1. Purpose

The purpose of this document is to outline commissioner Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) assurance responsibilities for the services they commission.

2. Audience

The audience for this document is the London NHS Commissioner MCA Steering Board.

3. Background

NHS commissioners identified a lack of clarity about their responsibility and accountability for gaining MCA assurance in the September 2015 Steering Board meeting. A commissioner checklist to clearly outline CCG and CCG MCA lead responsibilities for ensuring MCA compliance has therefore been developed. This commissioner checklist has been structured in line with the MCA compliance framework below.

4. Overview

This document contains:

- An overview of CCG and CCG MCA lead responsibilities
- MCA lead day-to-day activities
- Contract monitoring elements

This checklist is based on the NHS England MCA guidance document for commissioners.
5. CCG responsibilities

CCGs are required to:

☐ Have a named responsible CCG MCA lead in place, who is appropriately trained

☐ Have an MCA/DoLS policy or assurance framework in place

☐ Deliver or commission mandatory MCA/DoLS training for all commissioners

6. MCA lead responsibilities

The CCG MCA lead is required to ensure that:

☐ Healthcare services provided within the CCG's geographical area demonstrate compliance with the MCA (see section 8 for how services should demonstrate compliance)

☐ Services the CCG commissions/joint commissions/co-commissions for people aged over 16 demonstrate compliance with the MCA. This can include services provided outside the CCGs area

7. MCA lead day to day activities

7.1 Commissioner focus

7.1.1 Contract monitoring

☐ Ensure all services commissioned by the CCG have contracts in place with MCA expectations in service level agreements

☐ Ensure all contracts include the appropriate MCA/DoLS requirements within quality monitoring mechanisms and quality monitoring elements (see section 8)

7.1.2 MCA training and networking

☐ Provide technical MCA/DoLS advice to and raise MCA awareness amongst CCG colleagues

☐ Ensure appropriate CCG staff are trained for MCA/DoLS processes

☐ Keep up to date with any changes in legislation, best practice and useful MCA/DoLS tools

☐ If trained as a best interests assessor, offer support to the local authority regarding best interest assessments, where appropriate

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1 Refer to the commissioner MCA training checklist for details on commissioner training requirements.

2 It is important commissioners have an oversight that residents in their area are being treated in accordance with the MCA. Whether the quality information is collected directly from the provider or via the lead commissioner is at the discretion of the CCG.
7.2 Provider focus

7.2.1 Quality assurance

☐ Collect evidence from providers that shows they are fully compliant with the MCA/DoLS (see section 8)

☐ Collect evidence of MCA/DoLS compliance from lead commissioners regarding providers in local area that the CCG does not have a contract with

7.2.2 Policies and procedures

☐ Check provider MCA/DoLS policies and procedures

7.2.3 MCA training and support

☐ Advise providers about complex MCA/DoLS cases (e.g. conflicting views on capacity)

☐ Support providers who are not fully compliant with the MCA/DoLS

☐ Advise about approved MCA/DoLS training for providers in area

7.3 Service user focus

7.3.1 MCA support

☐ Ensure service users and carers have access to MCA/DoLS information (posters/leaflets/CCG website)

☐ Ensure NHS patients have access to advocacy services in the area

7.3.2 Quality assurance

☐ Collect patient and carer MCA feedback (directly or indirectly via providers)

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3 Refer to NHS England MCA guidance document for commissioners for more detail.
4 Follow advice on SCIE website.
5 Small providers (e.g. independent nursing homes) may require additional MCA training support and guidance from commissioner MCA leads (e.g. multiagency training funded by Safeguarding Adults Board). An approved provider MCA training checklist is to be agreed by London NHS Commissioner MCA Steering Board.
8. Contract monitoring

For CCGs to be assured that services comply with the MCA/DoLS, contracts with providers should include:

- Quality monitoring mechanisms
- Key performance indicators (KPIs)
- Non-quantitative quality monitoring elements

8.1 Quality monitoring mechanisms

MCA/DoLS quality assurance can be measured using a combination of the following methods:

- MCA audits
- MCA reports
- MCA meetings
- Provider site visits
- MCA data collections (KPIs)
- MCA CQUINs (Commissioning for Quality and Innovation) payment framework

8.2 KPIs

The following KPIs should be assessed through data collections (e.g. dashboards) and CQUINs:

- Numbers trained (level 1, level 2, level 3)
- IMCA (Independent Mental Capacity Advocate) referral numbers and waiting times (by referral reasons – serious medical treatment, accommodation, care reviews, adult protection, DoLS)
- Number of service users with an Advance Care Plan (ACP) in place
- Number of authorised/rejected/outstanding standard/urgent DoLS referrals made to LA (care homes, per ward for hospitals)
- Average number of weeks that outstanding DoLS referrals made to the LA have breached statutory timeframes
- Number of authorised/rejected/outstanding CCG DoL referrals made to Court of Protection (settings other than care homes or hospitals)
- Average number of weeks that outstanding CCG DoL referrals made to Court of Protection have breached statutory timeframes

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6 It is important CCGs are assured providers have systems in place to capture the required KPIs. CCGs are advised to use the lead commissioner model and work closely with their LA (for DoLS KPIs) to avoid data collection duplication.
7 Refer to Provider MCA training quality standards checklist in MCA lead toolkit.
8 An ACP would include any DNACPR (do not attempt CPR) decisions or ADRTs (advance decision to refuse treatment).
9 This helps providers and commissioners understand the impact of training and identify gaps.
### 8.3 Non-quantitative quality monitoring elements

The following elements are difficult to measure quantitatively, but could be assessed through audits, reports, site visits and meetings. Please refer to the [NHS England MCA guidance document for commissioners](#) for further detail.

|☐| MCA/DoLS policies (Pan-London provider policies) |
|☐| MCA is referenced in all relevant policies and pathways (e.g. consent, restraint, transition for young people, dementia, end of life care) |
|☐| Quality, delivery and implementation of MCA and DoLS training<sup>7</sup> |
|☐| Evidence of mental capacity assessments (e.g. anonymised sampling of capacity assessments) |
|☐| Evidence of care planning and best interest decisions (e.g. anonymised sampling of best interest documentation) |
|☐| Evidence of supported decision making (e.g. local arrangements around how staff support patients to enhance their ability to make decisions) |
|☐| Evidence that supporters/advocates have been consulted following DNACPR notices for people lacking capacity |
|☐| Evidence that the MCA is linked into the organisation’s systems and processes relating to improving service users’ experience and the quality of their care and treatment |
|☐| Evidence of registered Lasting Powers of Attorneys (LPAs) for health and welfare |
|☐| Prompts to consider capacity in key care pathways<sup>10</sup> |
|☐| Evidence that the MCA features in job descriptions |
|☐| Evidence that the MCA features in inductions |
|☐| Evidence that the MCA features in appraisal systems |
|☐| Policies on research recognise the rights of those lacking capacity |
|☐| Governance processes<sup>11</sup> |
|☐| Safeguarding enquiries<sup>12</sup> |

<sup>10</sup> For example, transition for young people, dementia and end of life care pathways.

<sup>11</sup> Please refer to the [NHS England MCA guidance document for commissioners](#) for further detail.

<sup>12</sup> For example, minutes from safeguarding meetings, risk assessments, care/treatment plans.