**Independent Mental Capacity Advocates**

When would a GP request an IMCA?

There is a legal duty to instruct an IMCA if all the following apply:

The patient is 16 years or older AND

A decision is being made in the person’s best interest as to whether they should have serious medical treatment because they lack capacity to make the decision. (This includes decisions not to proceed with treatment or attempt resuscitation.)

AND

There is no one other (than paid workers) involved in the care and treatment of the person who it is appropriate for professionals to consult as part of the decision.

|  |
| --- |
| **Mental Capacity**  Does the person have a condition which affects their ability to make a decision?  Does the condition mean that the person is unable to understand salient information relevant to the decision, remember the information long enough to weigh it up, weigh up the information and communicate the decision? |
| **Appropriate to consult**  Anyone involve in the care of the person (friend or family member) should be consulted. It is not necessary for the person to be “next of kin.” The person must be willing to be consulted as part of the decision. If there are concerns, professional judgement should be used to decide if someone is appropriate to consult. No one should be excluded solely because they disagree with professional advice. |
| **Urgent and Life-saving treatment**  The only situation in which the duty to instruct an IMCA need not be followed, is when an urgent decision is needed (for example, to save the person’s life). This decision must be recorded with the reason for the non-referral. Responsible bodies will however still need to instruct an IMCA for any serious treatment that follows the emergency treatment. While a decision-maker is waiting for the IMCA’s report, they must still act in the person’s best interests (e.g. give treatment to avoid deterioration) |

If you would like to discuss whether a person is eligible for the IMCA, please contact:

In Plymouth - 01752 753718 or 0330 440 9000 [info@seap.org.uk](mailto:info@seap.org.uk)

In Devon and Torbay 08452311900 [imca.devon@nhs.net](mailto:imca.devon@nhs.net)

**Serious medical treatment**

Definition from the Mental Capacity Act Code of Practice © Crown Copyright 2007

It includes treatments for both mental and physical conditions.

Serious medical treatment is defined as treatment which involves giving new treatment, stopping treatment that has already started or withholding treatment that could be offered in circumstances where:

• if a single treatment is proposed there is a fine balance between the likely benefits and the burdens to the patient and the risks involved

• a decision between a choice of treatments is finely balanced, or

• what is proposed is likely to have serious consequences for the patient.

‘Serious consequences’ are those which could have a serious impact on the patient, either from the effects of the treatment itself or its wider implications. This may include treatments which:

• cause serious and prolonged pain, distress or side effects

• have potentially major consequences for the patient (for example, stopping life-sustaining treatment or having major surgery such as heart surgery), or

• have a serious impact on the patient’s future life choices (for example, interventions for ovarian cancer).

It is impossible to set out all types of procedures that may amount to ‘serious medical treatment’, although some examples of medical treatments that might be considered serious include:

• chemotherapy and surgery for cancer

• electro-convulsive therapy

• therapeutic sterilisation

• major surgery (such as open-heart surgery or brain/neuro-surgery)

• major amputations (for example, loss of an arm or leg)

• treatments which will result in permanent loss of hearing or sight

• withholding or stopping artificial nutrition and hydration, and

• termination of pregnancy.

These are illustrative examples only, and whether these or other procedures are considered serious medical treatment in any given case, will depend on the circumstances and the consequences for the patient. There are also many more treatments which will be defined as serious medical treatments under the Act’s regulations. Decision-makers who are not sure whether they need to instruct an IMCA should consult their colleagues or the local IMCA service.