

**WRITTEN QUESTION TO THE MINISTER FOR HEALTH AND SOCIAL SERVICES
BY DEPUTY C.S. ALVES OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 1st FEBRUARY 2021
ANSWER TO BE TABLED ON MONDAY 8th FEBRUARY 2021**

Question

For the period March 2020 to date, will the Minister advise how many patients living in care homes under the care of the Health and Community Services Department have been assessed as lacking capacity?

Answer

Capacity means being able to make a particular decision at that time for oneself. One of the five core principles of the Capacity and Self-Determination Law (CSDL) is that everyone aged 16 and over has capacity unless it can be proven otherwise. Capacity can fluctuate depending on the impact of the impairment, time, and also the type of decision. As such, a person may have capacity to make some decisions, but not others, depending on what the decision is and when it needs to be made. Therefore, no person ubiquitously does not have capacity.

A person can only be deemed to lack capacity where there is an inability to use information given, at that time, to make that decision because of an evidenced disorder or disturbance in the functioning of the mind or brain. The identified impairment has to be the direct cause of the problem with one or more of the legally defined areas that constitute decision-making. Therefore, a patient in a care home will have their capacity constantly assessed each time, in relation to each decision, ranging from what to wear, to consenting to care, treatment and residence. Given the time and decision-specific nature of capacity, it must remain under constant review.

Therefore, this reply focuses on assessments in relation to the decision: Can the individual (“P”) validly consent to their care and treatment in their current address? Under Part 5 of the Capacity and Self-Determination Law (2016) (“CSDL”), this decision requires formal assessment when P is being significantly restricted of their liberty, by a Capacity and Liberty Assessor (a qualified professional such as a social worker, OT, or nurse) and a Mental Health Assessor (an approved psychiatrist), the second of which is the person’s capacity (checking they fall under the auspices of the law, i.e. being 16 or over is the first).

In the care homes managed by HCS, since March 2020 there have been 11 duly made applications for authorisation of Significant Restrictions on Liberty (“SRoL”). All of these were assessed as lacking capacity to make the relevant decision (as stated above) at the time of assessment.

As advised, ‘capacity assessments’ are constantly undertaken for a multitude of decisions across Health and Community Services, with these ordinarily recorded in case notes and decision-making records as assessing capacity is not a discrete event but an ongoing process. For example, a dentist will assess an individual’s capacity to consent to dental treatment and record this assessment in their own notes; a healthcare assistant will assess an individual’s capacity to consent to partaking in a social activity and record the outcome in the relevant notes – both are capacity assessments. More formal capacity assessments take place for bigger decisions, such as moving home, serious medical treatment and managing finances (not an exhaustive list).