



Delivering Quality Healthcare

<b>Policy Title:</b>	Mental Health Capacity Policy: 44	<b>Date implemented or date of last review:</b>	11/05/2020
<b>CQC KLOE Reference:</b>	Caring	<b>Date of next review</b>	10/05/2021

## 1. PRINCIPLES

- 1.1. KOPE-MEDICS complies with the principles of the Mental Capacity Act 2005 by first treating all the people who use our services and prospective clients on the basis that they can make their own decisions.
- 1.2. The five statutory principles are:
  - 1.2.1. A person must be assumed to have capacity unless it is established that they lack capacity
  - 1.2.2. A person is not to be treated as unable to decide unless all practicable steps to help him to do so have been taken without success.
  - 1.2.3. A person is not to be treated as unable to decide merely because he makes an unwise decision.
  - 1.2.4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
  - 1.2.5. 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 person's rights and freedom of action.

## 2. HOW TO TELL IF SOMEONE CAN MAKE A DECISION

There are several things you should consider when assessing if a person can make a decision:

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- 2.1. if the person understands what decision they need to make and why they need to make it
  - 2.2. if the person understands what might happen if they do or do not make this decision
  - 2.3. if the person can understand and weigh up the information relevant to this decision
  - 2.4. if the person can communicate their decision (by talking, using sign language or any other means)
  - 2.5. if the person can communicate with help from a professional (such as a speech and language therapist)
  - 2.6. if there is a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)
- 3. YOU MUST NOT TREAT THE PERSON AS UNABLE TO DECIDE JUST BECAUSE THEY MAKE DECISION YOU DON'T AGREE WITH.**
- 3.1. There might be some occasions when KOPE-MEDICS staff during their support work become involved or find it necessary to enter some decision-making process on behalf of someone who cannot take a decision at the time that it needs to be taken.
  - 3.2. In respect of the involvement of a domiciliary care service this is most likely to be related to a care matter.
  - 3.3. KOPE-MEDICS will take decisions on behalf of a client only if there is evidence that they cannot take the decision (at the time it needs to be made) because of mental incapacity.
  - 3.4. It will co-operate with relatives and others involved with the clients in decision making on behalf of a person on the same basis.
  - 3.5. It will not take or collude in taking decisions for a client where, from its point of view, there is insufficient evidence and it does not appear to be in that person's best interests.

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- 3.6. KOPE-MEDICS will only take a decision for one of its clients after it has exhausted every means of enabling the person to take it of their own accord
- 3.7. It will also show its actions in taking the decision are reasonable and in the person's best interests.
- 3.8. Where KOPE-MEDICS has information that suggests the person might be unable to take some decisions, sometimes it will carry out or contribute to an assessment of that person's mental capacity.
- 3.9. It recognises that the assessment procedure should follow the two-step assessment process recommended in the Mental Capacity Act's Code of Practice.

### **4. STAGE 1 DIAGNOSTIC TEST**

- 4.1. First, an assessment needs to be made as to whether there is impairment in the functioning of the mind.
- 4.2. The approach is referred to as the 'diagnostic test', which requires evidence of a condition that can be shown to impair functioning such as to render the individual unable to make the decision.
- 4.3. This test should be applied at the time the decision is to be made without regard to whether the condition is permanent or temporary.
- 4.4. In addition to this, the assessment must be regarding objective criteria rather than on assumptions drawn from appearance or prejudicial assumptions about that condition.

### **5. STAGE 2 FUNCTIONAL TEST**

- 5.1. Secondly, an assessment needs to be made as to whether a person is unable to make decision about a specific matter and therefore lacks capacity in relation to that specific matter. This is referred to as the functional test.
- 5.2. KOPE-MEDICS ensures that it complies with the all aspects of the law in the cases of clients who are subject to guardianship proceedings or who need legal protection because their lack of mental capacity.

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- 5.3. It includes here clients, who have assigned powers of attorney or who are subject to Court of Protection proceedings.
- 5.4. KOPE-MEDICS familiarises and acts upon any advance directives or "living wills" that its clients have chosen to make in contingency situations where they might lose the ability to take a decision.
- 5.5. The agency also attempts to find out about any end-of-life plans so that a client's wishes are known in the event of their death.

## **6. ASSESSMENT OF MENTAL CAPACITY**

- 6.1. KOPE-MEDICS ensures that a person's needs assessment and clients plan of care contain all the information needed relating to a person's decision taking capacity and the decisions over which they might need help because their possible lack of capacity.
- 6.2. The information included indicates (a) Which decisions the person can take at all/most times (b) Those that the person has difficulty in taking (c) Those that the person is unable to take.
- 6.3. In respect of each area of decision taking where there are difficulties or an inability to take decisions, the clients plan of care records the actions to be taken for the person that are deemed in their best interests.
- 6.4. The individual is always as fully involved as possible. Decisions are only taken based on the best information available and the agreement of those concerned in the person's care and future.
- 6.5. All decisions taken for that person are fully recorded and made subject to regular review.
- 6.6. Clients who lack mental capacity as any others, are only subject to any form of restraint when by not doing so would result in injury or harm to them or to other people.
- 6.7. All incidents where restraint has been used follow the agency's procedures for reporting and recording.

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## 7. STAFF INVOLVEMENT

- 7.1. KOPE-MEDICS expects its support staff to implement the agreements and decisions that are identified on an individual's plan of care.
- 7.2. KOPE-MEDICS also expects its staff to involve clients in all day to day decisions that need to be taken by seeking their consent and checking that the actions to be taken are consistent with their plan of care if the individual clients lacks capacity at the time.
- 7.3. Where the client's needs to take a decision that lies outside of their ability at the time staff must do everything to help the person decide for her or himself.
- 7.4. KOPE-MEDICS expects its staff to avoid taking decisions on behalf of a client unless they can show that it is necessary and the clients at the time is unable to take that decision her or himself. Any such incident must be fully recorded.
- 7.5. KOPE-MEDICS expects its staff to take decisions for clients lacking capacity only because they have reasonable beliefs that they are necessary and in the person's best interests. When in doubt that they can proceed in this way they must seek advice from their line manager.
- 7.6. Where there are, concerns raised about Mental Capacity the Registered Manager will inform the allocated care manager or social services and discuss a referral for an assessment to take place and an independent mental capacity advocate (IMCA) to be appointed.

## 8. TRAINING

- 8.1. We know that choice has become increasingly important for clients and we will attempt to advance this principle throughout our operations.
- 8.2. We will ensure that every client who receives our service has positively opted to use our agency.
- 8.3. We will try to provide clients with the chance to exercise choice about the support workers with whom they interact and will change the worker in instances

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when the clients request it. We are particularly sensitive to matching workers and clients where issues of gender, culture or ethnicity play a role.

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