HEMPSONS

COVID-19 Future Care Planning

In the wake of the COVID-19 pandemic, an increasing number of people will be concerned to ensure that future care planning is considered and is appropriate.

In order to assist health and social care providers, we provide a brief overview that identifies the different means of forward planning that may be utilised by individuals.

From the outset, it is important to be aware that having a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) in place for an individual is not an automatic decision-making factor to determine that an individual should not be admitted for hospital treatment. Care providers need to continually ensure wishes and feelings are obtained as to the use of DNACPR's and steps regarding hospital admission and ventilation if so medically advised.

Warning

All of the measures set out below are existing means of advance care planning. They are not specific to COVID-19. Recent media comment shows how sensitively these issues need to be discussed. It is crucial that advance care planning relates to a particular individual. Blanket decisions will never be appropriate. Individual decisions can take account of all relevant circumstances, even temporary ones, but must be reviewed as circumstances change.

The NHS has produced: "Advance care planning guidance and template" specifically for the coronavirus pandemic - https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/04/Advanced-care-planning-guidance-and-template-050420.pdf. It is important to note that the template will not create a valid advance decision under the Mental Capacity Act, as explained below, for the refusal of life sustaining treatment. It might validly refuse other treatment. It is more likely to amount to an advance statement.

Advance Care and Treatment Plans

A treatment plan may include consideration of whether it is appropriate for an individual to be admitted to hospital in the event of deterioration and, in the current circumstances, in the event of contracting COVID-19.

Where an individual does not have capacity, any treatment decision or plan must be made in the best interests of the individual. The plan and any treatment decisions should have regard to any advance decisions and DNACPR decisions already in place. It must also be discussed by the treating clinical team (including GP, specialist, or MDT where appropriate) and with the involvement of family, any LPA or carers. Recent media coverage has criticised purported general decisions made by GPs without consultation.

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ReSPECT

The ReSPECT process is an advance care planning approach which seeks to encourage individual plans to ensure appropriate future care. It encompasses care planning beyond DNACPR and attempts to capture priorities on an individual basis. Conversations should take place between the individual and health professionals and the plan is then recorded on a form and includes personal priorities for care.

Further information is available at http://respectprocess.org.uk

DNACPR – Do Not Attempt Cardiopulmonary Resuscitation

An DNACPR decision is primarily a clinical decision which relates specifically to whether to undertake CPR if an individual's heart stops. CPR may not be offered where it would be futile. A DNACPR form can also be completed where it reflects an advance decision or CPR would not be in the best interests of the individual.

Recent media reports have focussed on the potential for general DNACPR decisions based on age or disability. However, it is crucial to ensure that any DNACPR decision is made on an individual basis.

When clinicians make a DNARCPR decision they are legally required to discuss this with the patient (or in the cases where an individual does not have capacity, family or those involved in their care) unless such discussion is likely to cause the patient physical or psychological harm.

Where a DNACPR decision is made on a "best interests" basis this must only be after consultation with and the agreement of the individual or appropriate consultation under the Mental Capacity Act, if the patient lacks the relevant capacity.

A DNACPR decision must not prevent all additional care being provided, for example, it does not in itself prevent admission to hospital, that would be a separate decision.

In some hospitals or care settings, the DNACPR decisions are recorded on a specific form but may also be included in a broader emergency or treatment escalation care plan.

Having, or not having, a DNACPR decision is not legally binding on those assessing a patient at the time CPR is a treatment option (unless it is based on a valid and applicable advance decision).

Advance Decisions

The Mental Capacity Act sections 24–26 provides that an advance decision to refuse treatment can be provided by an individual (aged 18 or over) who has capacity to make the decision. Please also read Chapter 9 of the Mental Capacity Act Code of Practice.

Advance decisions are sometimes referred to as "Living Wills": the correct legal terms are advance decisions (legally binding) and advance statements (not legally binding but important to decide best interests). "Living will" is not a defined legal phrase.

Requirements for a valid Advance Decision

Unless an advance decision relates to the refusal of life sustaining treatment there are no specific formalities. The individual must specify the treatment(s) to be refused and the circumstances in which that treatment is to be refused. The language used does not have to be medical terminology as long as it is clear what is meant.

