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## CONSENT TO CARE, SUPPORT & TREATMENT

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# CONSENT TO CARE, SUPPORT AND TREATMENT POLICY AND PROCEDURE

The Aim of this policy is to ensure that Nursing Direct Healthcare Limited (hereinafter referred to as "Nursing Direct") as a care provider complies with its' legal and ethical responsibilities in obtaining valid consent before providing care, support and treatment to their service users, whilst maintaining their choice and right not to consent including the consent to complete a care needs assessment. The policy also aims to reflect the rights of individual service users to determine how their personal health, medication, social and psychological needs should be met. Nursing Direct focusses on the legal rights of a service user's, ensuring choice is respected all times in accordance with the provisions of Care Act 2014 and other relevant legislation.

## 1. PURPOSE

1.1 The main purpose of this policy is to ensure that Nursing Direct recognise the importance of complying with the legal and regulatory aspects of Regulation 11 under Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the best practice of consent to care.

1.2 Nursing Direct recognises the importance of having a process that supports meeting the Key Lines of Enquiry and Quality Statements set out by the Care Quality Commission (CQC). This process ensures that the organisation fulfills its obligations related to consent and provides respectful and compassionate care, support, and treatment. By adhering to these standards, Nursing Direct is committed to delivering person-centered care at all times by:

- Supporting the service users to express their views and be actively involved in making decisions about their care support and treatment as far as possible involving and engaging them through freedom to speak up.
- Ensuring that consent to care support and treatment always obtained in line with the legislation and best practice guidance.
- Improving quality of care by ensuring that service users concerns and complaints in relation to consent are listened and responded to and used.

1.3 By using this policy and procedure, Nursing Direct acknowledge that they have a process to implement within the daily practice of their service users' complete informed consent whenever care delivery services are being proposed to meet their needs and choice them.

### 1.4 Relevant Legislations, Rules, and Regulations:

To meet the legal requirements of the regulated activities that Nursing Direct is registered to provide:

- The Care Act 2014
- Children Act 1989
- Children Act 2004
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Mental Health Act 1983
- Mental Health Act 2007
- Safeguarding Vulnerable Groups Act 2006
- Data Protection Act 2018
- The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012

## 2. SCOPE

2.1 The following roles may be affected by this policy:

- All staff including Agency Workers

2.2 The following Service Users may be affected by this policy:

- All Service Users

2.3 The following stakeholders may be affected by this policy:

- Next of Kin and/or families of our service user
- Power of Attorney and/or advocates as duly authorised
- Commissioners
- External health professionals
- Local Authorities
- NHS/ICB/CCG

## 3. OBJECTIVES

3.1 **The objective of this policy is to ensure that:**

- Suitable processes are in place to obtain the consent lawfully from the Service User/ those lawfully acting on behalf of the service user, before any care, support or treatment is provided by the Nursing Direct. This is including where a service user lacks mental capacity to make an informed decision, or give consent, staff including Agency Workers must act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice.

- The consent to Care, Support and Treatment is recorded as and when it is obtained on the relevant Consent Form which has been developed reflecting current legislation and guidance. The relevant records are to be kept and maintained safely and confidentially as per the Data Protection laws and regulations. Staff including Agency Workers including agency Workers who obtain the consent of people who use the service are familiar with the principles and codes of conduct associated with the Mental Capacity Act 2005, and are able to apply those when appropriate, for any of the people they are caring for.
- Service users and/or their next of kin are not pressured into giving consent, and where possible plans must be made well in advance to allow time to provide adequate information and respond to any queries.
- Consent must be treated as a process that continues throughout the duration of care and treatment, recognising that it may be withheld and/or withdrawn at any time.

3.2 Where the Service User lacks mental capacity to make an informed decision, or give consent, Nursing Direct must act in accordance with the requirements of the following:

- Mental Capacity Act 2005 and associated code of practice
- Best Interest process

3.3 To ensure that staff including Agency Workers understand other occasions when a Service User's valid consent is required and the implications of obtaining valid consent from a young person aged over 16 and the procedures that they must follow.

