Sheffield Clinical Commissioning Group

Guidance to Accompany the NHS Continuing Healthcare Consent Forms 1 and 2 to Accompany DOH Tools

1.0 Purpose

1.1 The purpose of this guidance is to assist practitioners to demonstrate they have secured an individual's consent to screening and assessment for eligibility for a period of continuing healthcare. It also assists practitioners to demonstrate that the individual's capacity to give informed consent has been assessed where appropriate, and that a best interest decision has been made where necessary.

1.2 The consent tools also ensure that Sheffield Clinical Commissioning Group seeks permission to arrange care and pay relevant providers.

2.0 Background

2.1 The Health and Social Care Act established new structures and a framework for the NHS, with effect from 1 April 2013. Regulations[1] issued under the Act set out the Standing Rules to be followed when determining eligibility for continuing healthcare.

2.2 The Regulations are supported by the National Framework for Continuing Healthcare, which was revised in 2012 . The Framework and the associated Practice Guidance assist with the application of the Standing Rules.

2.3 The National Framework states that "individual's informed consent should be obtained before the start of the process to determine eligibility for NHS continuing healthcare". It also states "if there is a concern that the individual may not have capacity to give consent, this should be determined in accordance with the Mental Capacity Act 2005". This guidance has been developed by Sheffield Clinical Commissioning Group to support practitioners to meet these requirements of the National Framework.

2.4 The Framework also states advises that if an individual with capacity does not give their consent, practitioners should carefully explain to them the impact this may have on the ability of the NHS and the Local Authority to provide appropriate services to them. Declining to give consent does not mean that a Local Authority has an additional responsibility to meet their needs, over and above the responsibility it would have had if consent had been given.

2.5 In addition, the framework states that the extent of the consent being sought should be made explicit to the individual. Sheffield CCG's consent and capacity forms seek consent to screen and assess patients for eligibility for continuing healthcare. They also seek consent to arrange care and pay relevant providers for

[1] The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

the care. In both cases this includes sharing information with relevant professionals, which can include clinicians and administrative staff.

2.6 It should also be noted that consent may be withdrawn at any time. However, withdrawing consent may prevent the NHS from completing an assessment or for providing the patient with care.

2.7 The National Framework provides further advice in respect of consent, capacity and advocacy. Practitioners should ensure that they are aware of this before commencing screening or assessments of eligibility for continuing healthcare.

3.0 Consent and Capacity

3.1 Practitioners should have regard to the Mental Capacity Act (MCA) Code of Practice, and to the fundamental principles set out in MCA s1 that:-

- A person must be assumed to have capacity unless it is established that he lacks capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- 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
- 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

3.2 The decision which the CHC Consent Form must addresses the question of is the person's ability to consent to the CHC assessment process – i.e. initial screening and full assessment. It also addresses the sharing relevant information so that care can be arranged and paid for.

3.3 The MCA s1(2) provides that a person lacks capacity for a particular decision if, at the time a decision needs to be made, he or she is unable to make or communicate the decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.

3.4 To have capacity to make a specific decision, the person must have capacity at that time to understand, absorb and retain information relevant to the issues on which his/her consent is required, including the ability to weigh the information. They must be able to communicate the decision, which can include any form of communication e.g. sign language or other means such as Makaton.

3.5 A lack of capacity for a decision cannot be established merely because of a person's age or appearance or his/her condition or an aspect of his/her behaviour.

3.6 If they **do not** have capacity to make that decision, it must be made in their best interests. The decision maker, in this case, should be either someone appointed as a **registered** health and welfare lasting power of attorney, a Court of

Protection appointed health and welfare Deputy or the health or social care professional completing the NHS Continuing Healthcare Checklist. The Checklist must be completed in accordance with the National Framework for Continuing Healthcare and NHS Sheffield/Sheffield CCG's procedure on completing Checklists.

3.7 MCA s4 sets out a list of factors to be considered and the process to follow in making a specific decision in P's best interests:-

- P must be encouraged, as far as is reasonably practicable, to participate in the decision making process
- P's past and present wishes and feelings, and the beliefs and values that would be likely to influence the decision if P had capacity
- Any other factors that P may be likely to consider in making the decision, if they had the capacity to do so
- It cannot be assumed simply on the basis of age, condition, appearance or behaviour that the decision reached would be in P's best interests.
- If practicable and appropriate to do so, others should be consulted including anyone named by P as being someone to be consulted on the matter in question and anyone engaged in caring for P or interested in their welfare, or anyone holding a power of attorney or appointed as a deputy (including for finances only).

3.8 The provision for consulting others (MCA s4(7)) means sharing information about P with them appropriately, and it is possible that P may have the capacity to decide who is involved in that consultation about his or her best interests, and with whom that information is shared.