It would be good practice to put any advance decision in writing and, if possible, get the individual to confirm it with their signature.

There are specific formalities if an advance decision seeks to refuse life sustaining treatment. In order to be valid such an advance decision must be:

- Written, signed and witnessed.
- State that it applies to the treatment(s) even where life is at risk.
- State the type of treatment refused and in what circumstances.

Any advance decision should be shared with those involved in care, i.e. GP, carers, family in order to ensure that relevant individuals are aware of the decisions.

An advance decision can be amended or withdrawn if an individual later comes to a different decision. The only proviso is that you have capacity when you make these changes. It is also key that those involved in care are also aware of any changes made. It will also be made invalid by any later capacitous decision to accept treatment contrary to the advance decision.

An advance decision is legally binding to prevent the specified treatment in the specified circumstances. It cannot compel clinicians to provide treatment that is considered clinically inappropriate or futile. A document that contains an advance decision may also contain statements of wishes or requests for specific treatment. Those are not legally binding – see advance statements below.

If there are doubts about the validity or application of an advance decision, a ruling can be sought from the Court of Protection.

COVID-19 Considerations

It is important to check all documentation and make any necessary revisions to ensure that the advance decision specifically addresses the types of care that may be required in the event of serious COVID-19 symptoms, for instance intubation and ventilation.

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Lasting Power of Attorney (LPA):

Section 9 of the Mental Capacity Act 2005 makes provision for Lasting Powers of Attorney (LPA). Please also read Chapter 7 of the Mental Capacity Act Code of Practice.

An LPA is a legal document in which an individual (the donor) appoints a trusted person or people (the donee(s)) to manage their affairs in the event that they lose capacity.

There are 2 types:

- Property and Affairs LPA that grants authority in relation to the donor's financial decisions: Allows a nominated agent to manage financial and personal administration.
- Personal Welfare LPAthat grants authority in relation to the donor's health and care: Allows a nominated agent to manage welfare i.e. medical treatment /care and treatment decisions.

For an LPA to be binding:

- It must have been made by an individual aged 18 or over with capacity.
- The person(s) appointed as donee must be aged 18 or over and have capacity.
- The document must be in a prescribed form as set out under Schedule 1 of the Mental Capacity Act 2005.
- It must be registered with the Office of Public Guardian.
- The LPA cannot be amended or changed once it has been created. If it needs to be changed, it must be revoked and resubmitted with the required changes.

A person appointed under an LPA must act in the best interests of the donor and within the authority granted by the LPA.

A person appointed under a Personal Welfare LPA can only make decisions when the donor lacks the capacity to make those decisions.

COVID-19 Considerations

Recent events mean that Hospital admission can be hastier and more unexpected. Good care planning should take into account an LPA. Where there is a valid and applicable LPA the person(s) appointed make the relevant decisions on behalf of the individual in the individual's best interests. If there is an LPA but it does not cover the situation the people appointed under any LPA must be consulted, if practicable, before making a best interest's decision.

Advance Statements

An advance statement may contain a statement of an individual's health and care wishes, religious considerations and personal preferences. In addition to providing guidance to medical staff, this document also assists in informing family and friends of wishes going forward. An individual may also have a document they, or family, refer to as a "Living Will" i.e. it is in writing, signed and may be witnessed. Unless it amounts to a valid and applicable advance decision (see above) a "Living Will" is no more legally binding than any other advance statement but it may be more persuasive in that it may more reliably represent the true wishes of the individual. There is no legal definition of a Living Will.

Advance statements are not legally binding but are important evidence of the individual's own wishes, feelings and priorities. They must be taken into account when making best interest decisions.

COVID-19 Considerations

An important consideration, especially during the COVID-19 pandemic, is to ensure the relevant people are notified about any existing or updated advance statement.

Conclusion

What is important in relation to all aspects of care planning, is that the appropriate people involved in the provision of care are aware of the relevant care decision or plan. Documentation and discussion between patient, carers and healthcare professionals should therefore be ongoing.

Published 17/04/2020 All information correct at the time of publishing and is subject to change. Please get in touch with us for more detailed advice.
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