

## **RAPID RESPONSE GUIDANCE NOTE: TESTING FOR COVID-19 AND MENTAL CAPACITY**

Regarding testing for Covid-19: attached some guidance from 39 Essex chambers (trusted firm of solicitors that usually produce good and reliable information). There is nothing that indicates that this deviates from most other decisions under MCA. There was some guidance on this published by the NHS that indicated that families could consent on a persons behalf... this isn't so and the only situation where that could happen to my mind would be if the person had some legal authority to act on the persona behalf such as an LPA for welfare or a court ordered deputyship.

I would suggest that there should be no blanket policies on testing everyone though (although that might be the aim), and each decision should be unique to that person albeit some of the relevant factors will be the same for most people. Appropriate consultation is needed with the person and when the person does not have capacity with anyone appropriate to consult with (LPA's deputies for example). Where there is a concern that it might not be in the persons best interest then its probably worth contacting us to talk over some of the issues... I think advice in what is in someones best interest can potentially include "*altruistic sentiments and concern for others*" coupled with the idea of "being a responsible citizen"... Both of these points are routed in pieces of case law. If there is a situation where someone has capacity and refuses to take a test then it might be worth calling to go through what needs to happen and whether public health powers need to be used.

Leeds FT created this PDF easy read which is helpful for explaining what the test entails. <http://flipbooks.leedsth.nhs.uk/LN004794.pdf>

**See additional documents on the Provider Zone, including:**

- **LET TO GP FOR BI MEETING**
- **MENTAL CAPACITY GUIDANCE NOTE COVID-19 TESTING AND CAPACITY 4 MAY**
- **SHORT FORM CAPACITY ASSESSMENT**