**Coronavirus (COVID-19): Template Letter – Mental Capacity Act and Covid 19 testing**

If your relative develops any of the symptoms associated with Covid 19, government guidance suggests that they are tested for the virus. This may be especially important if your relative lives in a communal home or cannot understand social distancing. There may also be other situations where your relative is required to undergo testing. However, anecdotal reports suggest that the test for Covid 19 is quite unpleasant and requires a swab to be taken from the individual’s nose. If your relative cannot consent to this test and you are concerned that a formal best interests decision making process might not be followed, or you might not be involved in that process, you can send this letter to your relative’s care home manager, Social Worker or GP:

YOUR NAME

YOUR ADDRESS

DATE

Dear NAME,

I am writing to you in respect of my [son/daughter/brother/sister/family friend, etc]. He/ she [insert here a summary of their disabilities], and as a result lacks the capacity to consent to Covid-19 testing.

As you will be aware, the Mental Capacity Act 2005 (MCA) governs the process for decision-making in someone’s best interests where they lack the mental capacity to make that decision themselves. The MCA says that when a person lacks capacity to make a decision themselves, a decision must be made in their best interests. If there is a dispute over mental capacity, the MCA and its code of practice also govern the process by which that dispute should be resolved.

Before testing any person for Covid-19, the individual in question must give informed consent i.e. agree to the test with understanding of its benefits and limitations, the implications if the test is positive and how the test will be conducted. If an individual lacks capacity to consent in this way, a decision whether to carry out a test will need to be made in their best interests. Although the Coronavirus Act 2020 introduced emergency measures to help control the spread of the virus, testing is unlikely to be considered an emergency measure such that consent is not needed.

I believe that my [son/daughter/brother/sister/family friend, etc] lacks capacity to consent to Covid-19 testing, because [son/daughter/brother/sister/family friend, etc] is not able to understand, retain, and use and weigh the information relevant to the decision whether to be tested. In light of this, in accordance with the MCA, a best interests decision must be made for [son/daughter/brother/sister/family friend, etc].

A ‘blanket’ approach to care and treatment decisions for people who lack capacity is unlawful therefore a decision to be tested for Covid-19, or to have an antibody test, cannot be assumed for every patient. Therefore, as my [son/daughter/brother/sister/family friend, etc] lacks capacity to consent to a Covid 19 test, a best interests decision must be made for my, [son/daughter/brother/sister/family friend, etc] before they can be tested.

While the term ‘best interests’ is not defined by the MCA, section 4 of the Act provides a list of some of the matters that should be taken into account when considering what is in an individual’s best interests. The code of practice to the MCA provides detailed guidance on what should be considered, and the steps that should be taken, when considering best interests. In particular, I would like to draw your attention to the requirement that a best interests decision must take account of all the relevant circumstances and, in particular, should include the following steps:

1. Encourage [insert name] to participate as fully as possible in the decision-making process.

2. Consider [insert name]’s past and present wishes and feelings and the beliefs and values that would be likely to influence his/her decision if he/she had capacity. [Insert specifics here if relevant, e.g. your cultural or religious background].

3. Consider the views of anyone engaged in caring for the person or interested in his/her welfare. Clearly this would involve me as [insert name]’s [insert relationship]. Steps need to be taken to properly consult.

**The law therefore requires that both [insert name] and I should be fully involved when any decision is being made on his/her behalf.**

Involving [insert name] will mean taking practical steps to assist him/her in communicating his/her wishes or preferences, for example [explain how they might do this, e.g. by using simple language or pictures]. [Insert name] may need help to express his/her wishes or preferences, so you may need to involve someone who knows him/her well – such as me – in this.

**In addition, you need to consult with me and anyone else interested in [insert name]’s welfare, to get our views. I do not need to be appointed a ‘welfare deputy’ in order to be consulted.**

Determination of mental capacity for Covid 19 testing (and all other MCA decisions) is time and decision specific. It is possible for a best interests decision to be made to carry out repeat Covid -19 tests, however this should be time-limited and subject to review.

If it is determined it is in my [son/daughter/brother/sister/family friend, etc] best interest to have a Covid-19 test you must ensure that it is carried out in the least restrictive way possible and taking into account [his/her] usual response to the activities involved in testing.

I have written this letter using a guide that has been published by the Challenging Behaviour Foundation. The guide was based on legal advice. I would therefore be grateful if you would contact me on [insert your contact details] so we can work together to ensure that all decisions regarding [insert name here] and Covid 19 testing are taken in his/her best interests.

I have copied this letter to [insert name of LA/NHS body/care manager, etc].

I look forward to hearing from you shortly.

Yours sincerely

[Print name]