

Mental Capacity Act and Deprivation of Liberty Safeguards

E-Newsletter for Managing Authorities Summer 2016

Welcome to the summer newsletter! Please share this newsletter with interested colleagues.

Topics Covered in this newsletter

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MCA - Reducing restrictions tool

This tool aims to help practitioners identify restrictions in a person's care, in order to examine whether the care is the 'least restrictive' possible, as required by the Mental Capacity Act. It can also be used as part of care planning to 'promote liberty and autonomy' in care plans.

This tool is to assist practitioners to identify restrictions which may not always be evident and to assist them in considering less restrictive alternatives in line with Principle five of the Mental Capacity Act 2005.

Website: www.northyorks.gov.uk/dols

We are pleased to report that we have updated the website once again, the site contains a wealth of information, regarding;

Mental Capacity - what steps do you need to take to ensure plans are in place if you lose capacity, Deprivation of Liberty Safeguards and Deprivation of Liberty.

It's a useful site to you as managing authorities, other professionals, family, friends of people subject to a DoLS /DoL.

There are also links to other helpful websites. If after visiting the website you feel there are things missing that you would like to see on the site please let us know.

Law Commission's interim statement re proposed DoLS reforms.

On 25 May 2016, the Law Commission published an interim statement providing an update about its consultation on deprivation of liberty safeguards (DoLS). This statement follows a public consultation that was run in 2015 looking at the current scheme dealing with DoLS and setting out suggestions for a replacement.

The interim statement concludes, amongst other things:

- That there is a compelling case for replacing DoLS to create a more 'straightforward, streamlined and flexible scheme' for authorising a Deprivation of Liberty in a number of settings, including community settings such as Extra Care and Care in your own home.
- The responsibility of establishing the case for a DoL shall be shifted from the provider of the care to the local authority or CCG, using where possible the same assessments already in place for the care planning
- Looking at an amendment to the Coroners and Justice Act which could mean that deaths of people subject to DoLS are reported to medical examiners who will in turn determine whether the case should be referred to a coroner.

The next stage will be the production of a final report and draft legislation, which are both due before the end of 2016. It will then be a matter for the Government to decide how to proceed.

Conditions for DoLS Authorisation.

As part of the DoLS process, the Best Interests Assessor can highlight certain conditions they want to be actioned by the Managing Authorities, once the DoLS authorisation is in place. This they will have discussed with you, as part of their assessment process. Senior Managers from the Supervisory Body panel can amend, add or remove the conditions recommended by the BIA for the authorisation. Once the DoLS is authorised, the finalised conditions become a legal requirement and need to be met by Managing Authorities. If conditions are not being actioned, this becomes a Safeguarding concern. If, as Managing Authorities you feel unable to meet the conditions etc. you do need to inform the DoLS team as soon as possible, for the situation to be addressed.

21A Appeals/RPR

As previously mentioned in our last newsletter, nationally there is an increase in the number of DoLS 21A appeals, that are being processed Court of Protection. Every person who is subject to a DoLS, has the right to appeal, even if it's felt that their package of care is in their Best Interests, and that the appeal may either be upheld by the Court of Protection, or it might fail. Therefore, it needs to be stated that if a patient or a resident is appealing against their DoLS, it does not necessarily reflect on the care they are currently receiving. The Relevant Persons Representative is crucial in supporting the relevant person in the appeal process. The RPR needs to visit, face to face, at least every 6 weeks. If you are aware of someone who's RPR does not visit could you please let us know, then we can review the situation.

Not granted DoLS and why ?

We are experiencing higher numbers of DoLS that are not being granted, once assessments have been completed. Most of these are due to the person having capacity. For example, in May, 25 DoLS were not granted and most of these were due to the fact, that it was found after the DoLS assessments were completed that the person had capacity. Each DoLS assessment has significant financial and resource implications for NYCC. Therefore, assessing capacity and establishing if the person can consent to receiving the care and treatment in your establishment is an important first step, before requesting a DoLS assessment. Also, if someone capacity status changes, it is very important that you let the DoLS team know as soon as possible. This will help us target more effectively the resources we have, to undertake assessments.