3.9 The decision to share personal information with family members, carers or others, is distinct and separate from the decision to consent to the continuing healthcare assessment process, and it is possible to have capacity for information sharing decisions but not for consent to the CHC assessment process. Capacity to consent to sharing information must therefore be assessed separately, in accordance with the same tests in the MCA.

3.10 A fundamental duty of confidentiality is owed to P about his or her medical records and personal information. The NHS Code of Practice on Confidentiality (2003) makes clear that where P lacks capacity to consent to disclosure of information, information may be shared with others in P's best interests but only as far as it is reasonably necessary to meet P's best interests and no further. The information shared in this way must therefore be limited to as little information, and shared with as few people, as is reasonably necessary to meet P's best interests.

3.11 For any decision made in P's best interests, where he or she lacks the capacity to make that decision for him/herself, a record should be kept of the decision-making process and should set out:

- Who the decision maker is
- How the decision about P's best interests was reached
- Who was consulted to help work out best interests, and
- The reasons for reaching the decision.

4.0 Recording

4.1 Two forms are appended to this guidance. One of these forms must be used in every case where a patient is being screened for assessment for continuing healthcare.

4.2 Form 1 should be used to record the individual's decision, where they **have** capacity to consent to screening and full assessment for continuing healthcare. The form also seeks consent to share relevant information so that care can be arranged for them and paid for, as appropriate.

4.3 Form 2 should be used to record when the individual **does not have** capacity to consent to screening or full assessment for continuing healthcare. The form also seeks consent to share relevant information so that care can be arranged for them and paid for, as appropriate.

4.4 There are no circumstances in which both forms should be completed.

4.5 Either form 1 or form 2 should be completed and submitted to Sheffield CCG with every Checklist and every Fast Track referral. Where a Checklist or Fast Track referral is not accompanied by a completed form, it will not be possible to take the assessment further. Therefore the Checklist or Fast Track referral will be returned to the practitioner, so that the correct from can be completed.

4.6 In the event that an individual has been informed that they screen in for assessment for continuing healthcare, and there is no evidence that they have given their consent, the Coordinator must obtain their consent prior to commencing the assessment. Where the Coordinator believes that the individual may not have the capacity to consent, they must ensure that a capacity assessment has been undertaken, in line with the Mental Capacity Act. If such an assessment has not been undertaken, the Coordinator should arrange for an assessment. If the outcome of the assessment is that the individual does not have capacity give consent to the assessment, the decision whether to proceed with the assessment must be made in the individual's best interest.

4.7 Similarly Sheffield CCG will not be able to arrange and pay for care for any individual who does not give their consent to share information for these purposes Where a patient has not given their consent to share such information, the MDT members must explain to the patient that the CCG will not be able to arrange care for them, unless consent is provided. Where the Coordinator believes that the individual may not have the capacity to consent, they must ensure that a capacity assessment has been undertaken, in line with the Mental Capacity Act. If such an assessment has not been undertaken, the Coordinator should arrange for an assessment. If the outcome of the assessment is that the individual does not have capacity give consent share information for service development, the decision whether to proceed with the assessment must be made in the individual's best interest.

5.0 Governance

5.1 This guidance is issued to support Sheffield CCG to meet its commitments under the Standing Rules for continuing healthcare.

5.2 The guidance will take effect once authorised by the Chief Nurse for Sheffield CCG.

5.3 The responsibilities of Sheffield CCG under this guidance may be discharged on its behalf by a Commissioning Support Unit

5.4 This guidance will be due for review on 30 July 2014.

Document Control

Version	Author	Date	Status	Comment
0.1	KS	October 2012	Draft	Following legal advice and to Operational Group for comment
0.2	EH	January 2013	Draft	Following feedback from Operational Group
0.3	EH	April 2013	Draft	Sent to Chief Nurse for comment or approval
04	EH	19 June 2013	Final	Following PDG and with amendments regarding arranging and paying for care..

Sheffield Clinical Commissioning Group

Consent to NHS Continuing Healthcare processes

FORM 1 – for people that HAVE capacity to consent to the screening and assessment process and for care to be arranged for them, including making payments to providers.

This form indicates that the person named below has consented to be screened for assessment for continuing healthcare, for full assessment and for their care to be arranged and paid for, if appropriate.

Section A

Patient:	DOB:	
NHS Number:	Date of Interview:	
Does this person require an interpreter:	Yes **[]**	No **[]**
Was an interpreter present at the interview:	Yes **[]**	No **[]**
Name of Assessor:		

Does the person have capacity to consent to be screened for continuing healthcare, full assessment **and for care to be arranged for them, including making payments to providers** if appropriate?

