

MENTAL CAPACITY ACT FACTSHEET

Independent Mental Capacity Advocate Factsheet

Summary

The role of Independent Mental Capacity Advocates (IMCAs) is to support and represent a person who lacks capacity in making a specific decision, and who has no-one (other than paid carers) to support them. This factsheet sets out further information about IMCAs and the role they play.

What is an IMCA?

An IMCA is independent of the person making the decision. The IMCA:

- provides support for the person who lacks capacity
- represents the person without capacity in discussions about any proposed treatment
- provides information to work out what is in a person's best interests
- questions or challenges decisions that they believe are not in the best interests of the person lacking capacity
- presents individuals' views and interests to the decision-maker.

The IMCA is not the decision-maker but the decision maker has a duty to take into account the information and views expressed by the IMCA.

When will an IMCA be involved?

An IMCA **must** be instructed, and then consulted, for people lacking capacity who have no-one else to support them (other than paid staff), whenever:

- an NHS body is proposing to provide serious medical treatment, or
- an NHS body or local authority is proposing to arrange accommodation (or a change of accommodation) in hospital or a care home, and
- the person will stay in hospital longer than 28 days, or
- they will stay in the care home for more than eight weeks.

An IMCA **may** be instructed to support someone who lacks capacity to make decisions concerning:

- care reviews, where no-one else is available to be consulted
- adult protection cases, whether or not family, friends or others are involved

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What is serious medical treatment?

The definition of serious medical treatment includes the treatment of both physical and mental conditions; therefore, you should instruct an IMCA if you are:

- giving new treatment, stopping treatment or withholding treatment, in circumstances where there is a fine balance between the likely benefits, burdens and the risks of the single treatment to the patient
- deciding between treatments where the choice is not clear
- considering treatment which is likely to have serious consequences for the patient.

Serious consequences include where treatment or the decision to treat:

- causes serious and prolonged pain, distress or side-effects
- has potentially major consequences, ie, surgery or life support treatment discontinuation
- has a serious impact on the patient's future life choices.

Emergency situations

In emergency situations, it is likely that you may not have time to instruct an IMCA. You should record any decisions you make about the treatment you give, and the reasons for them, in the patient's notes. If treatment with serious consequence follows from the emergency treatment, then you should instruct an IMCA.

You should always act in the patient's best interests while you are waiting for the IMCA's report.

What happens if the IMCA disagrees with the decision-maker?

The IMCA's role is to support and represent their client. They may do this through asking questions, raising issues, offering information and writing a report. They will often take part in a meeting involving different healthcare and social care staff to work out what is in the person's best interests. There may be cases where the IMCA disagrees with the decision maker.

An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in his welfare. The right of challenge applies both to decisions about lack of capacity and a person's best interests

Guidance on resolving disagreements is given in chapter 15 of the MCA Code of Practice

This fact sheet is based on information provided on the above website and was documented in December 2016.