## 4. POLICY

4.1 Nursing Direct understands the need to only provide care, support, and treatment with consent from the Service User.

In relation to this need, Nursing Direct acknowledge that this policy covers the following:

- A process of seeking consent
- What constitutes as valid consent
- The need to ensure that consent is given voluntarily, and that sufficient information has been imparted to allow valid consent to be made
- The importance of establishing whether the person has capacity to give consent.

Capacity for consent, as per the mental Capacity Act 2005, a person who lacks capacity is a person who is unable to make a decision for themselves because of an impairment or disturbance in the functioning of their mind or brain. It does not matter if the impairment or disturbance is permanent or temporary.

A person lacks capacity if:

- They have an impairment or disturbance (i.e., a disability, condition or trauma or the effect of drugs or alcohol) that affects the way their mind or brain works
- That impairment or disturbance means that they are unable to make a specific decision at the time it needs to be made.

Under the mental Capacity Act, a person must be assumed to have capacity unless it is established that they lack capacity. If there is any doubt, then the relevant healthcare professionals should assess the capacity of the patient to take the decision in question. This assessment and conclusions drawn from it should be recorded and shared with Nursing Direct.

Capacity should not be confused with a health care professional's assessment of the reasonableness of the person's decision. Under the Mental Capacity Act and the common law, a person is not to be treated as unable to make a decision merely because they make an unwise decision. A person is entitled to make a decision which may be perceived by others to be unwise or irrational, as long as they have the capacity to do so. However, if the decision that appears irrational is based on a misperception of reality, as opposed to a different value system to that of the health practitioner, then the patient may not be able to comprehend, weigh or make use of the relevant information and hence may lack the capacity to make the decision in question .

4.2 For consent to be valid it must be given voluntarily by an appropriately informed service user who has the capacity to consent to the care, support, or treatment interventions from Nursing Direct.

4.3 Nursing Direct will ensure that when a Service User is asked for their consent, all relevant and related information about the proposed care, support or treatment will be provided in a way that they can understand. This may include the use of different formats or languages and may involve others such as a translator or independent advocate.

4.4 Where a Service User lacks mental capacity to make an informed decision, or give consent, staff including Agency Workers will act in accordance with the requirements of the Mental Capacity Act 2005 and associated code of practice. Nursing Direct will respect when Service Users, or a person acting lawfully on their behalf, refuses to give consent or withdraws it.

4.5 Nursing Direct recognises that consent may be implied and include non-verbal communication such as sign language or by someone rolling up their sleeves to have a wash or offering their hand when asked if they would like help to move.

4.6 Nursing Direct will ensure that consent is treated as a process that continues throughout the duration of care, support, and treatment, recognising that it may be withheld and/or withdrawn at any time. Staff including Agency Workers will be trained to understand that capacity can fluctuate and this needs to be considered in the context of giving or refusing consent.

4.7 Nursing Direct will uphold the Service User's right to be involved in all decisions about their care, support, and treatment.

4.8 Nursing Direct will work with other members of the multidisciplinary team to ensure that best interest decisions are made and recorded for Service Users who lack mental capacity to give valid consent. Sharing of information with multidisciplinary partners will be done so in line with UK GDPR and Data Protection Policies and Procedures.

4.9 Nursing Direct will ensure that their policy on consent to care, support and treatment will reflect current legislation and guidance and Nursing Direct staff including Agency Workers follow them at all times.

## 5. PROCEDURE

5.1 Nursing Direct recognises that consent is fundamental in ensuring person-centred Care provision. Nursing Direct understands the need to allow Service Users time to process information without feeling rushed or pressured, providing the opportunity for the individual or their legal representative to consider and formulate any questions that they have relating to their Care provision.

### 5.2 Consent at Initial Point of Contact

Nursing Direct understands that there may be times when family members, friends or legal representatives of a Service User make contact with the service in order to arrange a pre-service visit on a Service User's behalf.

Nursing Direct recognises that unless the person making contact has power of attorney for the Service User, and that Service User lacks capacity, consent must be obtained from the person the service is intended for, before any assessments, contracts, or commencement of service.

