

FOURCREST CARE (WATTON) LIMITED

QUALITY POLICY STATEMENT

QP-11

Title: SERVICE USER'S CONSENT

1.0 WHAT CONSENT IS

- 1.1 "Consent" is a Service User's agreement for a health or social care professional to provide care.
- 1.2 Service Users may indicate consent non-verbally (for example by presenting their arm for their pulse to be taken), orally, or in writing.
- 1.3 For the consent to be valid, the Service User must:
 - Be competent to take the particular decision.
 - Have received sufficient information to enable them take it; and
 - Not be acting under duress.
- 1.4 The context of consent can take many different forms, ranging from the active request by a patient of a particular treatment (which may or may not be appropriate or available) to the passive acceptance of a health professional's advice. In some cases, the health professional will suggest a particular form of treatment or investigation.
- 1.5 Where a Service User lacks the mental capacity (either temporarily or permanently) to give or withhold consent for themselves, no-one else can give consent on their behalf unless they hold a relevant Lasting Power of Attorney or are a Court Appointed Deputy for the individual. Treatment or care decisions may be made and given in their best interests, as long as it has not been refused in advance in a valid and applicable advance directive. For further details on advance directives see the Department of Health's *Reference guide to consent for examination or treatment* (chapter 1, paragraph 47-52).
- 1.6 Consent must be treated as a process that continues throughout the duration of care and treatment, recognising that it may be withheld and/or withdrawn at any time.

2.0 CONSENT IN LEGAL CONTEXT

- 2.1 It is a general legal and ethical principle that valid consent must be obtained before commencing an examination, starting treatment or physical investigation, or providing personal care. This principle reflects the right of individuals to determine what happens to their own bodies, and is a fundamental part of good practice.
- 2.2 Under English law, no-one (not even husbands or wives, partners, close relatives or carers) can give consent to treatment on behalf of another adult, unless they hold a relevant Lasting Power of Attorney or are a Court Appointed Deputy for the individual.
- 2.3 There are no circumstances in which any member of staff should give formal consent for medical treatment of a Service User. If a member of staff is asked to give such consent staff should immediately inform the senior member of staff on duty.

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- 2.4 The law states that if a patient has made no decision, and is in no position to make one, doctors have both the right and duty to treat in accordance with what, in their clinical judgement, they consider to be the patient's best interests.
- 2.5 Any best interest's decision made on behalf of a Service User with diminished capacity must be recorded on a Best Interests Decision Making Checklist form to demonstrate that a fair and best interest's decision has been explored and a considered decision arrived at.
- 2.6 Adults are always assumed to be competent unless demonstrated otherwise. If you have doubts about a Service Users competence, the question to ask is: "can the person understand and weigh up the information needed to make this decision?" Unexpected decisions do not prove the patient is incompetent, but may indicate a need for further information or explanation.

3.0 INFORMED DECISION MAKING

- 3.1 We are required by the Mental Capacity Act 2005 to ensure that that all practical and appropriate steps are taken to enable a person to make the decision themselves. These steps include the following:
- Providing the Service User with all relevant information. For example, if there is a choice, has the Service User been given information on the alternatives?
 - Communicating with Service Users in an appropriate way. Presenting and explaining information to a Service User in a way that they find easier to understand.
 - Making the Service User feel more at ease. For example, are there particular times of the day when a person's understanding is better?
 - Enlisting the help of anyone else who can support the Service User to understand information and to make a choice.
 - Where staff obtain the consent of Service Users, they must be familiar with the principles and codes of conduct associated with the Mental Capacity Act 2005 and other relevant national guidance, and are able to apply those when appropriate, for any of the people they are caring for. An understanding of consent will form part of the staff training and induction programme.
- 3.2 In addition we will provide evidence that sufficient information about the care, treatment and support options available has been provided to Service Users in order for them to make an informed decision.
- 3.3 Further guidance on how people should be helped to make their own decisions is given in chapter 3 of the Mental Capacity Act (2005) Code of Practice.

