

Welcome to our newsletter



This issue is mainly about care records...

But before you lean across to file this in your recycling bin, bear with us! Consider the following questions:

“ **Will my Dad get NHS continuing healthcare funding?** ”

“ **How do I know if the care home is meeting Mum's needs?** ”

“ **How can I challenge cuts to my care package?** ”

These are just some of the questions we are asked where at least part of the answer is "... it depends what the care records show".

Good quality, accurate care records fulfil a range of purposes, including;

- Helping to ensure service users are safe
- Demonstrating that services are meeting their legal requirements
- Providing evidence of an individual's care needs and how those needs are met

If you or a loved one receives paid care, it is worth spending some time familiarising yourself with the relevant care records. Many people are unaware of the information a care provider must record about them or their loved one until they participate in a NHS continuing healthcare assessment and the question of care funding raises its head.

Not only does this give you a picture of how professionals see yours or your loved one's care needs, it also gives you the chance to think of any questions you want to ask, correct any inaccuracies and provide information that might have been missed.

**Feel daunted at the prospect?
Want some independent help?**

Our Health and Community Care Team have a wealth of up to date knowledge and experience in the law relating to care,

including care records. We provide advice and guidance to individuals, families and care providers on record keeping, monitoring and reviews. We also use care records to provide detailed, tailored advice to client's in order to answer the questions posed at the start of this article. Click here to take a look at **Nurse Judy's guide to care records** on our website.

"Care records" is the catch all term for the written information recorded by professionals who deliver support either in an individual's home or a care home setting.

Sam was due to attend a NHS continuing healthcare assessment for her Dad, George. Two weeks before the meeting she instructed us to go through and analyse the care records. We were able to compare Sam's diary of visits with her dad to the records at the home and noticed that some of her Dad's challenging behaviours, due to his mental health, had not been written down. Sam raised this with the Manager who updated George's care plan and ensured that detailed behaviour records were kept. At the continuing healthcare assessment Sam and staff members were able to give a very accurate picture of George's needs, backed up with comprehensive records. George was found eligible for full NHS continuing healthcare funding.

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Who can see care records?



The process is relatively straightforward and governed by the Data Protection Act 1998. Any request you make to an organisation for personal information they keep about you is called a Subject Access Request (SAR).

If you receive a care service, either at home or in a care home, you will be involved in your care planning and access to your records should be quite straightforward as part of your ongoing reviews.

Accessing health or social services records requires a more formal approach. Each health provider or local authority will have details available about how they handle requests for personal information. Your request will need to be in writing and the organisation concerned may ask you to complete their own Subject Access Request form.

There is usually a fee payable, which will be between £10-£50 depending on the type of records requested and whether they are stored electronically or in paper form.

The organisation must respond to your request within 40 calendar days of receipt of your fee, provided they have all the details they need from you to find the information you have requested.

There are limited types of personal information that do not need to be disclosed, notably where the records may identify another person or where disclosure would cause 'serious' mental or physical harm.

If you care for someone who does not have the mental capacity to request their own records, you will need to have legal authority to make a Subject Access Request on their behalf. You can do this if you are an Attorney acting under a Health and Welfare Lasting Power of Attorney, if you are a Court appointed Welfare Deputy or if a property and finance LPA has specific instructions in this regard. You will need to include a copy of the power of attorney or Court Order as proof of your authority to act.

If you are not an attorney, all is not lost. Health and social care information can be shared with you, about a loved one, if the organisation considers it is in that person's best interests to do so. So, for example, a care provider may disclose your wife's care plan to you as part of her review, or a hospital may share information so that you can decide where your Dad should live when he is discharged.

The bigger picture... Health and social care records in the news...

The Care Quality Commission (CQC) will be amending their 'key lines of enquiry' this November. These are specific questions that form the basis of the CQC's inspection. Some questions have been reworded following the CQC's consultation or have been amended so that they are aligned with the questions posed to health services.

There are also some new questions, including one that focuses on record keeping:

"Are people's records accurate, complete, legible, up-to-date, securely stored and available to relevant staff so that they support people to stay safe? - It will be interesting to see how this question is applied by inspectors."

Healthwatch is the independent, national champion for people who use health and social care services. It has published several interesting reports recently about health and social care provision, including a briefing about people's experiences of home care services (Home Care: What people told Healthwatch about their experiences' August 2017) which highlights the importance of an up to date, accurate care plan in delivering person centred care. For more information visit www.healthwatch.co.uk.

Coming from a slightly different perspective, we were also interested to read the Local Government and Social Care Ombudsman report into complaints around mental capacity and deprivation of liberty (DoLS) which was published in July. It reinforces our experience that how professionals gather and record information is vitally important to ensure someone's rights, wishes and feelings are respected. Vague or generalised assessments - in this case Mental Capacity Assessments - are not good enough!