Throughout all stages of the initial assessment process, valid consent must be obtained from the Service User or their legal representative.

### 5.3 Consent Before a Service Commences

Before the service starts, or as soon as is practical, the Service User will receive information about Nursing Direct in a format that they can understand, this will include how to locate our policies and procedures, how to make a complaint and what they can expect in relation to the support provided.

The Registered Manager will ensure that staff including Agency Workers responsible for assessing the Service User's needs and formulating the Care Plan have the skills and knowledge to answer any Service User questions and to discuss valid consent with the Service User.

Staff including Agency Workers who are responsible for the Care Plan assessment will ensure that mental capacity is assessed, if appropriate, before the Service User consents to care and support. Where the assessment identifies that the Service User lacks the mental capacity to give valid consent, it will be sought from the Service User's legally authorised representative (such as a person having power of attorney). The assessor must consider whether the lack of capacity is temporary or permanent and the Service User will be supported and encouraged to be involved, as far as they want to and are able, in decisions about their Care.

The Service User and/or their representative will be given the opportunity to read and understand the information given. Where there are communication or language barriers, alternative measures will be taken to ensure that the Service User can understand the information that is being shared.

### 5.4 Consent and Mental Capacity

A Service User lacks capacity if their mind is impaired or disturbed in some way, and this means the Service User is unable to make a decision at that time.

- Nursing Direct, who are responsible for the Care Plan assessment, will request that mental capacity is assessed, if a service users' capacity is in question, before support commences.
- Where a mental capacity assessment identifies that the Service User lacks the mental capacity to give valid consent, consent will be sought from the Service User's legally authorised representative (such as a legal guardian or a person having a power of attorney)
- The assessment will consider and determine whether the lack of capacity is temporary or permanent and consider if there are occasions when capacity fluctuates.
- The Service User will be supported and encouraged to be involved, as far as they want to and are able, in decisions about their treatment, care and support.
- Staff including Agency Workers must adhere to the policy on Mental Capacity at Nursing Direct

### 5.5 Consent and Best Interest Decisions

Where a Service User is assessed as lacking capacity to give valid consent and has no-one formally appointed to make decisions on their behalf, the assessment will consider a best interest decision. This best interest decision is to consider whether to go ahead with the care, support, or treatment. There are many important elements involved in trying to determine what a Service User's best interests are, including:

- Considering whether it is safe to wait until the Service User can give consent if it is likely they may regain capacity at a later stage.
- Involving the Service User in the decision as much as possible
- Trying to identify any issues that the Service User would take into account if they were making the decision themselves, including religious or moral beliefs; these would be based on views the Service User expressed previously, as well as any insight close relatives or friends can offer.
- Best Interest decisions will also be undertaken in partnership with the multi-disciplinary team and the best interest decisions must be documented. The decision will be reviewed at regular intervals as agreed with Nursing Direct and the multi-disciplinary team.

### 5.6 Care Plans and Care Delivery

Care Plans are formed as a collaborative approach with the Service User's wishes and more importantly, their consent.

Nursing Direct will ensure that the Service User's consent is to evidence that they agree with the care and support that is to be delivered as outlined in the Care Plan. The Service User will be asked to sign the consent form that clearly indicates what they are giving consent for.

Where a Service User is unable to sign, Nursing Direct will ensure that the Service User has provided valid consent.

Consent is often wrongly associated with a Service User's signature on a consent form. A signature on a form may not amount to valid consent if the Service User is rushed into signing a form on the basis of too little information.

Similarly, if a Service User has given valid verbal consent, the fact that they are physically unable to sign the form is no bar to care and support.

Consent can be confirmed or withdrawn by a Service User at any time.

Staff including Agency Workers will log in the record of care notes that consent was obtained for tasks carried out with or on behalf of the Service User at each interaction.

