

**Putting Barnsley People First**

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| **BARNSLEY CCG: CONSENT POLICY FOR CCG SERVICES PROVIDING CARE, ACCOMMODATION OR TREATMENT** |

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| **Version:** | 1.0 |
| **Approved By:** | Quality and Patient Safety Committee |
| **Date Approved:** |   |
| **Name of originator / author:** | Jo Harrison |
| **Name of responsible committee/ individual:** | Quality and Patient Safety Committee (Approval and Review) |
| **Name of executive lead:** | Jayne Sivakumar |
| **Date issued:** | September 2019 |
| **Review Date:** | 12 months from approval (see page 12, 10.1)  |
| **Target Audience:** | Barnsley CCG staff |

**POLICY ON POLICIES - FOR THE DEVELOPMENT AND MANAGEMENT OF PROCEDURAL DOCUMENTS**

**DOCUMENT CONTROL**

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| **Version** | **Type of Change** | **Date** | **Description of Change** |
| V1.0 | New policy |  |  |
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| **1.** | **INTRODUCTION** |
|  | 1.11.21.31.4 | Patients have a legal and ethical right to determine what happens to them and how information about them is used. Valid consent to treatment and the sharing of information is central in all areas of health care. Seeking consent is also a matter of courtesy between health professionals and patients. Any health or social care professional who does not respect and follow this principle may be liable to legal action by the person and also disciplinary action by their regulatory body. Organisations involved in providing examination, care and treatment may also be liable for the actions of their staff. This policy aligns to the Mental Capacity Act 2005 and its Code of Practice.NHS Barnsley CCG (BCCG) aspires to the highest standards of corporate behaviour and clinical competence, to ensure that safe, fair and equitable procedures are applied to all organisational transactions, including relationships with patients, their carers and representatives, public, staff, stakeholders and in the use of public resources.Barnsley CCG has a statutory duty to ensure that it makes arrangements to safeguard and promote the welfare and rights of vulnerable adults and young people over the age of 16, who receive care, treatment and/or services funded by the CCG by: |
|  |  | 1.4.1 | Ensuring that the services commissioned by BCCG provide safe, effective and high quality care for vulnerable children and adults, including adults who lack mental capacity; |
|  |  | 1.4.2 | Ensuring the care commissioned by BCCG is compliant with the MCA and that providers fulfil their statutory responsibilities to people who access services; |
|  |  | 1.4.31.4.41.4.51.4.61.4.7 | Ensuring that all staff employed by BCCG are aware of and fulfil their responsibilities under the MCA and that their staff operate at all times in accordance with the Statutory Framework and the Code of Practice;Ensuring that all staff employed by BCCG are aware of and fulfil their responsibilities under the DoLS and that their staff operate at all times in accordance with the Statutory Framework and the Code of Practice;Ensuring that all staff employed by BCCG undertake yearly Safeguarding Adults and Children’s mandatory e -learning training which incorporates Mental Capacity Act Training;A reference to otherdocuments that should be read in conjunction with the Policy, e.g. cross reference to another policy;A reference that the policy has been developed in accordance with the CCG’s Policy on Policies - the Development and Management of Procedural Documents.  |
| **2.** | **Purpose** |
|  | 2.12.22.32.42.5 | This is a corporate policy that specifically relates to consent to care and support, examination and treatment and the sharing of information for services internal to the CCG, e.g. Continuing Health Care (CHC).All NHS and private providers within the CCG catchment area are required to implement their own policy which will be included in CCG quality and assurance targets and indicators.The Department of Health has issued a range of guidance documents on consent <https://www.health-ni.gov.uk/publications/consent-guides-healthcare-professionals>. The guidance should be consulted for details of compliance with the law and national good practice guidance. This policy sets out the standards and procedures for use in Barnsley Clinical Commissioning Group, which aim to ensure compliance with the guidance. This document is primarily concerned with healthcare, social care colleagues should also be aware of their obligations to obtain consent before providing certain forms of social care, such as those that involve touching the patient or client.This policy will:

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| 2.4.1 | Set out the key issues for consent that must be considered; |
| 2.4.2 | Set out the requirements to record consent on systems with patient data to have clear procedures for the recording of consent decisions. |

This policy is applicable to: 2.5.1 All assessments, examinations and investigations carried out  on patients (hereafter referred to as an ‘act’); 2.5.2 All care, support and treatment offered to patients (hereafter  referred to as an ‘act’); 2.5.3 All referrals made on behalf of patients (hereafter referred to  as an ‘act’);2.5.4 All means of communicating information, both within and  outside the CCG and both paper and electronic, including  data and voice transmissions, emails, post, fax, voice and  video conferencing;2.5.5 All patient information and data held and processed by the  CCG and its constituent statutory bodies. All personal  information data must be managed and held within a  controlled environment with appropriate access controls in Compliance with GDPR 2018. It applies to information in all  formats whether paper, electronic or email;* + 1. This document will refer to information as a term that will

 encompass data. The term information is understood as details that can be understood independently, for example an  |
|  |  |  |  Email. |
|  |  |  |  |
| **3.** | **The Risks of not having this Policy in place** |
|  | 3.13.2 | This policy relates to priority area 9 of NHSBCCG Governing Body Assurance Framework: ***Compliance with statutory and regulatory requirement.*** This policy mitigates the risk of vicarious liability from potential prosecution, litigation and from the actions / omissions of NHSBCCG’s employees in obtaining valid and relevant consent |
| 4. | **Definitions** |
|  | 4.1 | Valid Consent4.1.1 Valid consent is the voluntary and continuing permission of a person for an act to be carried out based upon adequate knowledge and understanding of relevant factors including:* The purpose
* The nature
* Any likely effects
* Any significant risks / benefits / outcomes
* Consequences of the act taking place or not taking place
* Any alternative/s

4.1.2 Obtaining consent is a process. The process includes discussions with the person, and the giving of information about the relevant factors in the appropriate format. Consent can be given verbally or in writing (‘explicit consent’) or non-verbally (‘implied consent’). The process must be evidenced and recorded, e.g. a consent form or entry in a person’s care/medical notes. 4.1.3 For consent to be valid, the person must: * be over 16 and have mental capacity to take the particular decision
* if under 16, be ‘Gillick’ competent to take a particular decision. This applies to the case of *Gillick v West Norfolk & Wisbech AHA [1986]*, in which the courts ruled that children who have sufficient maturity and intelligence to enable them to understand fully what is involved in a proposed intervention will have the capacity to consent to the intervention.
* have received sufficient information to take it; and
* not be acting under coercion or duress.

4.1.4Consent can be given on behalf of a person in certain circumstances by someone acting lawfully on their behalf.4.1.5 Consent obtained without appropriate communication of the relevant factors (in an understandable format) or under unfair or undue pressure is not valid consent. 4.2 Implied Consent There is a non-verbal indication that the person agrees to an act or the disclosure of information based on a reasonable presumption of their understanding and acceptance of the risks, benefits and consequences of the intended act, e.g. where a patient will present their arm for a blood test, or may nod agreement to a referral being made. 4.3 Explicit Consent This is a clear, positive indication given verbally or in writing that the patient agrees to examination, treatment or the disclosure of information based on their understanding and acceptance of the risks, benefits and consequences of the intended act.This section will include: |
| **5.** | **Principles**5.1 The person carrying out the act will be responsible for:* obtaining consent from the person.
* carrying out a mental capacity assessment if there is a reasonable belief that the person may lack capacity to consent
* checking if there is any valid Advance Decision to Refuse Treatment (ADRT) for the proposed treatment / act.

