ACTING AS AN AUTHORISED PERSON

Introduction

Local authorities and the NHS have a duty to offer direct payments to all eligible people.

This includes people who lack the mental capacity to consent to them; where there is an ‘Authorised Person’ to receive and manage such payments on their behalf; and where it would be in their best interests to have direct payments.

You may be considering acting as an ‘Authorised Person’ to receive direct payments on behalf of someone who does not have capacity. This factsheet will tell you about what an authorised person does.

Contents

1. Being appointed as an authorised person
2. Your role and responsibilities
3. Keeping safe

1. Being appointed as an authorised person

- you cannot just become an authorised person. Your local social service team or NHS team must follow legislation and guidance on how to appoint an authorised person. Please discuss with your worker or practitioner from your funding authority what the conditions are.
- you must meet all the criteria as set out in the funding authority’s policy and the local council/NHS checklist for appointing an authorised person.
- you will act as the authorised person on behalf of an adult who lacks mental capacity to consent to receive direct payments.
- you must be willing and want to act as an authorised person.
- you can have support to manage the direct payments.

Your council contacts and organisations offering support can be found on:

Sussex
2. Your role and responsibilities are as follows:-

- you must follow good practice in making decisions on behalf of the person who lacks capacity and act in their best interests.
- as the authorised person you are accountable for the way the direct payments are used.
- you should involve the person who lacks capacity as far as reasonably practicable and give them as much control and independence as possible.
- you agree to inform your local council of any changes or difficulties, or as soon as you believe the person has regained capacity.
- you will sign an agreement with your local council relating to the use of the direct payments and you must keep to its terms.
- you agree to use the direct payments to purchase and obtain the services necessary to meet the needs of the person who lacks capacity, as agreed by your funding authority.
- when making these arrangements it may involve legal responsibilities - for example employing staff. If you employ personal assistants, you must ensure you act lawfully as an employer. This information can be found through Independent Lives
- if you use an agency, please ask your adviser for the relevant factsheet for advice on how to use agencies and keep safe.
- if you decide to give up acting as the authorised person, you must contact your local social services/NHS team as soon as you no longer want to carry on in this role.
- if the person you represent has fluctuating capacity, during periods when they regain capacity you must ensure that you involve them as much as practicable in decisions.

You may not use the direct payments to secure services from a spouse, civil partner or partner of the individual. Nor can you use a close relative, spouse or partner of a close relative of the individual who is currently living in the same household without permission from your funding authority.

The authorised person must first speak with the local social services/NHS team and seek agreement in these circumstances. There may be occasions when the council/NHS decides that it is necessary for the authorised person to use direct payments to secure such services; however, such situations are likely to be exceptional and a best interest’s policy may be adopted.
You must open a separate direct payments bank account and provide your funding team with the details on the form given to you.

Whilst the funding authority will not want to discourage you from acting on behalf of an individual who lacks capacity, they must ensure that you are aware that anyone who acts as an authorised person may be guilty of fraud if they dishonestly abuse their position, intend to benefit themselves, or others and cause loss or expose the person to risk or loss.

The Fraud Act 2006 created an offence of ‘abuse of position’. This applies when someone is expected to safeguard the interests of a person but instead acts against their financial interests. Such a person can be found guilty of a criminal offence.

3. Keeping safe

Independent lives strongly advises that Disclosure and Barring Service (DBS) checks are undertaken for anyone employed to provide services for an individual who lacks capacity. There are occasions where it is mandatory to have a DBS check in place such as when support work is being carried out with children.

Some local authorities will request you undertake a DBS check if you wish to be an appointed authorised person and you are not a family member, spouse, or a friend involved in the provision of care (please discuss with social services/NHS for criteria). For example an independent care broker or solicitor not previously known to the person who lacks capacity. You cannot be appointed until the DBS check has been completed.

As the authorised person, you are only responsible for making decisions about direct payments.