

NHS DORSET CLINICAL COMMISSIONING GROUP
GOVERNING BODY MEETING
LIBERTY PROTECTION SAFEGUARDS

Date of the meeting	22/01/2020
Author	D Palmer - Senior Operational Manager, Personal Health Commissioning
Sponsoring Board member	N Rowland – Chief Finance Officer
Purpose of Report	To inform the Governing Body of the implications of the Mental Capacity (Amendment) Act 2019.
Recommendation	The Governing Body is asked to note the report.
Stakeholder Engagement	N/A
Previous GB / Committee/s, Dates	N/A

Monitoring and Assurance Summary

This report links to the following Strategic Objectives	<ul style="list-style-type: none"> • Prevention at Scale • Integrated Community and Primary Care Services • One Acute Network • Digitally Enabled Dorset • Leading and Working Differently 		
	Yes [e.g. ✓]	Any action required?	
		Yes Detail in report	No
All three Domains of Quality (Safety, Quality, Patient Experience)	✓	✓	
Board Assurance Framework Risk Register	✓		✓
Budgetary Impact	✓	✓	
Legal/Regulatory	✓	✓	
People/Staff	✓	✓	
Financial/Value for Money/Sustainability	✓	✓	
Information Management & Technology	✓		✓
Equality Impact Assessment	✓		✓
Freedom of Information	✓		✓
I confirm that I have considered the implications of this report on each of the matters above, as indicated		✓	

Initials: DP

1. Introduction

- 1.1 The Mental Capacity (Amendments) Act 2019 (The Act) will be introduced on 1st October 2020.
- 1.2 The amendments were made in light of recommendations made by the Law Commission that the current Deprivation of Liberty Safeguards (DoLS) were not fit for purpose, with increasing numbers of applications each year, resulting in statutory timescales being regularly breached.
- 1.3 DoLS will now be replaced with Liberty Protection Safeguards (LPS).
- 1.4 Whilst the draft Code of Practice is not anticipated until January 2020, it is apparent that as a consequence of the amendments, NHS Trusts, the CCG and care homes will play a much bigger role in the deprivation of liberty process than they do now. It can also be anticipated that there will be financial implications.

2. Report

- 2.1 With effect from 1 October 2020, Responsible Bodies will be required to authorise an incapacitated person's deprivation of liberty. For the first time, NHS Trusts and CCGs will become Statutory Bodies, as well as Local Authorities.
- 2.2 A deprivation of liberty arising in any setting must be authorised - this includes hospitals, care homes, the person's own home, supported living arrangements and whilst transporting the person between specified places.
- 2.3 Unlike current legislation, the Act will also apply to 16 and 17-year-olds.
- 2.4 Authorisation may be granted if
 - The person is aged 16 or over;
 - They lack capacity to consent to the arrangements for their care/treatment;
 - They have a mental disorder; and
 - The deprivation of liberty is necessary to prevent harm to the person themselves (risk to others will not be grounds for an authorisation) and is proportionate to the likelihood/seriousness of that harm
- 2.5 The Impact of the amended legislation on the CCG and Partner Organisations:-
 - i) NHS Trusts - Will for the first time be responsible for authorising deprivations of liberty for those who are being cared for mainly in an NHS hospital. Local Trusts will therefore be required to set up a system (with associated leadership, policies and allocation of roles/responsibilities) for

arranging assessments, consulting, doing pre-authorisation reviews (and deciding when these should be done by an Approved Mental Capacity Professional (AMCP) plus providing information about authorisation and reviewing them as required.