4.0 OBTAINING CONSENT

- 4.1 We will communicate with Service Users and their representatives the reasons for seeking their consent and obtain a formal agreement to examination, care, treatment and support.

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- We will provide evidence of how we have supported Service Users and their representative to make an informed decision and ensure that Service Users are supported by their keyworker who has sufficient knowledge about the Service User, and the care, treatment and support options available.
 - Service Users confidentiality is respected and records are available that confirm that the keyworker has explained and communicated and discussed with the Service User and their representative (where appropriate) in a way that they can understand; the risks, benefits and alternative options.
 - We will respect the rights of Service Users to have an advocate involved in the process to help them understand the options available and to make an informed decision.
 - Where a Service User lacks the capacity to make an informed decision, we will arrange best interest meetings with people who know and understand the person.
 - We will not rush Service Users or their representatives into making decisions requiring consent, and give them sufficient time to come to a decision except in an emergency situation when this may not always be possible.
 - Where Service Users refuse care and treatment staff will communicate and explain to them the risks and benefits of refusing and the alternative options available.
 - We will respect the rights of Service Users to refuse or withdraw consent, staff will take due account of the decision, respect it and make a record.
 - We will make specific arrangements for seeking consent when a Service User is taking part in health and care-related research.
 - We will carry out regular reviews of the Service Users consent decisions taking into account the changing needs of the person.
 - When the wishes of the Service User are in conflict with their representatives or with their care, welfare and safety needs we will make arrangements for a Best Interest Meeting to try to resolve the situation.
- 4.2 We will ensure that evidence is available that confirms Service Users are given sufficient information about the alternative options for their care, treatment and support and the risks and benefits of each to enable them to make a decision on consent.
- 4.3 Staff must record any expressed medical consent preferences in the person centred care plan. This must be done in line with mental capacity procedures. Agreement from a next of kin would be preferable. A best interest's form would need to be completed for the Service User who has a diminished capacity to make decisions for themselves.
- 4.4 Whilst respecting the privacy of Service Users, it is essential that we have photographic evidence for all of our records, e.g., of the Service User's face for their medication administration record or of a wound for their wound care plan. Staff should seek the consent of Service Users before taking photographs, Service Users Consent Form (Photographs) should be kept in the scanned documents section on PCS.

5.0 ADVANCED DECISIONS

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- 5.1 The Mental Capacity Act 2019 (MCA) says that people who have the capacity to do so, may make an advance decision to refuse specified treatment which will have effect at a time when they no longer have capacity to refuse or consent to treatment.
- Staff need to be aware that Service Users may have an “advance directive” or “living will” specifying how they would like to be treated in the case of future incapacity.
 - The manager must ensure that any advance decision made in line with the Mental Capacity Act 2019 that the Service User may have made and is known by the service is followed.
 - We will make arrangements that take account of restrictions authorised under the deprivation of liberty safeguards.
- 5.2 Staff will support Service Users to make advance decisions to refuse treatment or appoint someone with lasting powers of attorney, if they wish to do so?
- 5.3 The manager will ensure that a record is maintained on the Service Users personal file of living wills, or advanced directives, and these are taken into account by staff.

6.0 STAFF TRAINING

- 6.1 We will provide training for our staff to ensure that they are competent to undertake the tasks relating to obtaining consent. The training should enable staff to understand:
- The circumstances in which written consent must be taken and documented.
 - The circumstances in which verbal or implied consent can be taken.
 - How staff will respect the cultural, social values and beliefs of the Service User when seeking consent.
 - Assessing the level and kinds of support the Service User may require in obtaining consent.
 - How to identify when a person is not able to give valid consent at the time it is required.
 - Interpretation of Service Users’ preferences.
 - That in a life-threatening emergency situation, when receiving consent is not possible; decisions are made which are in the best interests of the person who uses the service.
 - That consent is “ongoing” and can be withdrawn by the person who uses services at any time.
 - The circumstances in which an advance directive or advance decision regarding the refusal to treatment by a Service User may be lawfully over-ruled.
 - Referral to Best Interest Meeting where Service User is unable or unwilling to give consent.
 - Right of Service Users to refuse or withdraw consent.
- 6.2 **We will provide training to ensure staff are competent to respond to the decisions Service Users and or their representatives make about their care, treatment and support including:**
- How to respond to the decisions made by Service Users respecting their decisions even when staff disagree.

