

Consent to Care Policy

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Version Tracking

Version	Date Ratified	Brief Summary of Changes	Owner
2	24/01/2020	Minor amendments to typographical errors, the addition of reference to the MCA 2005 on pages 1 & 2 and clarification of fluctuating capacity page 5	JP
17/1	April 2021	Annual issue update	JP
17/2	23 Oct 2021	Scheduled review. Minor amends (p3) for clarity re care planning	JP
V2	27 Oct. 22	Scheduled review; minor punctuation/bullet amends	MBrad

Policy Statement

This policy is to set out the standards and procedures within Agincare to enable staff to be compliant with the requirements and guidance on consent.

The Care Quality Commission include consent as part of their ongoing monitoring process as part of the fundamental standards (Regulation 11 – Need for Consent). 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 except where a person lacks mental capacity to make an informed decision or give consent in which cases staff must act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice.

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.

The aim of this policy is to ensure that staff:

- Are clear as to their legal and professional responsibilities in gaining consent prior to care and information sharing;
- Understand the principles of gaining consent;
- Are aware of when it is appropriate to intervene without consent when this is required to meet Agincare's statutory duty to safeguard vulnerable adults and protect them, or others from harm;
- Are aware of their responsibility to comply with Agincare's agreed ways of working through this and other policies, procedures and guidance.

Introduction

Agincare works on the basis in law that everyone is competent to take their own decisions about their care and treatment needs unless it can be shown otherwise (Mental Capacity Act 2005 Part 1; Section 1 [2]). Where there is any doubt about a person's capacity to give informed valid consent about any care and treatment proposed there must be undertaken an assessment in line with the requirements of the Mental Capacity Act 2005. If from the assessment it is clear that the person cannot give their informed consent on account of their mental incapacity, a decision will be taken in their best interests following Mental Capacity Act procedures (See also Agincare's Mental Capacity Act Policy and Procedures).

When a person requests a care and support service an assessment will take place to ensure the particular Agincare service is able to meet their needs; the process is outlined in the following documents that should be read alongside this policy:

- Accepting a Care Package (including Emergency) Policy and Procedure
- Person Centred Outcome based Care Planning guidance
- Mental Capacity Act 2005 Policy and Best Interest Decision Recording Procedures.

This list is not exhaustive but is the starting point for any care and support service; it has always been Agincare's policy to empower people who need a service enabling them to exercise choice and to maximise their independence, while offering them the care and support that they need. All of the company's policies, procedures and guidance are framed around the basic general, legal and ethical principle that valid consent must be obtained before providing care and/or treatment to a person; this principle reflects the right of people to determine what happens to them and is a fundamental part of good practice.

Process

• Informed and valid consent

Following initial assessment a plan of care should be written up and made available for the person in order that they have full, detailed information regarding what Agincare can provide and how it proposes to meet their needs; information must be presented in a way that maximises the persons' ability to understand and make an informed choice. (See also Agincare's Accessible Information Policy). When the person is in agreement with the information and planned care and support they are requested to sign the consent form.

Agincare's consent form is included at the end of the Health and Welfare Assessment and Care Plan document (Home Care) and in Agincare Homes Holdings is a separate document.

Following any review of planned care, the person must be asked to consent to any changes.

Separate Consent forms are available on share-point in varying formats; these include:

- A decision specific consent form. This is for use where a specific matter arises for which the person should provide valid consent such as allowing the service to request that their GP considers a DNAR, or an appointment for a flu vaccination, for photographs to be taken for wound care (Nursing homes) or for marketing purposes.
- Consent to destroy unwanted medicines. This form is to be used when, at assessment a person has a supply of no longer required medicines, their consent is requested to allow the staff member to take them to the pharmacy for disposal.
- Letter to GP and consent for information. This is to be used in order that the service can obtain, for example an up to date list of a person's prescribed medicines

If the person is able to give consent but is physically unable to sign or unable to read or write they may be able to make their mark on the consent form to indicate consent. The person obtaining consent must sign the section of the form that indicates the person gives their consent having been read the document and given a full explanation of the proposed care or intervention. There will be reference in the relevant section of the care plan that the person is physically unable to sign due to dexterity or sight issues.

Verbal Consent

All care and support staff delivering care receive training as part of the selection assessment/induction process on basic communication skills and the principles of obtaining consent for all actions are embedded in each care process.

Once a person has provided formal signed consent; daily care can proceed and care staff will ask at each intervention for the person's consent. A person's communication needs and abilities will be agreed as part of their planned care where communication using other methods than verbally will be understood

It is not necessary to gain separate written consent to routine and low-risk procedures, such as providing personal care, in many cases people may imply consent by complying with the proposed care or treatment, for example lifting their arms for the care worker to assist them to dress/undress, taking their medication when it is handed to them in a way agreed and assessed as the most appropriate way in which they can take/swallow their tablets; however implied consent is not sufficient to demonstrate an understanding about the proposed intervention which is why the initial informed, signed consent process is carried out.

- **Refusal to consent**

Just as a person with capacity is able to consent, they are able to refuse their consent to all, or part of the planned care.