## 5.7 Consent to Share Information

Nursing Direct will ensure that the Service User gives permission for information to be shared with other professionals or providers before doing so. If a Service User lacks capacity to make this decision, Nursing Direct, in consultation with any representatives, will need to make a best interest's decision about sharing information. Examples of when information might be shared are:

- Transferring Care between providers
- Discussing an acute medical condition with a GP
- Discussing mobility goals with a physiotherapist or other healthcare professionals involved in the Service User's Care

Nursing Direct will also ensure that staff including Agency Workers comply with the UK GDPR and Data Protection Act and that consent is sought from the Service User before sharing any information with inspectors or regulators. Nursing Direct will be aware of the need to maintain confidentiality and that a Service User's right to confidentiality continues even when they are deceased.

Service Users must understand what information is recorded about them and how Nursing Direct uses that information, stores it and whether the information is shared.

## 5.8 Consent and Assessments

Nursing Direct will ensure that the Service User's consent is sought prior to undertaking the following:

- Quality checks involving the Service User's Care, including initial assessment, Care Plans, Risk Assessments etc.
- Observational competency assessments for staff including Agency Workers involving the Service User's Care
- Training in the Service User's personal environment

This will be explained to the Service User in a way they can understand.

## 5.9 Duration of Consent

- When a Service User gives valid consent to care, support, or treatment, that consent remains valid unless the Service User withdraws it or there are circumstances that mean it can be treated as if it had been withdrawn.
- Such circumstances would include the procedure having taken place or there being a significant gap since the consent was given. In addition, if new information becomes available regarding the proposed intervention (for example, new evidence of risks or new treatment options) between the time when consent was sought and when the intervention is undertaken, Nursing Direct will inform the Service User and reconfirm their consent.
- Similarly, if a Service User's condition or circumstances have changed significantly in the intervening time, it may be necessary to seek consent again, on the basis that the likely benefits and/or risks of the care, support or treatment may also have changed.

## 5.10 Consent Refusal and Withdrawn

Nursing Direct recognises that consent may be obtained by the Service User themselves or by a lawful legal representative. This can be given, refused, and withdrawn at any time and must be respected.

If the process of seeking consent is to be a meaningful one, refusal must be one of the Service User's or lawful representative's options. A competent, adult Service User is entitled to refuse any care or treatment, except in circumstances governed by the Mental Health Act 1983.

If, after discussion of possible care, support or treatment options, the Service User refuses care or treatment (this includes personal care, medication, etc.), this fact must be clearly documented in their notes and escalated to Nursing Direct.

If a Service User has already signed a consent form, but then changes their mind, this must be noted on the consent form, and where possible, it will be noted on the consent form by the Service User.

When care, support or treatment is refused and when staff including Agency Workers cannot follow the agreed Care Plan, the Registered Manager at Nursing Direct and staff including Agency Workers will be informed who will then ensure that they follow the procedure for refusal of care, support or treatment at Nursing Direct, to ensure that safeguarding issues do not arise. This should include:

- The Registered Manager ensuring that this is monitored to ascertain if certain patterns are forming and if the occurrence is regular, which may be detrimental to the Service User's health and wellbeing.
- Following this, the Registered Manager will liaise with the Service User if they have concerns relating to their health or wellbeing.

## 5.11 Obtaining Consent

- The Registered Manager will ensure that all designated staff including Agency Workers understand the importance of ensuring that they obtain consent each and every time any aspect of Care is delivered. Once valid consent has been obtained, for example, in relation to administering medication, staff including Agency Workers will check before they start to administer medication, that the Service User still consents to have the medication. This consent may be verbal or implied consent, e.g., saying yes or holding out their hand for the medication.
- Staff including Agency Workers will be duly informed on what they should do and what protocols that they should follow if a Service User refuses consent.
- Where Service Users have communication difficulties or lack capacity, the Care Plan will clearly state how ongoing consent will be obtained.
- Service Users will be asked to give individual consent separately for different purposes, in line with the UK GDPR

## 5.12 Recording Consent

Staff including Agency Workers will ensure that consent is recorded as given or refused in the Service Users daily records at each episode of Service User Care. Nursing Direct are responsible for ensuring that consent is gained in an informed and lawful way.

## 5.13 Advance Decisions

- Nursing Direct will ensure that where a Service User has an advance decision in place, it is valid and that it is clearly documented what it relates to
- Where the advance decision relates to the Service User's decision not to resuscitate, this will be in writing, signed, dated, and witnessed, a DNACPR form will also be completed.

