DUNELM MEDICAL PRACTICE

ADVANCE DIRECTIVE (LIVING WILL) POLICY

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ADVANCE DIRECTIVE ("LIVING WILL") PROTOCOL

1. Introduction

Patients who wish to make their preferences known in advance about treatments which might occur in the future may present the practice with a "Living Will". This is more correctly known as an Advance Directive (AD).

The purpose of this policy is to inform and guide practice procedures when presented with an AD. It describes some of the limitations of ADs and raises some key issues in providing treatments within the confines of verbal and written Advance Directives.

The policy also introduces the basic provisions of the Mental Capacity Act 2007 (MCA) as applied to the presentation and validity of Advance Directives.; however it is essential that reference is made to the MCA (2007) in the assessment of mental capacity, advocacy and best practice in maintaining medical records in the event an AD is proposed / implemented.

2. Scope

The policy is not a legal guide and practices should not rely on the policy in dealing with patient issues relating to ADs. In all cases, practices should approach their professional indemnity insurers for advice on the correct way to proceed.

There are important limitations applicable to the policy:

- The AD has no binding on illegal acts;
- An AD cannot compel a GP to carry out a particular treatment;
- An AD which refuses treatment does not prevent the provision of basic care such as cleaning, pain relief etc.

The policy is applicable to all clinical staff employed by The Surgery; non-clinical staff should refer any actual or potential issues to clinical staff as a matter of urgency.

3. Background

An AD may be made by a patient in respect of a condition which may arise in the future, or of a present condition which may be expected to deteriorate. An AD is made by a mentally competent person who may intend that the AD remains effective in the event that he / she later becomes mentally incompetent. Details relating to the assessment of mental competence are explained within the MCA (2007).

In October 2007 the Mental Capacity Act 2007 (MCA) took full effect, formalising Advance Directives relating to the withholding of life-sustaining treatment. In some circumstances, the subsequent appointment of an Attorney can supersede the validity of an AD - see also: Power of Attorney Protocol and Mental Capacity Act (2007).

An Advance Directive need not be written; a verbal statement appropriately witnessed may be equally as valid. Patients may carry cards to record active ADs in order to inform treatment in the event that they are unknown to the clinician responsible for their care (e.g. an admission to hospital).

It should be noted however that Advance Directives which contain provision regarding the withholding of life-sustaining treatments are only valid under the Mental Capacity Act if they are in writing.

It is therefore recommended that practices advise patients that ADs should always be written to avoid any ambiguity or error at a later date.

Until the Mental Capacity Act (2007), the concept of an Advance Directive was not contained within UK legislation; however the government has issued statements on the subject and the UK courts and higher courts have ruled in cases involving ADs. In these circumstances, the principles of ADs have been generally supported as being a natural extension of patient choice and the right to determine the acceptance of treatments.

It is a general principle of law and medical practice that all patients have the right to consent to or refuse treatment, and ADs are a means by which that right can be exercised. An AD may well be binding on a doctor where it expresses a refusal of treatment in circumstances which the patient has foreseen; however it may be ineffective if subsequent or alternative circumstances were not anticipated by the patient.

Under the Mental Capacity Act, an advance refusal of treatment is valid if:

- The person making the AD was over 18 and had mental capacity at the time of the decision;
- It is given in writing, is signed and witnessed, and it states clearly that it is to apply **even where life is at risk**;
- The AD states the specific treatment to be refused, and the circumstances which may apply – this may be stated in non-clinical (lay-persons') terms;
- The AD has not been withdrawn by the patient during a brief or prolonged period when he / she had mental capacity;
- The appointment of an Attorney to make the same decision has not taken place after the date of the AD;
- There has been no act or other indication that the person has changed his / her views, or has done anything that contradicts or is inconsistent with the terms of the AD.