Following an assessment where it is determined that support is required with for instance, medication management, domestic duties and weekly shopping (Home care), the person may say they would appreciate the support with the household duties and shopping but are quite able to manage their medication without support. The assessor should understand any risks posed by this activity having undertaken a medication risk assessment as part of the initial assessment process and dependent on the level of risk identified should inform the person that they must refer this part of the care back to the commissioner.

Where care and support are requested via a local authority (brokerage) that local authority will have already carried out an assessment in order to propose the purchase of care on the person's behalf. If Agincare's assessment in anyway contradicts the assessment of the local authority there must be open and honest discussion about what is required and what the person agrees to.

Where a package of care is requested privately; for instance a family member calls to say that their mother/father/grandparent needs support, Agincare's assessment will determine the extent of that support. A family may feel that their relative is no longer managing with household tasks or with their meal preparation and whilst they have the best interests of the person at heart, they are not bound by the principles of the Mental Capacity Act. Where Agincare's assessment identifies that the person does have full capacity and they do not agree with the proposed care, communication with the commissioner (in this instance the family member) must take place and outline the reasons why.

Where a person's refusal to consent is due to a lack of capacity to understand what is being proposed, Agincare's Mental Capacity Act 2005 and Best Interest Decision Recording Procedures must be followed.

- **Exceptions and withheld consent**

There are potential exceptions to the general rule of obtaining and acting on consent:

1. If other people appear to be at risk of harm (adults or children)
2. If there is a legal restriction or an overriding public interest*
3. If the person is exposed to life threatening risk and they are unreasonably withholding their consent
4. If the person has impaired capacity or decision making in relation to the matter at hand and the withholding of consent

*A legal restriction in this context means that there may be exceptional circumstances where a service user makes a decision or intends to act in a way that is unlawful or where their care needs to be addressed under the Mental Health Act 1983.

An overriding public interest refers to a situation where it is essential to share information in order to prevent a crime or to protect others from harm.

In all cases where an adult at risk is withholding consent and there are concerns about his/her welfare, a senior manager's opinion should be sought on the best way to proceed.

- **Fluctuating Capacity/time specific decisions**

Any decision that might need to be made by a person receiving a service must be specific and they must have capacity at the material time so for instance, to consent to care and support as planned at the time of planning. Where there is any doubt as to the person's capacity at any time a decision needs to be made, whilst principle one of the Mental Capacity Act (See Agincare's Mental Capacity Act 2005 Policy) that one should *always assume capacity*; the presence of doubt means the staff member best placed to support the person to make the decision at the time must assess their ability to do so.

This might not be a formal written assessment but the staff member must be able to justify the decision based on the five principles of the MCA. Fluctuating capacity refers to situations where a person's decision-making ability varies. The person may lack capacity at the time of one assessment, but the result may be different if a second assessment is undertaken during a lucid interval. There are many different conditions where fluctuating capacity may occur, for example, as a result of mental illness, dementia or an acquired brain injury; other examples might include where a person who is deemed to have capacity may have lost that capacity *at the material time* due to:

- Alcohol consumption
- The effects of medication or other substances
- Head injury
- Infection (delirium)
- Late day confusion (Dementia care; sometimes referred to as 'sundowning')

- **Power of Attorney**

Where a person is unable to consent and has authorised an attorney to act on their behalf, this person can sign the consent form to indicate they agree with any decisions made and they have been involved in the best interest decision making process. (See Agincare's Mental Capacity Act 2005 Best Interest Decision Recording Policy)

- **Other health and social care professionals**

Agincare expects other healthcare professionals such as GPs and community nurses to be responsible for seeking a person's consent for any care and treatment that they provide. Agincare will help to implement their decisions on the basis that the person has given their consent to the proposed treatment or a best interest's decision has been taken.

Where other health or social care professionals direct Agincare staff to provide certain care or treatment regimes, the Agincare service will check that this has been decided in the person's best interests where the person does not have capacity to consent.

Contractual impact

Agincare's policies and procedures are to be followed in conjunction with the requirements of the contracts under which you provide services. There may be occasions where the contract contains requirements which appear to contradict or be in addition to, standard Company policy. In these instances you are to:

- If the requirement is in addition to standard company policy - adhere to the terms and conditions of your contracts
- If the requirement is lesser than standard company policy - follow company policies and procedures

If you require any further clarification please contact the Commercial Department for guidance.

Training

The management team of Agincare believe that, in order to provide a quality service, Agincare requires high quality staff who are suitably trained, supervised and supported.

Agincare policies and procedures are referenced in the induction programme and are available for staff in their work place (Care Home or Branch office). Staff will be informed of how to access all policies, procedures and related documentation and of how to seek further advice regarding Agincare's agreed ways of working. Staff should be provided with regular updates to encourage continuous improvement and include latest good practice.

Agincare is committed to provide an ongoing programme of support for all staff. This includes supervisions, appraisals and training which will be in line with company policy, contractual obligations and current best practice.

REVIEW OF THIS POLICY

Review of this document is recorded on the controlled index and reviewed annually as part of the management review process.

Name: Policy Review Group

Date: October 2022