East London NHS
NHS Foundation Trust

Advance Directive for Mental Health Guidelines

1. What is an Advance Directive?

Advance directives are about making/recording views and decisions on health care in preparation for a time in the future when a person may lack the capacity to consent to or refuse treatment.

In mental health, this means that a person's wishes can be taken into account if he/she ever becomes mentally incapable of making informed choices during a crisis.

The significance of advance decision-making is endorsed by the Codes of Practice for both the updated Mental Health Act 1983 and the Mental Capacity Act 2005. NICE guidance on schizophrenia (2006, p.154) and the management of violence in psychiatric inpatient settings (2005, p.108) also indicates the need to consider treatment choices and/or preferences.

In line with these legal/policy developments, East London NHS Foundation Trust has produced an Advance Directive for Mental Health booklet. This allows service users to write down their views and wishes with regard to future care, and to note any treatment refusals. The following guidelines apply to the use of that document.

2. Medical Treatment Advance Directive

The Trust Advance Directive booklet is much like a 'crisis plan'. However, Part One (Medical Treatment) has some legal implications with regard to treatment preference and refusal. These are outlined below.

2.1 Preference

Any person who is able to participate in an informed discussion about treatment can state his/her preferences in advance. Healthcare professionals treating a person who lacks capacity must have regard to such preference(s) and use them to inform the provision of care. For example, if the following statement were noted in an Advance Directive, '*medication X*' should be considered the preferred treatment option, unless it would not be in the person's best interests:

> *"If I become unwell, I would prefer to be treated with medication X as this has worked well for me in the past."*

Treatment preferences can be positive or negative and should be treated as such unless they contain a clear decision to refuse treatment (where 2.2. would apply).

If a decision is taken *not* to follow a treatment preference or wish, reasons for this must be noted. However, only advance decisions to *refuse* treatment are legally binding. Nobody has the right to demand specific treatment(s) either in advance or at the point of care.

2.2 Refusal

It is a general principle of law and clinical practice that people have the right to refuse treatment. It is recognised that adults (aged 18 or over) have the right to say *in advance* that they want to refuse treatment if they lose capacity in future.

Advance directives that state a decision to refuse treatment(s) are (in general) legally binding and must be followed by healthcare professionals.

However, advance decisions to refuse treatment can be overruled if deemed not 'valid' and/or 'applicable' in the current circumstances. This is a complex area of the law; for additional detail refer to Chapter 9 of the *Mental Capacity Act 2005 Code of Practice*.

Advance decisions to refuse treatment for mental disorder may not apply if the person is detained under the Mental Health Act 1983, when treatment could be given compulsorily under Part 4 of the Act. This applies to all advance decisions other than those that refuse the administration of ECT, which cannot be overruled if valid and applicable (see *Mental Health Act 2008 Code of Practice*: p.204).

3. Role of Care Coordinators and other ELFT staff

Care Coordinators (and other staff) are likely to be approached by service users seeking to create an Advance Directive. Helping service users to set out their wishes in advance can be a therapeutic tool, promoting collaboration and trust. However, it is important that good quality information is provided and service users assisted appropriately.

3.1 Awareness

Care Coordinators and other community staff should make best efforts to raise awareness about the Trust Advance Directive booklet. CPA reviews and other client contacts should be used to encourage service users to record their views in advance.

Staff should make service users aware that there are various people from whom they can seek help and advice on Advance Directives, including their Care Coordinator, GP, advocacy services or Citizens Advice Bureau.

3.2 Assistance

Care Coordinators and other members of staff may be asked to assist service users with making an Advance Directive. The process that this should follow is outlined in Appendix 1.

When assisting a service user, staff should explain the implications of the Advance Directive and when it might be enacted. In addition to the formal categories laid out by the document, staff can assist the service user to define any other topics that their Advance Directive might address, for example:

- Medication
- Use of ECT
- De-escalation techniques

Where a treatment refusal is made, staff should highlight that this *may* (in some circumstances) be one of the reasons why a decision is taken to detain the service user under the Mental Health Act.

If a service user makes a decision to *refuse* treatment staff should help him/her to construct a statement in appropriate language such that it is deemed valid. Statements should make explicit what treatment is refused and the circumstances under which this decision applies.

If the Advance Directive contains a decision to refuse medical treatment of mental disorder AND a clinician forms the opinion that the service user lacks capacity to understand the wish they are expressing, they should:

(a) record their opinion, and the reasons for it, in the service user's notes; **and/or**
(b) refer the service user onto a medical practitioner who can make a decision about the capacity of the service user.

3.3 Sharing

When a Trust Advance Directive is complete the Care Coordinator (if exists) or another member of staff needs to ensure that it is made accessible to others clinicians who might be responsible for the service user's care during an acute phase.

The original Advance Directive booklet should remain in the possession of the service user. Copies should be placed in both paper notes and on the RiO electronic system in accordance with the following process:

1. A photocopy of the Advance Directive should be placed in Part 1 (Alerts) of the service user's paper notes. A comment should be added to the 'Alerts' front-sheet highlighting that the Advance Directive has been made and that a copy is held in the file.

2. A copy of the Advance Directive should also be added to RiO. It can either be scanned from the original document or attached directly if an electronic copy is available. Advance Directives should be attached to the service user's Case Record by selecting Clinical Documentation Upload. The title field must be completed as follows: 'dd/mm/yyyy ADIR'. The Document type when attaching must be Consent to treatment. For further advice on uploading Advance Directives to RiO, see: http://elcmhtintranet/Cribsheets.html

3. For service users under the Care Programme Approach (CPA), the location of the Advance Directive should be noted on CPA documentation.