Reminder of priority of assessments and renewals.

In the years April 2015 to April 2016 2,612 referrals were processed by the DoLS team. Between April 2016 and mid June 2016 we have received and are processing 462 referrals. As mentioned in previous newsletter we are prioritising all DoLS referrals using the agreed ADASS tool (please look on the website if you need updating on the priority tool) But please note if someone's condition changes we need to know as their priority level may change. Also when submitting a further referral following an expired DOLS authorised please note if the persons presentation has changed this needs to be highlighted on the referral as this could alter the persons priority level.

What are the benefits of being subject to a DoLS?

In the midst of the form filling and assessments, what is the benefit to the person of being part of the processes? It's a question I am sure you ask yourselves as we do within the Supervisory Body for time to time. But within the MCA DoLS office we do see a number of positive outcomes that come from this work and here we would like to share with you some of those examples.

- A gentleman had been in a care home for 12 years, in that time he had never had a visitor, also he has been there longer than most of the staff. There is no history of his life previous to admission therefore there is no individualise care plan to reflect his needs as an individual. The BIA as part of the DoLS recommended that every effort is made to find out history to support formulating a person centred support plan.
- As part of the DoLS they will be entitled to an in RPR who will be a paid advocate who will be able to take an independent view on the care.
- People who are self-funders also benefit for a DoLS as sometimes they are also on their own without family/ friends support and also without an over view of a Care Manager. The independent RPR role is extremely helpful and beneficial to the person.
- With the right of a 21A appeals this gives the opportunity to look at placements is it in the persons Best Interest? Some people have had change of placement and are blossoming in their new environment
- Working together, within the DoLS framework it does help focus the need for all involved to work together. To explore different options that may have not been considered and this does have many benefits for all.

So keep up the good work, together we are making a positive difference

No Forms to be faxed anymore

Please note no DoLS forms cannot be accepted by fax any more. All DoLS forms should be scanned and emailed to Social.care@northyorks.gcsx.gov.uk. **Remember - there has to be a signature on the referral form or it cannot be accepted this is a legal requirement.**

If you have not got access to a scanner then the Forms can be posted to this address. North Yorkshire County Council, Customer Service Centre, East Block, County Hall, Northallerton, DL7 8AH

Paperwork

A reminder of the current paper work.

Forms 1 and 4, urgent and standard are now combined and form 2 is much shorter please find templates attached.

Usual Reminders !

When someone is subject to a DoLS dies please let the DoLS office and Coroner's office know immediately. In this instance If you feel unsure if a person is subject to a DoLS please contact the DoLS team

Also the DoLS team need to know when someone is discharged from hospital or moved from one Care Home to another any changes in Residency has an impact on the DoLS. Thank you very much for your cooperation in these matters.

Also please note if a person needs an interpreter to support them in the DoLS assessment process please enter this on the referral form, to enable the DoLS team to arrange for an interpreter to be present during the assessments.

If you give us an email address to contact you, please make sure it's an address that is checked regularly

If you aware of any good practice around MCA or DoLS we would be very interested to share in the future newsletter

Contact Us

The NYCC MCA/DOLS Office is open:

Monday –Thursday 8:30am- 5:00pm and Friday 8:30am- 4:30pm

DoLS helpline number 01609 536829. Calls will be monitored and returned between 10am-3pm. Please note that this number is for follow up/queries only. We have a general email address which is monitored for queries but not referrals – dols@northyorks.gov.uk

If you require DOLS authorisation outside of these times or during a bank holiday period please process the application in the usual way and it will be acted on upon our return.

Sending Referrals emailed to: Social.care@northyorks.gcsx.gov.uk.

Or post North Yorkshire County Council, Customer Service Centre, East Block, County Hall, Northallerton, DL7 8AH

