

Suffolk County Council – Adult and Community Services (ACS)

COVID-19 Vaccination and Mental Capacity 08/12/2020

The following guidance refers to the decision-making process for people with care and support needs and there is doubt about their capacity to decide whether or not to consent to receiving the COVID-19 vaccine.

Who makes the decision?

Vaccination is a medical procedure and requires the consent of the person before it can be carried out. To give consent, an adult must have the capacity to do so. *“Consent must be obtained before starting any treatment or physical investigation or before providing personal care for a patient. This includes the administration of all vaccines.”* Green Book on Immunisation against Infectious Diseases (page 7) <https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book>

It is for each person with capacity to decide whether they will have the covid-19 vaccination.

Families/relevant others can only give consent where the person lacks the capacity to consent to having the COVID-19 vaccination and they have a Lasting Power of Attorney (LPA) for Health and Welfare which has been registered with the Office of the Public Guardian or have a Court Order appointing them Deputy for Health and Welfare and the person obtaining consent to vaccination has had sight of the relevant paperwork confirming appointment as LPA or Deputy.

If the person lacks capacity and there is no LPA or Deputy for Health and Welfare, then the decision will be made by the medical practitioner administering the vaccine.

Mental Capacity and Decision Making

The Mental Capacity Act 2005 is clear that everyone should be presumed to have capacity to consent to medical treatment such as vaccination, unless there is evidence to suggest their capacity to make this specific decision may be limited in some way.

Presence of capacity cannot be determined by appearance of the person, their age, medical conditions or behaviour.

Mental capacity is time and decision-specific so a decision cannot be based solely on prior knowledge or experience of the person.

Even when there are doubts about a person’s capacity, every effort should be made to support them to make their own decision. Consideration should be given to communication approaches, such as accessible information or videos where these might help the person to retain the necessary information.

If capacity fluctuates, for example if the person is experiencing delirium from an infection, consideration should be given to whether the decision could be postponed to see whether capacity is regained when they recover. In such cases, medical advice should be sought regarding the risks of delaying vaccination weighed against the potential benefit of waiting for the person to regain capacity to consent for themselves.

Assessment of Capacity

Ideally, assessments of capacity to consent to the vaccine should be completed by the clinician who will administer the vaccine. Where this is not possible, senior staff from the provider supporting the person or other relevant professionals might complete the assessment.

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The purpose of the assessment is to establish whether the individual assessed has capacity to consent to the COVID-19 vaccination. **To have mental capacity for any decision the person must be able to do all of the following:**

- understand relevant information about the decision
- retain that information long enough to make the decision required
- use or weigh up (evaluate) that information
- communicate their decision.

If the person is unable to do any one of these, ***because of*** an impairment of or disturbance in the functioning of the mind or brain then they are assessed as lacking mental capacity to make that decision.

The process for the assessment and rationale for its conclusion should be clearly recorded in the person's records using the locally agreed vaccination consent forms.

Best Interests Decisions

When a person has been assessed as lacking capacity to make a decision about receiving the vaccination, a decision about vaccination must be made in their best interests.

A decision on best interests determines what is best for the person at the present time. Where the decision involves the provision of medical treatment, the doctor or other member of healthcare staff responsible for carrying out the particular treatment or procedure is the decision-maker, unless the person has a LPA (Health & Welfare) registered with the OPG, or a Deputy for Health & Welfare.

A record of a Best Interest decision must include the following:

- brief account of the relevant circumstances
- the person's current AND prior wishes and feelings
- the person's beliefs and values
- evidence of consultation with relevant others, people who know the person
- consultation with people delivering care to the person
- consideration least restrictive options
- and whether the person may be likely to gain capacity (can the decision be delayed until then?)

The assessment and the reasons upon which the decision was reached should be clearly documented in the person's records.

* No blanket assessments of capacity should be made for groups of people, for example large numbers of people living in care settings may lack capacity to consent to receiving the vaccination, each person should have their own individual capacity assessment and Best Interest decision*

Role of Adult Social Care

The role of adult social care will be limited in the decision-making process for the COVID-19 vaccination for people who may lack capacity **as this is a clinical decision.**

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However, Suffolk County Council could be approached to support with identifying people who may lack capacity to consent to the vaccination by sharing relevant information with regards to previous relevant mental capacity assessments and any information about relevant written advance wishes.

In addition, if a person has an allocated practitioner from ACS they may be consulted by the medical practitioner or LPA/Deputy making the decision in order to obtain a view regarding what is in the person's best interests.

Further reading

<https://www.39essex.com/rapid-response-guidance-note-vaccination-and-mental-capacity/>

<https://www.gov.uk/government/publications/covid-19-vaccination-guide-for-older-adults/covid-19-vaccination-guide-for-older-adults>