RE PAT

MEDICAL SERVICES

Advocacy and Decision-Making for Children Policy

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Introduction
Re-Pat Ltd supports the rights of children under the United Nations Convention on the Rights of the Child to have their views taken seriously in relation to the care provided to them.

The role of an advocate is to support a child to express their own needs and views and to make informed decisions on matters which influence their lives. Advocates do not make choices for children – instead, they support children and young people to make their own choices, where possible.

Policy Statement
Re-Pat Ltd is committed to support service users to make their own decisions, where able, and to provide additional support where this is not possible. This ensures that all service users can live a fulfilling life and make meaningful decisions whatever their health condition.

In circumstances where children have not yet reached the competent age to make healthcare decisions, Re-Pat Ltd will support children to understand the decisions that are being made on their behalf through the provision of age-appropriate information and guidance.

Scope
This policy provides guidance and support for team members who have face-to-face contact with service users under the age of 16 in their day-to-day role.

Roles and Responsibilities
The Registered Manager is responsible for supporting team members in assessing competence and the following procedures, as well as ensuring that the contents of this policy remain current and in line with best practice.

All employees are responsible for keeping up to date with guidance including this policy. Aswell as seeking support from their registered manager where appropriate and necessary.

Procedures

Advocacy will most often be required where a child is engaging with a service, such as health, education, police, social work etc. Anyone can act as an advocate for a child or young person. However, they should only take on the role if they properly understand what advocacy does and does not involve.

For most children, parents take on the role of advocate. For others, a friend will support them in this way. Teachers, social workers, youth workers and professional advocates can also provide this support for children and young people.

Assessing Competence

Children under 16

Children under the age of 16 are presumed not to have the competence to consent to medical treatment. Nevertheless, case law, in the form of the case of *Gillick v West Norfolk and Wisbech Area Health Authority,* has permitted a scenario in which children under the age of 16 can provide consent. This is known as the *Gillick* test. The *Gillick* test requires that a child has sufficient understanding and intelligence to enable him or her to fully understand what is proposed.

As a result, the healthcare professional should document their decision as to the child's competence in the care notes. It should be noted that competence is decision-specific and as such, achieving competence in relation to one decision does not automatically mean that the child is competent to make all decisions relating to their care. A young person who has the competence to consent to straightforward, relatively risk-free treatment, may not necessarily have the competence to consent to complex treatment involving high risks or serious consequences. If the child is deemed not to be competent then consent should be sought from an adult with parental responsibility, and duly documented. Further information relating to parental responsibility can be found within the Consent Policy and Procedure.

In practice, much will depend on the relationship of the team members at Re-Pat Ltd with the child and the family as well as what intervention is being proposed. Competency is something that can be developed over time by presenting the child with information appropriate to their age and level of education, and this process may be a rewarding one in the management of children with long-term conditions that involve several therapeutic procedures or investigations. The emphasis is that the families of children in this age group should be involved in decisions about their care, unless there is a very good reason for not doing so.

If a competent child under the age of 16 is insistent that their family should not be involved, their right to confidentiality must be respected, unless such an approach would put them at serious risk of harm.

If a competent child requests that confidentiality be maintained, this should be respected unless it is considered that failing to disclose information would result in significant harm to the child.

If a young person refuses treatment

Parents cannot override the competent consent of a young person to treatment that team members consider is in their best interests. But team members can rely on parental consent when a child lacks the competence to consent.

In England, Wales and Northern Ireland, the law on parents overriding young people's competent refusal is complex. Team members at Re-Pat Ltd should seek legal advice if they think treatment is in the best interests of a competent young person who refuses.

Team members at Re-Pat Ltd must carefully weigh up the harm to the rights of children and young people by overriding their refusal against the benefits of treatment, so that decisions can be taken in their best interests. In these circumstances, team members should consider involving other members of the multidisciplinary team, an independent advocate, or a named

or designated doctor for child protection. Legal advice may be helpful in deciding whether they should apply to the court to resolve disputes about best interests that cannot be resolved informally.

Team members at Re-Pat Ltd should also consider involving these same colleagues before seeking legal advice if parents refuse treatment that is clearly in the best interests of a child or young person who lacks competence, or if both a young person with competence and their parents refuse such treatment.

Incompetent children

In the case of incompetent children, consent should be sought from an adult who holds parental responsibility and documented in the care notes. It is not necessary to obtain consent from all adults with parental responsibility. However, if there is a disagreement between parents it may be necessary to seek the guidance of the court on the best course of action.

