

Policy No: 03-3727	Authorised: Roxane Lane	Date:15/05/2022
DEPRIVATION OF LIBERTY SAFEGUARDS (MENTAL CAPACITY ACT 2005)		

This Policy summarises the amendments to the Mental Capacity Act 2005, which relate to safeguards against the deprivation of an individual's liberty, and the implications for care service delivery by the Organisation:

1. DEPRIVATION OF LIBERTY - PRINCIPLES:

- 1.1 The *Mental Capacity Act 2005* was developed to provide a significant degree of protection for vulnerable service users who lacked the capacity to make informed decisions about their own care needs (Refer to *Policy Nos 3719* and *3720*).
- 1.2 The very nature of the *Mental Capacity Act 2005*, involves what can be interpreted as a "deprivation of liberty" (henceforth abbreviated to "DOL"), since decisions concerning a service user's care may be made for them by appointed advocates. It is therefore important that safeguards be introduced within the *Mental Capacity Act 2005*, to reinforce service user protection and to ensure that any DOL is made in a transparent, accountable and controlled manner and with the service users' best interests in mind.
- 1.3 This has been developed as a *Deprivation of Liberty Safeguards Code of Practice*.

2. IMPLICATIONS FOR CARE SERVICE DELIVERY:

- 2.1 The distinction between what can constitute DOL in the best interests of the service user, and what is considered to be "unreasonable" DOL, is very fine. Ideally, DOL should be avoided if at all possible, but to ensure that proper safeguards are in place to protect the service user where DOL is considered to be necessary or unavoidable, the procedure as detailed in part 3 of this Policy will be implemented.
- 2.2 DOL is generally not applicable to the Domiciliary Care environment, since DOL restrictions would contravene Article 5 of the *European Convention on Human Rights*. However, there can be some special circumstances where DOL Safeguards are indicated. These can include locking of doors, covert CCTV, the use of medication as a sedative, and actual physical restraint of the service user. In such cases, for the deprivation to become lawful it must be ratified by the *Court of Protection* under section 16 of the *Mental Capacity Act 2005*.

3. DOL - PROPER AUTHORISATION:

- 3.1 The Domiciliary Care Manager is responsible for obtaining what is known as *Proper Authorisation* for each perceived individual instance involving DOL. Proper Authorisation is requested in writing from the appropriate Registration Authority as a *Supervisory Body*.
- 3.2 Two factors may trigger a request for a Proper Authorisation for DOL by the Organisation:
 - 3.2.1 Where the Domiciliary Care Manager feels that this will be in the service user's best interests.
 - 3.2.2 Where the service user, or the service user's family member, advocate or representative feels that the service user is being adversely deprived of his / her liberty, and challenges the Organisation.
- 3.3 Reference 3.2 above, the Domiciliary Care Manager will respond to the service user or representative within 24 hours. If in agreement the Domiciliary Care Manager will request an assessment from the Registration Authority within 7 days. If there is no agreement the service user or representative can appeal to the Registration Authority as the "Supervisory Body" directly.
- 3.4 Upon receipt of the request for a Proper Authorisation, the Registration Authority will commission 6 assessments:

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- (1) Age-related issues
- (2) Mental health
- (3) Mental capacity
- (4) Eligibility
- (5) Best interests
- (6) No refusals

4. If any one assessment fails, then the request for Proper Authorisation is declined. However, the DOL Safeguards provide the service user or representative with the right of appeal for the DOL to be reviewed and monitored. This must be done through the *Court of Protection*.

5. *Duration of Authorisation:*

- 5.1 If all the assessments support authorisation, then the Best Interests assessor will recommend a time period for the DOL to be authorised, and for a person to be appointed as the service user's formal representative.
- 5.2 The maximum period for which the Authorisation remains valid is 12 months.
- 5.3 In an emergency situation, the Domiciliary Care Manager is able to authorise a self-authorisation for a maximum period of 7 days while awaiting formal authorisation.

6. In all cases, full records of any DOL Authorisations will be retained in the service user's care records.

FORMS REFERENCES:

Form No:3-722 *Deprivation of Liberty Safeguards - Care Plan Guidance Checklist*