It remains essential that admitting teams are notified where an Advance Directive exists. This is particularly important in areas where the RiO system is not fully operational.

3.4 Maintenance

Care Coordinators/other staff are responsible for checking, on an ongoing basis, whether a service user has made an Advance Directive.

It is extremely important that staff continue to monitor the Advance Directive for any changes or retractions made by the service user.

4. Responsibilities of the admitting team

When an individual arrives at one of our Trust inpatient wards, the admitting team will be responsible for checking whether an Advance Directive has been made and for ensuring that it is followed. The process that this should follow is outlined in Appendix 2.

4.1 Non-medical treatment sections of the Advance Directive

The admitting team is responsible for carrying out all non-medical treatment aspects of the Advance Directive. These elements consist of a 'crisis plan' and link to the CPA.

4.2 Advance directive on medical treatment

Section 2 of these guidelines provides guidance around treatment preference and refusal. Admitting teams should act in accordance with this guidance when enacting an Advance Directive.

Clear reasons must be provided in clinical notes if any Advance Directive outlining treatment refusal is deemed invalid or inapplicable, and where treatment is given under the Mental Health Act.

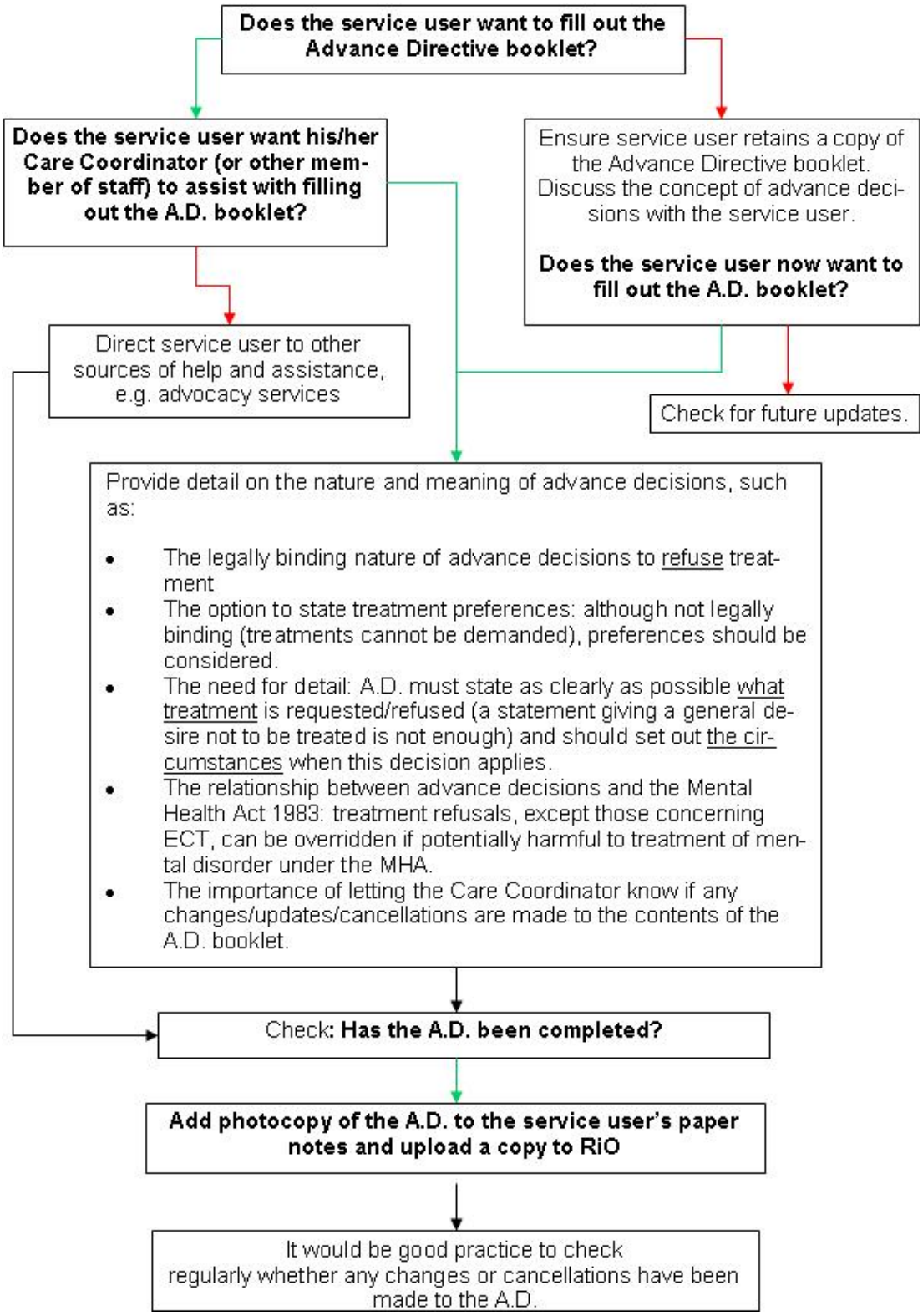
Related material

- Mental Capacity Act 2005
- *Mental Capacity Act 2005 Code of Practice*, TSO, 2007
- Mental Health Act 1983
- *Mental Health Act 1983 Code of Practice*, DH, 2008

- *Schizophrenia: Full national clinical guideline on core interventions in primary and secondary care*, NICE, 2006
- *Violence: the short-term management of disturbed/violent behaviour in psychiatric in-patient settings and emergency departments*, NICE, 2005

Appendix 1

Flowchart for community staff role/responsibilities in the creation of Advance Directives



Appendix 2

Flowchart for admitting team role/responsibilities in relation to service users with Advance Directives