Yes **[]** No **[]**

Section B: Declaration of Consent

If the person **has capacity** to consent to the initial screening, full assessment for continuing healthcare eligibility **and for care to be arranged for them, including making payments to providers**, has their consent been obtained?

Yes **[]** No **[]**

Where the patient **does not** have capacity to consent to this decision, please complete **Form 2.**

I give my consent to the initial screening and full assessment for continuing healthcare eligibility and for the sharing of information with other professionals involved in determining eligibility for continuing healthcare and arranging or paying for care (please delete as appropriate). I understand that I may withdraw my consent at any stage and that if I do this may prevent care from being provided for me:

Patient signature: ……..

Patient print name:…… Date: ……..

Assessor signature: ……

Assessor print name: …… . Date: ……..

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Consent to NHS Continuing Healthcare processes

FORM 2 – for people that DO NOT HAVE capacity to consent to the screening and assessment process and for care to be arranged for them, including making payments to providers

This form indicates that the person named below **does not** have the capacity to consent to be screened for assessment for continuing healthcare, full assessment and for care to be arranged for them, including making payments to providers, if appropriate.

Section A

Patient:	DOB:	
NHS Number:	Date of Interview:	
Does this person require an interpreter:	Yes **[]**	No **[]**
Was an interpreter present at the interview:	Yes **[]**	No **[]**
Name of Assessor:		

Does the person have capacity to consent to be screened for continuing healthcare, full assessment if appropriate and for care to be arranged for them, including the NHS making payments to care providers?

Yes **[]** No **[]**

I confirm that the person above **lacks capacity** to give consent for initial screening, full assessment for continuing healthcare and arranging care for them. The reason they lack capacity is [……], which is an impairment of, or a disturbance in the functioning of the mind or brain.

And although all reasonable steps have been taken to support and empower the person to make the decision, they are therefore **unable** to (please indicate):-

- Understand information about the initial screening, ~~and~~ full assessment process and arranging care for them **and/or** **[]**
- Retain that information in their mind **and/or** **[]**
- Use or weigh that information as part of the decision making process **and/or** **[]**
- Communicate their decision (this could include sign language, Makaton etc) **[]**

Section B: IDENTIFYING THE DECISION MAKER FOR PEOPLE WHO LACK CAPACITY

If the person lacks capacity to consent for initial screening and full assessment for continuing healthcare, a decision must be made in their best interests.

Is there a **registered** health and welfare Lasting Power of Attorney? Yes/No
Is there a Court of Protection appointed Health and Welfare Deputy? Yes/No

Who has been identified as the decision maker* (please print name):

……..

* In the absence of a registered health and welfare LPA or court appointed health and welfare Deputy, a continuing healthcare nurse may act as the decision maker.

Section C: BEST INTERESTS IN RESPECT OF RELEVANT DECISIONS

The best interests principle underpins the Mental Capacity Act 2005. In trying to reach a best interests decision in relation to a particular decision the decision maker should encourage P to participate in the decision making process, indentify all relevant circumstances, find out P's views and consult with others. Please see the attached guidance in relation to assessing a person's best interests.

Specifically, I have considered P's best interests per s4(6) MCA, including their past wishes and beliefs that would be likely to influence the decision in question. In order to assess P's best interests I have consulted others, in accordance with s4(7) MCA, namely [Please state who and their relationship to P]:

……..

Section D: RE SHARING INFORMATION WITH OTHERS to consult re best interests

(a) P **has** capacity to consent to information being shared with others for this purpose, and has consented to sharing information with the people listed above

Signed: ……
(by P)

Date: ……

OR

(b) P **lacks** capacity to consent to sharing information with others for this purpose, and information shared in this way is in P's best interests as assessed by the decision maker

Signed: ……..
(Decision maker)

Section E: DECLARATION BY THE DECISION MAKER

After any consultation, my opinion is that it **is/is not** (delete as appropriate) in P's best interests to undergo the assessment for initial screening, full assessment for continuing

healthcare eligibility, for arranging care for them and for the sharing of information with other professionals and relevant providers of care, because

……

I understand consent may be withdrawn at any stage and that if I do this may prevent care from being provided for the patient concerned:

Signature of the decision maker: ……

Please state role/job title: ……

Date: ……

If the decision maker is a health and welfare Deputy or registered health and welfare LPA, please attach a copy of the sealed COP order or registered LPA.

Any additional comments:

In this form the following definitions apply:

'P' means the patient names in section A
'LPA' means Lasting Power of Attorney
'COP' means Court of Protection
'MCA' means the Mental Capacity Act 2005