

Mental Capacity Act and Deprivation of Liberty Safeguards



E-Newsletter for Managing Authorities Spring 2017

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

Topics Covered in this newsletter

- ***Law Commission review report***
- ***Changes in reporting to the Coroners***
- ***Holidays***
- ***Keeping RPR, Family and Friends informed***
- ***21A Appeals/RPR***
- ***Delays in assessment timescales***

Law Commission Review

The long awaited report was finally published recently, that makes a 47 recommendations for change re how the current deprivation of liberty is managed. These are recommendations to government, who will accept them or not, and it's unlikely that we will see any changes in the next year or two. The following will have impact on managing authorities:

**The name will be changed from DoLS to the Liberty Protection Safeguards
There will be a new MCA Code of Practice
For the most part, authorisations will occur before the placement starts
The safeguards will apply to those 16 years of age and over**

Who you sent the request to.....if the person is in hospital, it will go to the hospital manager. If the persons primary need is met through NHS continuing healthcare, it will go to the relevant CCG. Otherwise, the request will be sent to the local authority. Most assessments will be completed by assessment workers as part of the case work planning process. AMCP's (replacing BIA's) will be involved if the person objects to the placement.

A period of authorisation can last for an initial period of one year, renewed for up to another year, and then for further periods of up to three years.

To read more the Mental Capacity and Deprivation of Liberty report can be found at www.lawcom.gov.uk

Changes in reporting to Coroners

From Monday 3 April 2017 the Coroners and Justice Act 2009 will be amended so that people subject to authorisations under the Deprivation of Liberty Safeguards (known as DoLS) will no longer be considered to be 'otherwise in state detention' for the purposes of Section 1 of the Coroners and Justice Act 2009.

The effect of this is that for any death that occurs on or after the 3rd April and where the deceased was subject to a DoLS authorisation, the Coroner will no longer need to be informed, or have a duty to conduct an inquest in all cases.

The change in the law will not apply to any death that occurred before Monday 3 April 2017, and inquests will still be required in those cases. Such deaths should be reported to the Coroner in all cases, even where the report is made after the 3rd April.

For any person with a DoLS authorisation or other deprivation of liberty authorisation under the Mental Capacity Act 2005 who dies on the 3rd April, or any time after, their death need only be reported to the Coroner where the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the persons death.

If you have any queries about this message please contact

Coroners@justice.gsi.gov.uk

Coroners, Burials, Cremations and Inquiries Policy Team | Ministry of Justice | Area 3.52, 102 Petty France, London, SW1H 9AJ | coroners@justice.gsi.gov.uk

Holidays

The DoLS office has been asked on a number of occasions to clarify the situation around a person subject to a DoLS going on day trips and holidays.

Being a subject to a DoLS does not prevent someone going out on day trips or holidays. The same principles needs to be followed as any other resident going on outings, that is robust support planning and risk assessments etc.

Keeping RPR. Family and Friends informed

We would like to take this opportunity to remind all Managing Authorities of the importance of keeping RPRs family and friends informed if a person needs a DoLS assessment. Sometimes, the first time a relative hears about the DoLS assessment is when the BIA contacts them as part of the assessment. We have had occasions the first time RPRs have heard of the DoLS assessment is when we send them the letter re the RPR role. Communication is key to ensure the DoLS process goes smoothly for all involved especially the Relevant Person.

21A Appeals/RPR

Just to say there remains 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 Interest and that the appeal may 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 RPR is crucial in supporting the relevant person in the appeal process. A reminder that the RPR needs to visit 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.

Delays in our assessment timescales.

Due to changes with Inland Revenue rules, we are no longer able to commission assessments from Doctors and Independent Best Interests Assessors in the same way, in the next Tax year. We are in the process of changing how we do this, but it is likely that there may be a short period of delay as we move across to the new system. We would like to apologise for this, and we are making every effort to resolve this as soon as we can.

No Forms to be faxed anymore

Please note no DoLS forms cannot be accepted by faxed 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

From April 3 2017 the Coroner does not need to be informed that a person subject to a DoLS has passed away .Unless the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the persons death. However the DoLS team does need to know if someone passes away while subject to a DoLS or if the Managing Authority has sent a referral for a DoLS assessment .This ensures we keep our records up to date

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.qcsx.gov.uk.

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