When making a decision relating to a child, the court must be guided by the welfare test outlined in the Children Act (s1(3)). This requires that the court considers:

- the ascertainable wishes and feelings of the child concerned
- the child's physical, emotional and educational needs
- the likely effect on the child if circumstances changed as a result of the court's decision
- the child's age, sex, backgrounds and any other characteristics which will be relevant to the court's decision
- any harm the child has suffered or maybe at risk of suffering
- capability of the child's parents (or any other person the courts find relevant) at meeting the child's needs
- the powers available to the court in the given proceedings.

This test is useful guidance for healthcare professionals who can sometimes be very focused on the physical health of the child by the very nature of their work and highlights the importance of considering the wider holistic needs of the child.

Those with parental responsibility have a statutory right to apply for access to their children's health records, although if the child is capable of giving consent, he or she must consent to the access.

Parental Rights

When working with children, it is important to recognise and understand the rights and responsibilities of their parents. These rights are designed to complement children's rights and should be balanced in a way which delivers the best possible outcomes for all those involved. Parents have the responsibility to look after their children, ensuring that they are given healthcare when required, and encouraging their growth, development and welfare. Indeed, it is a child's right to receive this support from their parents.

Parents also have the responsibility to ensure their children are given suitable education. Except in specific circumstances, they have the right to have their children live with them or the right to decide where their children should live. They have the responsibility and the right to decide how their children should be brought up and be in charge of actions and behaviour.

If they are not living with their children, they have both the responsibility and the right to stay in touch with and be involved with the lives of their children unless otherwise directed by legal authorities in certain circumstances.

Finally, they have both the responsibility and the right to act as a legal representative for their child. In some circumstances, there may be a conflict between the child and their parent(s). It is important to recognise when such conflicts arise and for separate representation to be found for the child and the parent(s).

When decisions are being made that will affect children, parents should seek the child's views on these changes and ensure that they are involved in decision making processes, effectively acting as their child's advocate.

Advocates should be mindful that parents themselves may have a need for advocacy support in order to express their wishes in relation to decisions affecting their children.

Safeguarding

Further information relating to safeguarding children can be found in Re-Pat Ltd Safeguarding Children Policies and Procedures.

Requirements of Being an Advocate

Advocates must:

- be aware of the rights of children and young people;
- act on the issues agreed with a child or young person and not be influenced by others;
- not let their personal opinions influence the child or young person's choices;
- be aware of their own prejudices;
- help the child or young person to access the information they need;
- be clear that information about the child will not be shared without the agreement of the child or young person, except in very specific circumstances;
- understand the different laws that apply to what they do;
- not do anything the child or young person does not want them to do, except where the law requires it;
- be always aware of and act within the law;
- be aware that they might have to break the child or young person's confidentiality, if the law requires it;
- know how to respond where they are concerned about a risk to the child's wellbeing;
- promote the importance of children's voices being heard;

- highlight the role of advocates in making this a reality; and
- act only as an advocate and should not represent the views or wishes of any other person.

Irrespective of who is providing advocacy to a child, it is crucial that everyone is clear about the boundaries of the role. An advocate must never promote or support any other individual or organisation's needs or wishes (including their own) when they are advocating for a child. To do so would result in a conflict of interest. If an advocate feels unable to support the child because of the above, someone else should be asked to provide advocacy support.

Supporting a Child to Understand and Agree to Advocacy

It is important that a child fully trusts the individual who is advocating on their behalf. If that trust does not exist, then it is unlikely that a child will be confident about sharing their views.

In order for trust to be developed it is crucial that the child or young person understands the role of the advocate and agrees to an individual acting as their advocate. The child must always have a choice in the matter and must be supported to understand who is best placed to support them, whether that be a friend, parent, teacher, youth worker or professional advocate.

There are circumstances where certain guarantees exist around the provision of advocacy for children. The Care Act 2014 identifies that an Independent Mental Capacity Advocate (IMCA) should be appointed for;

- a child's needs assessment
- a child's carer's assessment
- a young carer's assessment
- a safeguarding enquiry

The IMCA will then obtain as much information on the views and beliefs of the patient/service user and has the right to meet the service user privately, as well as review their health and care records. The IMCA will consider all of the service users relevant information and provide a report to help healthcare professionals at Re-Pat Ltd reach a decision that is in the best interests of the patient/service user. Sometimes this might include options that were not originally suggested, they can also ask for a second medical opinion and have the right to challenge any decision made.