## 6. DEFINITIONS

### 6.1 Staff including Agency Workers

#### 6.1.1 Staff

Denotes the employees of Nursing Direct Healthcare Limited.

#### 6.1.2 Agency Workers

Refers to individuals who are contracted with Nursdoc Limited or another employment business as an Agency Worker (temporary worker) provided to Nursing Direct Healthcare Limited to perform care services under the direction of Nursing Direct.

### 6.2 Nursing Direct

Nursing Direct, also known as Nursing Direct Healthcare Limited, is the entity regulated by the CQC (Care Quality Commission) and responsible for the care service provision, contracted to provide homecare services to service users in their homes, in placements, essential healthcare facilities and in the community.

### 6.3 Nursdoc Limited

As the sister company to Nursing Direct Healthcare Limited, Nursdoc Limited acts as an employment business, specialising in providing staffing solutions to the healthcare sector.

### 6.4 CQC (Care Quality Commission)

CQC throughout this policy, the term "CQC" refers to the Care Quality Commission (CQC) which is the independent regulator of health and social care in England.

### 6.5 Power of Attorney

- There are a number of reasons why a Service User might need someone to make decisions for them or act on their behalf:
- This may just be a temporary situation: for example, if they are in hospital and need help with everyday things such as making sure bills are paid.
- Alternatively, they may need to make longer-term plans if, for example, they have been diagnosed with dementia and they may lose the mental capacity to make their own decisions in the future.
- A power of attorney is a legal document that allows someone to make decisions for someone else if the person is no longer able to, or if they no longer want to make their own decisions.

### 6.6 UK General Data Protection Regulation (UK GDPR)

The UK's implementation of the General Data Protection Regulation (GDPR)

### 6.7 Young Person

- Children under the age of 16 can consent to their own treatment if they are believed to have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment. This is known as being "Gillick competent."
- Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there's significant evidence to suggest otherwise.
- People aged 16 or over are entitled to consent to their own treatment, and this can only be overruled in exceptional circumstances.
- The UN Convention on the Rights of the Child defines a child as everyone under 18 unless, "under the law applicable to the child, majority is attained earlier". However, there are a number of different laws across the UK that specify age limits in different circumstances. These include child protection; age of consent; and age of criminal responsibility.

### 6.8 Advanced Decisions

An advance decision (sometimes known as an advance decision to refuse treatment, an ADRT, or a living will) is a decision a person can make now to refuse a specific type of treatment at some time in the future.

### 6.9 Independent Advocate

An independent advocate involves speaking on behalf of a person(s) to ensure that their rights and needs are recognised

### 6.10 Capacity

The Service User must be capable of giving consent, which means they understand the information given to them, and they can use it to make an informed decision by considering all the risks and options, and they can remember what has been explained to them and the decision they have made. Capacity refers to having the mental capacity as defined in the Mental Capacity Act

### 6.11 Valid Consent

For consent to be valid, it must be voluntary and informed, and the Service User consenting must have the capacity to make the decision

### 6.12 Consent

Consent is demonstrated when the Service User (either verbally or non-verbally) indicates what they are willing to do, or allow a third party to do to, or for them

### 6.13 Informed Consent

A key concept is that consent must be in the form of 'informed consent'. This means that a Service User being asked to give their consent for a procedure or for a care service, must have adequate information given to them so they can understand all the issues involved and weigh up the pros and cons in order to make a valid decision


### 6.14 Best Interest Decisions

If a Service User has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that Service User, must be made in his or her best interests

## OUTSTANDING PRACTICE

To be 'outstanding' in this policy area you could provide evidence that:

- Regular reviews of a Service User's consent take place to ensure that it remains valid
- Consent is obtained and recorded to provide any care treatment and support
- There is evidence that staff including Agency Workers understand the Mental Capacity Act 2005 in relation to consent
- Information is shared appropriately and in a format the Service User understands to ensure valid consent

COMPLETED DATE:	
SIGN OFF DATE:	
REVIEW DATE:	
SIGNED:	 Marc Stiff – Group Managing Director