- ii) Independent Hospitals - Where care is provided mainly in an independent hospital, the authorisation process will need to be undertaken by the Local Authority (generally for the area where the hospital is located). Details of how this will work in practice should emerge as part of the supporting regulations/Code of Practice.
- iii) CCGs - Will, like NHS Trusts, be responsible for authorising deprivations of liberty for the first time, with their new duty applying to CHC funded cases, whatever the setting. NHS Dorset CCG will therefore need to establish, like NHS Trusts, the necessary systems and policies to undertake the required work.
- iv) Local Authorities – Will no longer be required to authorise all deprivations of liberty as they do now in their role as ‘supervisory body’, as they will no longer be responsible for authorising cases where the care is provided mainly in an NHS hospital or is CHC funded. Their remit will still cover all non-CHC funded cases in care homes, people’s own homes, supported living and independent hospitals.
- v) Care Homes - Whilst care homes will not be doing the actual authorising under the Liberty Protection Safeguards, the responsible body (i.e. either the Local Authority or, if the care is CHC-funded, the CCG) can decide to delegate much of the work needed to get to the stage of authorisation to the care home manager - including organising assessments (although not actually doing them), carrying out consultation, putting together the draft authorisation record and reviewing the authorisation once granted. Again, the details of how this will work in practice are likely to be covered in the regulations and Code of Practice.

3. Transition

- 3.1 In the first year the DoLS scheme and the LPS framework will work in parallel, this will mean any current DoLS authorisations will remain in place until they expire.

4. Code of Practice

- 4.1 The Code of Practice is expected to be out for consultation early in 2020. This document will hold the detail of how the LPS will work in practice.

5. Considerations for Planning for the new LPS scheme

- Strategic Planning: Bournemouth, Christchurch and Poole Authority have established a Project Board to oversee the implementation of the Act. The CCG has a representative on the Board. The CCG is currently working with Dorset Council to scope the work required for implementation within Dorset. In addition, support is being provided by NHS England and the Local Government Association through the Association of Directors of Adult Social

Services (ADASS). Further scoping will need to be undertaken when the Code of Practice is published.

- Training and wider needs within CCG, hospitals and across care homes, community teams and primary care will be addressed through the CCGs work with the Local Authorities.
- Scoping of number of CHC cases that will transfer to CCG is being undertaken.
- Scoping of 16- & 17-year olds and its impact for the work of the Local Authorities.
- Determination as to the number of DoLS within hospital setting, which will become the responsibility of the hospitals to complete from 1 October 2020.
- How many cases will be awaiting Court of Protection decision at time of transfer? How will these be managed? Dorset CCG is currently seeking legal advice in this regard.
- It is anticipated that Best Interest Assessors (BIA) will transfer to Approved Mental Capacity Professionals (AMCP). Guidance is awaited as to the process that will be required for this to occur.
- There will be a potential need for additional NHS staff to train to become AMCP's.

6. Financial Implications of LPS

- 6.1 Until the Code of Practice is published and processes are established, it is difficult to determine actual costs. The Government has yet to announce whether additional funding will be available to support the introduction of LPS.
- 6.2 For NHS Dorset CCG, based on 2018/19 activity, it is anticipated that the potential cost to deliver LPS will be circa £500k in a full financial year. This is a worst-case scenario and based on the required work being completed by Band 6 Assessor and using a delivery model that has been developed by BCP Council. An assumption has been made that 500 individuals in receipt of NHS CHC funding will require assessment/review and 250 individuals who are in receipt of fast track funding will also require LPS authorisation. The CCG will also be required to fund the required Doctors Assessments for each case. Currently this is £185 per case. This cost is included within the £500k assumption.
- 6.3 In addition to the above will be the costs to the NHS Trusts (Royal Bournemouth, Dorset County, Poole and Dorset Healthcare) and the two local authorities.
- 6.4 Costs to the local system can also be anticipated in relation to:
- Planning and Project Management.
 - Analysis of data.
 - Training conversion Best Interest Assessors to Approved Mental Capacity Practitioners (AMCPs).
 - Training new AMCPs.
 - Training and backfill costs for front line staff and managers.

- Ongoing training costs for AMCP's, frontline staff and managers, care homes.
- Increase in CCG cases to Court of Protection.
- Costs of medical assessments to determine mental disorder.
- Role of Authorisers.
- Increase costs to IMCA services.
- Possibility of Care Homes in increasing fees for coordinating process.

6.5 Greater clarity will be provided the publication of the draft Code of Practice and the Statutory Instrument early in 2020.

7. Conclusion

7.1 The Governing Body is asked to **note** the report and the work that will need continue upon publication of the final Code of Practice and the potential financial impact upon the CCG and provider Trusts.

Author's name and Title: David Palmer, Senior Operational Manager

Date: 8 January 2020

Telephone Number: 01305 361123