There are a number of key rules which should always be remembered when an advocacy worker is engaging with a child or young person:

- the advocate must have a good understanding of the child's rights;
- the child should always be supported to understand their rights;
- the child should always be supported to understand the importance of their voice being heard;
- children should be given the choice to participate in decisions (this can mean children choosing not to be involved);
- children should be involved as early as possible when decisions are being taken;

- advocates must always be honest about what difference a child's view will make, and be clear about what is possible;
- children should be encouraged to ask questions and supported to get the information they need;
- children need to feel that they are being taken seriously and that their views are being listened to;
- children should be supported to understand how their views are being considered when decisions are being made;
- if a child needs extra help to engage in a matter, they should get that help;
- never assume that a child understands what is being said to them – always check;
- as part of their work, advocates should consider using activities which are fun and creative, and which suit the child's ability and
- advocates must view the child as an individual, thinking about their age, ethnicity, ability, language, culture, religion, where they live and anything else that is important.

Any advocacy should be led by the child, allowing them to take part in decisions in the way that is right for them.

Confidentiality and Information Sharing

Information given by a child or young person to an advocate would normally be considered confidential. Confidential information should not normally be shared, except in limited circumstances where:

- the law requires information to be shared;
- there is a public duty to share information; or
- the young person consents to the information being shared.

It follows that, as a general rule, advocates should not share any information given by a child without their knowledge and consent. There are, however, some exceptions.

Where an advocate is concerned that a child is at immediate risk of significant harm, they should contact the police and the local authority children's safeguarding team.

Where the advocate has a concern which is less serious, they should follow the advice set out in the Re-Pat Ltd Safeguarding Children – Policy and Procedure.

Supporting Children Who Are Concerned About the Consequences of Speaking Up

There may be issues that a child raises with their advocate which they say they do not wish to be shared more widely. If this does happen, advocates must consider whether the child is at risk. If they are, then steps should be taken to share their concerns in line with the relevant guidance.

Supporting Disabled Children

Disabled children and young people may have a range of complex needs which include communication support and support for cognitive ability and capacity to understand. Advocates may need specialist training to enable them to work with children with particular needs (for example, children with autism, a learning disability or a mental health need).

Advocacy has an important role to play in supporting disabled children and young people to express their views. Disabled young people can struggle to develop friendships and wider social networks independent of parents and paid carers (though parents frequently strive to facilitate this process), so it is particularly important that advocacy identifies and faithfully articulates their views. It may be particularly important that their views are distinguished from those of parents and carers, who may have taken most decisions on behalf of the child in the past. Genuinely listening to young people and including their voice in decision-making should help achieve this. Disabled young people may need support to raise issues about access to a wide range of services including leisure and social activities (such as respite care and short breaks) and when moving from primary to secondary school and making the transition to young adults' services.

Supporting Groups of Children

This is known as collective advocacy. Collective advocacy can occur when a group of people who are all facing a common problem come together to support each other. The individual members of the group may support each other over specific issues. The group as a whole may campaign on an issue that affects them all. If you are supporting a group of children involved in collective advocacy, the same rules generally apply as if you are supporting a single child. All of the children being supported must understand your role and agree to your involvement.

Monitoring

Compliance with this policy will be monitored through routine auditing as well as regular supervisions and spot checks.

Related policies and procedures

Consent Policy
Safeguarding Children Policy

Legislation and Guidance

Advocacy services for children and young people - GOV.UK (www.gov.uk)
Advocacy for children | Children's Commissioner for England (childrenscommissioner.gov.uk)
GP Mythbuster 8: Gillick competency and Fraser guidelines | Care Quality Commission (cqc.org.uk)

0-18 years guidance: Other sources of information and guidance (gmc-uk.org) Care Act 2014
Children Act 1989
Child Abuse and Neglect, Overview | Child abuse and neglect | Guidance | NICE Family Law Reform Act 1969
Gillick v West Norfolk and Wisbech Area Health Authority [1986] 1 AC 112
IMCA regulations for England which detail the role and functions of the IMCA: www.opsi.gov.uk/si/si2006/20061832.htm www.opsi.gov.uk/si/si2006/20062883.htm
Montgomery v Lanarkshire Health Board [2015] SC 11 [2015] 1 AC 1430 Mental Capacity Act 2005
Parental responsibility (bma.org.uk) Gillick (hrcr.org)
Lynch J; Consent to Treatment, Radcliffe Publishing, 2010 UN Convention on the Right of the Child (UNCRC)