5.2 An act must only be carried out with the consent of the relevant person or a person acting lawfully on their behalf. NB: The only person’s with delegated authority to make a decision on behalf of a person who lacks capacity are those who hold a valid Lasting Power of Attorney (LPA) or who are a Court Appointed Deputy (CAD) for Health and Welfare. They must show proof of this at the time the decision needs to be made by producing an LPA form which is stamped ‘VALIDATED-OPG – otherwise the person carrying out the act remains the decision maker. To check if someone has LPA/CAD go to <https://www.gov.uk/find-someones-attorney-or-deputy>The following decisions **cannot** be made on behalf of a person:* consenting to marriage or civil partnership
* consenting to sexual relations
* consenting to a decree of divorce on the basis of two years separation
* consenting to the dissolution of a civil partnership
* consenting to a child to be placed for adoption or the making of an adoption order
* discharging parental responsibility for a child in matters not relating to the child’s property
* consenting under the Human Fertilisation and Embryology Act 1990

 If it is felt that the LPA/CAD is not acting in the person’s best interests in any decision or there is any concern / dispute about their decision making an application to Court of Protection would need to be considered. |
| **6.** | **Roles and Responsibilities**6.1 **The Governing Body**The CCG has delegated responsibility to the Governing Body for setting the strategic context in which organisational process documents are developed, and for establishing a scheme of governance for the formal approval and review of such documents. See Appendix 1.6.2**. The CCG Accountable Officer**The Accountable Officer is responsible for ensuring that the organisational accountability for complying with legislation and national guidance on consent is discharged effectively across the local health economy through the CCG commissioning arrangements.  6.3. **The Chief Nurse** The Chief Nurse is the Executive Lead for this policy and has a key role in supporting the Accountable Officer in their duty related to this.6.4. **CCG Lead for MCA**The CCG Lead for MCA will take a strategic and professional lead on all aspects of compliance with this policy This includes:* Ensuring assurance arrangements are in place within the CCG and provider services;
* Providing regular and exception reports to the CCG’s Governing Body via the Quality and Patient Safety Committee (QPSC);
* Provide professional leadership, advice and support to CCG staff and across provider trusts/services and independent contractors;

