policy refers only to the ways in which the principles of the Act are put into practice for our service users which ensures compliance to the requirements of the Act.

2. The Mental Capacity Act 2005 is built around 5 key principles. Careville Ltd subscribes to, and fully, supports, these principles. In all cases the best interests of our service users is paramount. The 5 key principles are as follows:

- a. Presumption of capacity. It is acknowledged that every service user has the right to make his / her own decisions and it will be assumed that they have the capacity to do so unless proved otherwise. Every person over the age of 18 is presumed to have mental capacity from a legal standpoint.
- b. Individual service users will be supported to make their own decisions. In all cases each service user is treated as an individual and will be given all practical help to make these decisions before it is decided that he / she is unable to do so.
- c. Each service user is presumed able to make his / her own decisions. It is accepted that some of these decisions may seem eccentric and possibly even unwise, but it will not be assumed that the service users lacks appropriate mental capacity because of this.
- d. Any action taken or decision made under the Act will only ever be done with the service user's best interests in mind.
- e. Any such action taken or decision made under the Act on behalf of a service user who is deemed to lack mental capacity will be the least restrictive of the service user's basic rights and freedoms.

3. Assessment and Care Planning

The core principles of the Act (see Section 5) effect the Assessment and Care Planning process.

- a. The professional/or other responsible for the care / treatment is the one who has to make these decisions but can take advice from others in specialist areas as appropriate. It is a statutory duty to involve carers and family in this process.

- a. The Act allows carers, healthcare and social care staff to carry out certain tasks with protection of liability provided the principles of the Act have been adhered to and there is evidence recorded as to how you are acting in those persons' best interests (See chapter 6 of the Code of Practice). These tasks involve the personal care, healthcare and treatment of individuals that lack capacity to consent.
- b. It is recommended that a record of the Mental Capacity Assessment is documented in the file.
- c. In order to ensure compliance with the Act and to protect staff from any liability with regard to the care/treatment of people who lack capacity **it is important that all decisions are fully documented with reasons.**
- d. The preparation of a care plan should always include an assessment of capacity to consent to the outcomes and actions and confirm that these are agreed to be in the person's best interests. This helps to evidence how staff are adhering to the principles of the Act and so give the protection from liability.
- e. The individual's capacity and best interests must be reviewed regularly.
- f. The Code of Practice suggests that if there are issues concerning capacity, it is good practice for a care plan to be prepared by a multi-disciplinary team.
- g. All assessments will be revised to include the following:
 - Does this person have capacity to consent to care / treatment?
 - Is the care / treatment assessed as being in their best interest?
 - Does an Independent Mental Capacity Advocate need to be instructed?

4. Deprivation of Liberty Safeguards (DOLS)

The safeguards are designed to protect the interests of an extremely vulnerable group of service users who for their own safety and in their own best interests need to be accommodated under care and treatment regimes that may have the effect of depriving them of their liberty, but who lack the capacity to consent. Any such decision must only be made following defined processes and in consultation with specific authorities. A separate supplementary Code to the main Mental Capacity Act sets out these safeguards.

In effect, DOLS:

- a. Ensure people can be given the care they need in the least restrictive regimes
- b. Prevent arbitrary decisions that deprive vulnerable people of their liberty
- c. Provide safeguards for vulnerable people
- d. Provide them with rights of challenge against unlawful detention
- e. Avoid unnecessary bureaucracy



Key Question: What impact would a breach have on the business?

- Compliance is MANDATORY;
- Careville Ltd has a ZERO TOLERANCE approach and will report any breach of this policy to the relevant authorities, taking immediate action to safeguard service users and staff.
- Compliance reduces the risk for fines;
- All members of staff must understand the contents of this policy;
- Serious breaches can result in imprisonment, closure of business, loss of life among other things



Procedure

1. Careville Ltd has a zero tolerance approach to abuse, unlawful discrimination and restraint. This includes:

- neglect
- subjecting people to degrading treatment
- unnecessary or disproportionate restraint
- deprivation of liberty

2. Have systems, processes and practices that safeguard people from abuse.

3. Ensure people's needs and choices are assessed and care, treatment and support delivered in line with current legislation, standards and evidence-based guidance to achieve effective outcomes.

4. Robust ongoing training and support for staff

5. Whistleblowing

Outstanding Practice

- Careville Ltd has a Zero tolerance approach to abuse, unlawful discrimination and restraint.
- Ongoing Staff training.
- Service users input in care plan, reviews and feedback (Working together Policy).
- Triangle of Care
- Correct and appropriate documentation in place.
- Easy read policies for service users.
- Further reading is recommended:

1. The Mental Health Act 2005

2. Mental Capacity Act Code of Practice

Policy Review

A Director will review this policy at least once a year to make any updates needed.

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