4. Policy

- The practice will carefully consider, on its own merits, each and any Advance Directive;
- Advance Directives will be in writing, signed, witnessed and dated;

- Any approach by a patient asking for advice relating to ADs will be treated with full consideration by the GP and appropriate advice will be offered (see below);

- In the event a GP feels unable to offer advice relating to ADs (e.g. because of personal beliefs), he / she will refer the patient (with his / her consent) to a colleague within or external to the practice to facilitate impartial discussion and advice;

- The GP will assume that the patient has mental capacity until proven otherwise and will explore whether he / she has involvement from an Attorney or from an Advocate;

- Young people under the age of 18 are entitled to have their views on future treatment taken into account

- Where the circumstances prompting treatment fall clearly within the full terms of the AD, the AD will be regarded as being the confirmed wishes of that patient;

- The practice and its doctors will fully consider the possibility that the patient may have changed his / her mind since signing the AD, and take into account any indication or likelihood that this has occurred. Statements made a long time in advance of any treatment are not necessarily invalid; however the courts are more likely to accept a more recent, or recently reviewed statement;

- In cases where it becomes necessary to invoke the terms or provisions of an AD the individual GP will normally consult with another GP colleague and with the practice's professional indemnity insurers.

5. Content of Advance Directives

Advance Directives may be of different types and written statements should be in clear and unambiguous language. They should be signed by the patient and witnessed by at least one other person. They may be:

- General statements about the patient's views on care without restricting specific treatment options; these statements may help a doctor understand the patient's beliefs and guide decisions on courses of treatment;

- A statement which names third parties who are to be consulted in the event that the planned circumstances arise;

- A clear directive which may be legally binding with regard to specified or generalised treatments; it should include the phrase: **"even where life is at risk"**;

- A statement made to support religious or other similar beliefs;

- A combination of the above elements which may very well have legal force.

6. Acceptance, Recording and Medical Records

The storage of an AD is primarily the responsibility of the patient. When presented with an AD the practice will take the following action:

- Clearly identify the patient. If the patient is not known to the GP, suitable patient-identifiable ID should be requested such as a full driving licence, bank card etc.;

- The **original** AD document and supporting identification documents should be photocopied;

- The person accepting the AD document should endorse the photocopy as a true and accurate copy of the original, sign and date the copy, and hand the original back to the patient. The copy of the identification should be endorsed in a similar way;

- The documents must be scanned into the patient's medical record. Scanning should include the endorsements made by the person accepting the documents;

- The photocopies will be retained indefinitely within the paper records or a special file maintained for that purpose;

- The clinical system will be populated with an alert message to the effect that an Advance Directive is held on file. Attention will be drawn to this prior to appropriate treatments;

- The patient is to be routinely advised by the clinician at each appointment / visit that the practice recommends that he / she re-authorises the AD at least annually and more frequently if there are fluctuating changes in the patient's condition or management.. Re-authorisations should include the patient's review of his / her AD and inclusion of any amendments; the new AD must be signed, witnessed and dated in the usual manner. A note that the patient has been reminded should be entered into the medical record, along with the patient's decision, if one has been made;

- The patient should be aware that the practice will not provide a reminder service other than that noted above and that the responsibility for regular review rests with the patient;

- The patient will be offered an extended appointment to discuss the situation with his / her usual GP (note: minimum of 3 days notice required for research);

- In all cases (including where an appointment offer is not taken up) a patient presenting an AD will be advised that his / her usual GP will review the document. The GP will undertake research in advance of the appointment to determine the extent and potential impact of the AD in relation to the health and needs of the individual patient;

- The patient should be advised to inform family and close friends that an AD exists and of its contents;

- GPs will provide details of the AD to other healthcare professionals at appropriate times and on a 'need to know' basis, e.g. on referrals or in emergency situations; where appropriate, a copy of the AD will be provided;

- In an emergency situation, treatment should not normally be delayed in order to search for an AD. **In all cases, in an emergency situation, all care and interventions will be based on clinical judgement.**

7. Coding

The following Read Codes will be used:

XaCEL Advance directive discussed with patient
XaCEN – Advanced Directive Signed

8. GP Advice

The patient's usual GP will consider all ADs presented by his / her patient. In formulating the advice to be given, the GP will give due regard to:

- The patient's mental capacity in deciding to give consent or refusal, using the guidance within the MCA (2007) to assess mental competence where appropriate to do so;

- Whether there any form of duress or undue influence being applied by third parties;

- The validity and acceptability of the AD when viewed on an individual case-by-case basis and the inclusion of the phrase **"even where life is at risk"**;

- All options and treatments open to the patient taking into account current anxieties, presented to the patient in a way which will enable an informed choice;

- The desirability of making a decision at a particular stage should be considered (e.g. whether the patient is depressed or otherwise in a temporary frame of mind) and whether advice to review the decision after a further period of time is appropriate.