6.5. **The CCG Quality and Patient Safety Committee**The Committee has a responsibility for development, implementation, review and monitoring effectiveness of this policy on behalf of the CCG Governing Body, receiving assurance via regular and exception reporting, Annual Reports and the Safeguarding Report updates.6.6 **CCG Staff** All staff must:* Be familiar and comply with this policy and its requirements
* Understand and carry out their duty in relation to Safeguarding of Children and Adults throughout this process;
* Where applicable have a responsibility to ensure that obtaining valid consent is reflected in commissioning processes and contracting arrangements.
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| **7.** | **Procedure**7.1 When a person is asked for their consent, information about the proposed act must be provided in a way that they can understand. This should include information about all relevant factors. Only a person with the necessary knowledge and understanding of the proposed act should provide this information. 7.2Discussions about consent must be held in a way that meets a person’s specific communication needs. This may include the use of different formats or languages and may involve others such as a speech language therapist or independent advocate. 7.3 Consent must be treated as a process that continues throughout the duration of the act.7.4 Consent may be withheld and/or withdrawn at any time.7.5 When a person using a service or a person acting lawfully on their behalf refuses to give consent or withdraws it, all those involved in carrying out the act must respect this.7.6 Where a person lacks mental capacity to make an informed decision, or give consent, staff must act in accordance with the requirements of the Mental Capacity Act 2005 and associated Code of Practice. See BCCGs Mental Capacity Act and Deprivation of Liberty policy.7.7 Consent procedures must make sure that a person is not pressured into giving consent and where possible, plans must be made well in advance to allow time to respond to a person’s questions and provide them with adequate information.7.8 Policies and procedures for obtaining consent in specific services (e.g. Continuing Health Care assessments, Influenza vaccinations) must reflect current legislation and guidance and this policy and staff must follow them at all times.7.9 CCG commissioned provider services must have a policy on Consent and that this is disseminated to their staff. 7.10 All evidence of staff attempting to obtain or obtaining consent must be recorded in the appropriate documentation and stored in the appropriate part of the person’s records, in compliance with the requirements of their professional body and the General Data Protection Regulations (2018).7.11 Consent may not be given by a third party (even if that person has a lawful authority |
| **8.** | **Monitoring the Compliance and Effectiveness of this Policy****8.1 Internal to BCCG** 8.1.1 All BCCG staff will be required to continue to have mandatory e learning training which encompasses safeguarding adults and children, consent and MCA. 8.1.2 BCCG staff who are involved in decision making and arranging care, treatment and accommodation for people receiving funding via the CCG will be required to attend mandatory MCA training that includes consent, at the appropriate level and refresher training. The levels of training will be stated on BCCG’ Mandatory and Statutory training matrix. 8.1.3 A method of clinical audit will be agreed for monitoring compliance with national legislation and guidance on consent. 8.1.4 The CCG Quality Assurance Committee will agree a method for monitoring the dissemination and implementation of this policy. Monitoring information will be recorded in the policy database. **8.2 External to SCCG** 8.2.1 BCCG’s MCA Lead and Contract Manager will monitor NHS and private hospital compliance with national legislation and guidance on consent within existing contract monitoring arrangements. 8.2.2 Information will be provided to BCCG on a quarterly and/or annual basis (via the completion of the provider’s ‘Annual Assurance Self-assessment Tool’. Providers will be advised in advance of when this information is required if it is out of their existing internal reporting schedules. 8.2.3 BCCG’s Care Homes Quality Team will monitor compliance, training needs and risk as part of routine quality monitoring and escalation process. 8.2.4 In addition to the standards required by this policy, legislation, national guidance or other stakeholders, BCCG may also use local quality and incentive schemes to identify additional standards or related targets for providers. 8.2.5 BCCG may receive and use information from other agencies and organisations where this is relevant to the performance management of the provider in relation to consent.  |
| **9.** | **References***9.1 Consent policies of: Greenwich CCG; North Devonshire NHS Trust; NHS Lincolnshire West CCG; Wirral Community NHS Trust* *Department of Health (2009)* Reference guide to consent for examination or treatment (second edition) [*https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition*](https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition)*Department of Health; Consent for examination, treatment or care* [*https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care*](https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care)*The Mental Capacity Act 2005* [*https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care*](https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care)*Department of Health (2009)* Reference guide to consent for examination or treatment (second edition) [*https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition*](https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition)*Department of Health; Consent for examination, treatment or care* [*https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care*](https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care)*The Mental Capacity Act 2005* [*https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care*](https://www.health-ni.gov.uk/articles/consent-examination-treatment-or-care) |
| **10.** | **Review of the Policy**10.1 This document may be reviewed at any time at the request of either staff side or management, but will automatically be reviewed after twelve months due to pending Mental Capacity Act legislation changes that may have bearing on consent issues and thereafter on a 3 yearly basis or when a change in legislation dictates.10.2 The CCG governing body will ensure that this policy document is reviewed in accordance with the timescale specified at the time of approval. 10.3 This policy will be reviewed and monitored by BCCG’s MCA Lead. It may be necessary to review the policy earlier than the corporate requirement of 3 yearly as it as a new policy and may require refinements and also due to pending Mental Capacity Act legislation changes that may have bearing on consent issues.10.4 No policy or procedure will remain operational for a period exceeding three years without a review taking place. 10.5 Staff who become aware of any change which may affect a policy should advise their line manager as soon as possible. The governing body will then consider the need to review the policy or procedure outside of the agreed timescale for revision.10.6 For ease of reference for reviewers or approval bodies, changes should be noted in the ‘document history’ table on the front page of this document. 10.7 **NB:** If the review consists of a change to an appendix or procedure document, approval may be given by the sponsor director and a revised document may be issued. 10.8 Review to the main body of the policy must always follow the original approval process. 10.9 The CCG’s Quality and Patient Safety Committee will ensure that archived copies of superseded policy documents are retained in accordance with Records Management: NHS Code of Practice 2009. |
| **11.** |  **Interaction with Other Procedural Documents***BCCG Mental Capacity Act and Deprivation of Liberty Policy and Procedure 2019* *BCCG Information Quality Assurance Policy**BCCG Confidentiality Policy**BCCG Information Governance Policy and Management Framework* *BCCG Information Security Policy**BCCG Records Management Policy* *BCCG Safeguarding People Policy* The relevant policies can be located at: <http://www.barnsleyccg.nhs.uk/strategies-policies-and-plans.htm> |

