

Coronavirus vaccination: Information for advocates

November 2020

Introduction

The development of vaccinations for coronavirus presents a potential life changing and world transforming advance. It is vital that people have access to vaccination once available and that decisions about administering the vaccination are taken lawfully.

Advocates can play an important role in promoting equitable access to healthcare and treatments of all kinds. This may include supporting people to get information about coronavirus vaccinations when they become available, assisting people to access them, and supporting people who find decisions about having a vaccination difficult.

This information is to help advocates support people in relation to decision taking about coronavirus vaccination. It assumes an advocate's existing knowledge and understanding of their role and the Mental Capacity Act and provides information to help apply this in a new circumstance.

People who have mental capacity to decide about vaccination

The government has been clear that it has no intention of making vaccination mandatory. It follows that people who have capacity will be able to choose whether they have a vaccination when it is available to them.

Advocates play an important role in enabling people to understand important information affecting their lives and supporting people to express their views. Advocates supporting a person to understand information about vaccination must ensure that they only use reliable sources of information, for example from NHS England or Public Health England. This is the case regardless of whether the person has capacity, is being supported to increase their capacity, or does not have capacity to decide about vaccination.

The Mental Capacity Act and associated guidance makes clear that people have the right to make unwise decisions and that an unwise decision does not of itself mean that the person making it lacks mental capacity.

People who may lack mental capacity to decide about vaccination

If a person lacks capacity to decide about vaccination, the decision about whether they receive a vaccination must be taken by the relevant professionals in the person's best interests in line with the Mental Capacity Act, unless there is a health and welfare attorney or deputy who is authorised to consent on their behalf.

Best interests are interpreted in a broad sense, not narrowly in terms of what is medically most beneficial. This means that it would be appropriate to consider the impact on the person of any restriction which may be imposed if the person is not vaccinated, or any loss of trust, if the vaccination is given against their will.

Advocates working with a person in relation to decisions about coronavirus vaccination should make sure that there is a proportionate process for deciding on the person's best interests in line with the Mental Capacity Act. In most cases, the balance is likely to be very heavily in favour of vaccination, and so a simple and short process may well be appropriate.

It may be helpful, where appropriate, to sign-post decision-makers to the [Rapid Response Guidance Note](#) on Vaccination and Mental Capacity published by 39 Essex Chambers. This strongly advises decision-makers to take legal advice as to whether to approach the Court of Protection in instances when the person may experience serious distress or other harm – for instance if they cannot tolerate a needle. It notes that an approach may also be required where it is not properly possible to say that there is a consensus as to whether the vaccination is in the person's best interests.

The Rapid Response Guidance Note also draws attention to the need for the decision-maker to gather the information required to enable a best interests determination to be made, which will mean consulting with family members (and, where relevant, friends) to help to ascertain the person's wishes, feelings, beliefs and values. We believe that advocates or RPRs who are already engaged with the person should be contacted as a part of this process, and advise advocates to take steps to facilitate and encourage this.

Deciding not to vaccinate a person who lacks mental capacity

Where it is decided that a person who lacks mental capacity will not receive a vaccination, advocates should expect there to be substantial justification for this. Where this is not the case, the advocate should raise the matter and where appropriate challenge the decision.

Where a person who lacks mental capacity has significant issues about the vaccination being given

There may be a small proportion of circumstances where the 'burdens' of actions necessary to give someone a vaccination are significant, for example, involving heavy sedation or restraint. Giving a person a vaccination would not constitute serious medical treatment (SMT)¹ in the large majority of cases. But it may do so if:

- the steps which are needed to give the person a vaccination involve serious consequences for person
- the benefits to the person and the burdens and risks it is likely to entail for the person are finely balanced

Where this is the case the decision-taker has a legal duty to consult with a family member or friend of the person 'with whom it is appropriate to consult', and where no-one is available to refer to an Independent Mental Capacity Advocate (IMCA). When this is the case, the advocate should start work in relation to the SMT as an IMCA, if they have wide enough instruction and are qualified to do so, or alternatively ensure that an IMCA instruction is provided to them or another suitable professional.

IMCAs acting in relation to SMT decisions about coronavirus are expected to carry out their role in the usual manner.

Least restrictive option

Advocates should seek to ensure that all best interest decisions consider and adopt the least restrictive option, in line with the Mental Capacity Act. For example, in some cases, health and care professionals can avoid the need for sedation or restraint to be used to give a vaccination by instead explaining clearly to the person what is involved, ensuring that reasonable adjustments are made, or providing desensitisation programmes.

¹ Serious medical treatment (SMT) is defined as "treatment which involves providing, withdrawing or withholding treatment in circumstances where -
(a) in a case where a single treatment is being proposed, there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for him,
(b) in a case where there is a choice of treatments, a decision as to which one to use is finely balanced, or
(c) what is proposed would be likely to involve serious consequences for the patient."

There are helpful resources about giving other vaccinations and taking blood, which might be relevant, including:

- [Flu vaccinations: supporting people with learning disabilities](#)
- [Blood tests for people with learning disabilities: making reasonable adjustments](#)

No blanket decisions

Decisions about vaccination cannot be lawfully made on a blanket basis and without consideration of each individual's best interests. Best interest decisions do not necessarily require an extensive or time-consuming process where a decision is heavily weighted on one side.

Where decisions appear to have been taken on a blanket basis, the advocate must question and challenge this and seek management advice on escalating the matter, where not resolved in the first instance.

Purpose of this document and disclaimer

This document is based on the information available on 26 November 2020 and developed by VoiceAbility for internal use. It was updated on 7 December 2020 to refer to the [Rapid Response Guidance Note](#) on Vaccination and Mental Capacity published by 39 Essex Chambers.

The information within this document may be reviewed as circumstances change.

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