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- What to do when the wishes of the person who uses the service conflict with their care, welfare and safety needs.
- What to do when the wishes of the person who uses the service conflict with those of any other person acting on their behalf.
- How to respond to advance decisions.

7.0 MEETING THE REQUIREMENTS OF THE MENTAL HEALTH ACT 1983, THE MENTAL CAPACITY ACT 2019

- 7.1 We will demonstrate through our records how we meet the requirements of the Mental Health Act 1983 and the Mental Capacity Act 2019 for each individual care, treatment and support activity where Service Users are unable to give, or choose to withhold, consent.
- 7.2 Where medical treatment is refused, the consequences of refusal will be explained by a GP or other health care professional.
- 7.3 We will ensure that staff are provided with the knowledge of the circumstances in which an advance directive or advance decision regarding the refusal of treatment by a person using services may be lawfully over-ruled.
- 7.4 We will ensure that staff know how to respond where a life-threatening emergency may arise and it is not possible to obtain consent.

8.0 CONSENT TO CARE

- 8.1 There are many situations in a care setting where staff are required to obtain the consent of Service Users. The following describes some of the situations where consent must be sought:
- On admission to the service when seeking information for the production of a person centred care plan.
 - Seeking the formal agreement of a Service User to their plan of care and their choices and preferences. Service Users signing to say that they are in agreement with the content of their person centred care plan and how it will be delivered.
 - Agreement to changes following a review of the person centred care plan and changes in the needs of Service Users.
 - Undertaking of risk assessments explaining what the risks are, and seeking their agreement on how they will be managed.
 - Information about proposed care and treatment should include information about the risks, complications and alternatives, and be given by a person with the necessary knowledge / understanding of the care and treatment for which consent is being sought.
 - Where a Service User or other relevant person refuses to give consent or withdraws it, this is understood and followed by all staff (and others) providing care and treatment. The mental capacity to give consent is understood to include the mental capacity to refuse consent to treatment.

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- Seeking Service Users consent to exchange information with other providers.
- Consent to resuscitation.
- Providers must make sure that they provide appropriate care and treatment that meets people's needs, but this does not mean that care and treatment should be given if it would act against the consent of the person using the service.

9.0 RECORDING SERVICE USERS CONSENT

9.1 Staff will ensure that a record of all situations where Service Users have given their consent, as detailed in section 8 of this policy, are recorded in the Service User's person centred care plan.

10.0 MONITORING AND REVIEW

10.1 We will actively monitor and review this policy to ensure it continues to comply with the Fundamental Standards and Mental Capacity Act 2019 and any other national guidance. If legislative changes are made concerning consent, we will ensure that staff are trained and informed of these changes and make adjustments and improvements to improve the service provided.

11.0 EXPERT GUIDANCE

11.1 We will take into account relevant guidance relating to consent, including that from the Care Quality Commission's Schedule of Applicable Publications (see appendix B) Fundamental Standards and Quality Statements.

12.0 REVIEW OF POLICY

12.1 This policy was reviewed by: Caroline Rowlands

Designation: Manager Date: 3.1.24

12.2 This policy will be reviewed in Jan 2025

REFERENCED DOCUMENTS TO BE USED WITH THIS POLICY

1. Other Policies

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QP-20 Mental Capacity Act 2019 Code of Practice.
QP-34 Communicating with Service User.
QP-74 Information Governance Policy.

2. Procedures

None.

3. Forms & Logs

Service Users Consent Form (Photographs)
Bed Rails Consent
Best Interests Decision Making Checklist

4. Files & Books

Residents File.

5. Legislation, Standards and Guidance

Health and Safety at Work Act 1974.
Department of Health's *Reference guide to consent for examination or treatment*.
Mental Capacity Act 2019.
Fundamental Standards and Quality Statements.