**Appendix 1**

**Equality Impact Assessment**

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| **Title of policy or service:** | **BARNSLEY CCG: CONSENT POLICY FOR CCG SERVICES PROVIDING CARE, ACCOMMODATION OR TREATMENT** |
| **Name and role of officer/s completing the assessment:** | Jo Harrison, Nurse Quality Manager MCA / DoL, Sheffield CCG |
| **Date of assessment:** | 22/08/2019 |
| **Type of EIA completed:** | **Initial EIA ‘Screening’** ☐**X** ***or* ‘Full’ EIA process** ☐ | *(select one option -**see page 4 for guidance)* |

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| **1. Outline** |
| **Give a brief summary of your****policy or service*** Aims
* Objectives
* Links to other policies, including partners,

national or regional | This policy is an Interim Policy which aims to support BCCG in the discharge of its duties and responsibilities as an NHS Commissioner and to gain assurance that the principles of the Mental capacity Act 2005 and its Code of Practice are being applied to decisions about care, treatment and information sharing of people who are receiving a service via the CCG or are an interested party.The policy supports the organisation to meet governance and standards required relating to the relevant legal frameworks.The Policy is based on National Legislation, Policies And Guidance.  |

**Identifying impact:**

* **Positive Impact:** will actively promote or improve equality of opportunity;
* **Neutral Impact:** where there are no notable consequences for any group;
* **Negative Impact:** negative or adverse impact causes disadvantage or exclusion. If such an impact is identified, the EIA should ensure, that as far as possible, it is either justified, eliminated, minimised or counter balanced by other measures. This may result in a ‘full’ EIA process.

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| **2. Gathering of Information**This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty*. |
| **(Please complete each area)** | **What key impact have you identified?** | **For impact identified (either positive or negative) give details below:** |
| **Positive Impact** | **Neutral impact** | **Negative impact** | **How does this impact and what action, if any, do you****need to take to address these issues?** | **What difference will this make?** |
| **Human rights** | X | ☐ | ☐ | Protects the Human Rights of vulnerable people over the age of 16 in Barnsley.Ensures everyone over the age of 16 falls within scope as per legislation.Takes into account a person’s representative in terms of expressing wishes and feelings on behalf of a person who may lack capacity.The Policy does not discriminate against any protected characteristic and helps to support those who may be at risk due to having a protected characteristic.  | Implementation of the Policy should ensure the CCG meets the positive obligations required under the MCA Legislation and national guidance on consent.  |
| **Age** | X | ☐ | ☐ |
| **Carers** | X | ☐ | ☐ |
| **Disability** | X | ☐ | ☐ |
| **Sex** | ☐ | X | ☐ |
| **Race** | ☐ | X | ☐ |
| **Religion or belief** | ☐ | X | ☐ |
| **Sexual****orientation** | ☐ | X | ☐ |
| **Gender****reassignment** | ☐ | X | ☐ |
| **Pregnancy and maternity** | ☐ | X | ☐ |
| **Marriage and civil partnership**(only eliminating discrimination) | ☐ | X | ☐ |
| **Other relevant groups** | ☐ | XX | ☐ |

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| **HR Policies only:****Part or Fixed term staff** | ☐ | X | ☐ |  |  |

***IMPORTANT NOTE:*** *If any of the above results in ‘****negative’*** *impact, a ‘full’ EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.*

Having detailed the actions you need to take please transfer them to onto the action plan below.

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| **3. Action plan** |
| **Issues/impact identified** | **Actions required** | **How will you measure****impact/progress** | **Timescale** | **Officer****responsible** |
|  |  |  |  |  |

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| **4. Monitoring, Review and Publication** |
| **When will the proposal be reviewed and by****whom?** | **Lead / Reviewing Officer:** | Jo Harrison | **Date of next Review:** | August 2020 |

Once completed, this form **must** be emailed to barnsleyccg.equality@nhs.net  for sign off by the delegated officer

 **Delegated officer:**

 **Date of Sign Off:**