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esmeh@moore-tibbits.co.uk

Continuing healthcare updates

YOU and YOUR assessment:

We can't help but have noticed that an increasing number of Clinical Commissioning Groups are not sending out full information when writing to people about whether they are eligible for NHS continuing healthcare.

Any decision about whether your care will be funded by the NHS is ratified by a panel who rely on the information supplied in the completed assessment, called the Decision Support Tool (DST). This DST includes detailed personal information about your care needs and the Assessor's rationale and recommendation about why you should, or shouldn't receive the funding. Given that the guidance governing continuing healthcare assessments says that the process should be 'person centred' and the individual kept 'fully informed', we are concerned to see many CCG's now writing that the completed DST is 'available on request'.

This approach is contrary to the guidance, and in our view another way of placing you on the outside, rather than at the centre, of the process.



Consent!

We are also concerned about letters sent out recently, by some Clinical Commissioning Groups, advising people that they should apply to the Court of Protection to be appointed a Health and Welfare Deputy if they want to appeal a CHC decision on behalf of a loved one who does not have the mental capacity to appeal for themselves. This is not the case, and defeats the purpose of being able to make a 'best interest' decision under the Mental Capacity Act 2005. If this is an issue you are concerned about, please contact a member of the team for assistance.

Statistics and more statistics...

The most recent published statistics show that the popularity of Lasting Powers of Attorney continues to grow.

There was a 50% increase in the number of registrations between the first half of 2015 and the same period (January - June) in 2017.

There are now over 2 million powers of attorney on the register with the Office of the Public Guardian.



Of these, only 38% are completed by men - is this a reluctance to hand over the reins, or like going to the doctors, something that just keeps getting put off?

Finally, 140,120 of the registered LPA's are for people between 91 - 100 years old and, 1841 for people who are over 100...

LASTING POWERS OF ATTORNEY THE DO'S AND DON'TS

SATURDAY 14 OCTOBER 2017

Join us at our **FREE Seminar** for you and your attorney.

The ideal opportunity to ensure you understand the importance of your roles.

Points to be covered:

- What does being an Attorney mean?
- What are an Attorney's legal obligations?
 - How the Mental Capacity Act 2005 defines your role
- A practical guide to getting started as an attorney
 - Important Do's and Don'ts!
 - Gifting as an Attorney
 - Arranging and paying for care
 - NHS continuing healthcare funding

There will also be time for questions.

Location: Alderson House, 23 High Street, Warwick, CV34 4AX

Date: Saturday 14 October 2017

Time: 1:00pm - 3:00pm

To book your place, please contact:
esmeh@moore-tibbits.co.uk

LIMITED PLACES
BOOK TODAY!

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In other news...

Recent decisions from the Local Government Ombudsman (LGO)

The LGO decision (16002186) against Dudley Metropolitan Borough Council concerned third party top up payments for a care home. Ms A became responsible for paying a top up for her Mother's care, when the only home placement made available to her by the council required one. The decision serves as a reminder that everyone entitled to financial support from their local authority towards care home fees should be given at least one option that doesn't rely on family contributions.

The LGO decision (16002395) regarding Worcestershire County Council highlights the important of care records (among other things). The council was found to be at fault for wrongly classing a mentally incapacitated woman as a self-funder, when her family had no access to her finances. By doing this, responsibility for paying for her care was left to her family, even though they did not have the means to access any money.

The care home subsequently increased its fees from £500 to £1200 per week and backdated the increase, on the basis that she needed one to one care. When the LGO checked the care records there was insufficient evidence that one to one support was actually required or implemented.

Pushing the boundaries (or ticking the wrong box) on a Lasting Power of Attorney? The Court speaks

There have been a number of cases recently where the Office of the Public Guardian has applied to the Court to challenge provisions that individuals have put in their Lasting Powers of Attorney. The judgments provide interesting and thought provoking interpretations of the law, set out in the Mental Capacity Act 2005 that governs Lasting Powers of Attorney. It highlights to us that the law regarding LPA's is still being refined and developed.

What is reassuring in these judgments is the importance that is placed on an individual's wishes and feelings - so, for example, where a ticked box on the form conflicts with an individual's written preferences or instructions, the written intentions prevail. Similarly, the desire to look after other family members is regarded as a legitimate instruction, and following those instructions is not necessarily against an individual's best interests.

At our forthcoming seminar we will be looking at these cases in more detail - in particular the difference between gifts and maintenance to family members and the implications for attorneys.

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