All-Wales Policy – Record of agreed Best Interests RBID documents for adults who do not have mental capacity (FCP-RBID)

All Wales Future Care Planning Strategy Group
Palliative and End of Life Care Programme
NHS Wales Performance & Improvement
https://performanceandimprovement.nhs.wales/functions/networks-and-planning/peolc/

Version 3.1 - Agreed by Future Care Planning Strategy Group NHS Wales 2021 following invited multidisciplinary formal legal review – reviewed every 2 years incl. 2023; 2025.

Purpose

The purpose of this policy is to ensure that Future Care Plans for people aged 18 and over, who do not have mental capacity with regard to considering and weighing future treatment escalation decisions, can help facilitate what has been agreed to be in a person's best interests both **effectively** and **safely**. These types of plans have been called RBID -Record of agreed Best Interests Decisions- or FCP-RBID in some regions, and will be referred to in this policy as RBID documents or forms.

Background

When a clinical decision is made on behalf of an adult person who lacks mental capacity, due consideration must be given to all available sources of information which may guide that decision in determining what is in the person's best interests (Mental Capacity Act 2005). In weighing up the available information, consideration will be made as to the provenance of that information. In some situations, a Future Care Plan may be the main or only source of such information, and this policy clarifies the steps the **author** of an RBID form should take, in order to ensure that the **reader/user** can be confident of the provenance. This policy and the associated All Wales RBID Form has undergone a formal, multidisciplinary legal review and agreed by the Advance & Future Care Planning Strategy Group for NHS Wales, and is reviewed every 2 years. The Mental Capacity Forum Wales has kindly been involved in the review processes, and ensured these forms are up-to-date with regard to case law.

Decision or not?

The Mental Capacity Act (MCA) states that a decision or act made or done on someone's behalf needs to be done in that person's **best interests**. The MCA also determines what is required in order to make a decision in someone's best interests. However, it is not entirely clear in law whether the process of writing an FCP-RBID form constitutes "making a decision" on someone's behalf.
This policy is based on the premise that an FCP-RBID document which may in the future become the main source of information on which a healthcare professional makes a best interests decision, should follow the principles of best interests decision-making as defined in the Mental Capacity Act 2005. This will ensure that anyone using the FCP-RBID to formulate a best interests decision will have confidence in the process.

Applying the Mental Capacity Act

Refer to the Code of Practice of the Mental Capacity Act for the latest information.
This policy seeks to clarify the application of the MCA principles in the context of an RBID future care plan.
A 'best interests decision' requires the decision-maker to obtain as much information as is practical in order to support the decision. The more time that is available, and the seriousness of the decision (e.g. is it about life-sustaining treatment) will dictate the level of consultation that is appropriate. In a clinical emergency, a decision may need to be made based on a brief conversation with one relative, and sometimes even that is not possible. In the case of a future

care plan (which will often include decisions about life sustaining treatment), the widest level of consultation is indicated.

Guidance to Authors

- If there is a Lasting Power of Attorney with appropriate authority[1] or Court Appointed Deputy, or Independent Mental Capacity Advocate, they must be consulted. *Note that Court Appointed Deputies do **not** have the power to refuse life sustaining treatments on behalf of an individual.
- If there is a *valid and applicable* Advance Decision to Refuse Treatment, this must be followed and an RBID should align with the treatment refusals of said ADRT.
- Otherwise, the widest level of consultation that is feasible should be undertaken when completing an RBID:
    - The views of ALL close family members, nominated next-of-kin, and significant carers should be considered when discussing a future care plan
    - In particular, where there are a number of siblings or children, efforts should be made to seek the views of all of them.
    - It is not always practical for all to be present or to contribute directly. Conflicting views should be actively sought by asking if any of those involved knows of anyone who may disagree with the decisions under consideration.
    - If there are no family members, close friends or significant carers, an IMCA must be involved.
    - If a medical doctor is not leading the process, then a doctor must be one of those consulted. This will usually be a GP or consultant,but may be a non-consultant with suitable experience e.g. an SAS doctor or senior trainee in care of the elderly or palliative care.
    - If an "urgent" future care plan is required (e.g. anticipating deterioration over the next hours or days), and this wide consultation is not possible, then the RBID form should **not** be used and alternative methods of communicating short term plans should be used. A treatment escalation plan (TEP see e.g. www.wales.nhs.uk/TEP) should be considered and discussed.

    - A mental capacity assessment of the person with regard to their understanding of the specific medical issues being addressed should be made and recorded. All practical steps must be made to support the patient to demonstrate their capacity.

    - It is not appropriate to complete an RBID future care plan if there is a reasonable possibility that mental capacity could improve. If improvement of mental capacity is considered to be a realistic possibility (e.g. daily improvements soon after a stroke), then alternative methods of communicating short term plans should be used.

[1] There are two types of LPA, one for Health & Welfare, and the other for Property and Financial affairs. Only an appointed LPA for Health & Welfare has the authority to act on the patient's behalf when it is clear that the patient lacks capacity to make a decision for themselves.
If the decisions being discussed relate to the giving or refusal of life sustaining treatment, then Section 5 of the LPA form must have been signed.

- When developing an RBID, this should take into consideration any previously expressed verbal or written wishes (including Advance/Future Care Plans) the person may have made.

  - Efforts should be made to enquire specifically if any of those involved in the process are aware of wishes previously expressed by the person
  - An RBID should normally be consistent with previously expressed wishes of the person; if not, the variation and reason should be clearly documented on the form.

•Agreement should be obtained from all those involved in the process that it is in the person's best interests for the document stating the agreed decisions to be shared with healthcare professionals (including on electronic patient records, e.g. Welsh Clinical Portal, Emis etc), and understanding that it may form the basis of important decisions made in the future, unless or until such time that the document is rescinded.

•The RBID should be signed and dated by a senior clinician, together with their GMC/NMC number. If the overseeing clinician is not familiar with the process, they may wish to consult a suitably experienced clinician for support or guidance. A future care plan (FCP-RBID) should normally be consistent with previously expressed wishes of the person; if not, the variation and reason should be clearly documented in the FCP-RBID.

- Agreement should be obtained from all those involved in the process that it is in the person's best interests for the document stating the agreed decisions to be shared with healthcare professionals (including through electronic sources), and understanding that it may form the basis of important decisions made in the future, unless or until such time that the document is rescinded.
- The FCP-RBID should be signed and dated by a senior clinician, together with their GMC/NMC number. If the overseeing clinician is not familiar with the process, they may wish to consult a suitably experienced clinician for support or guidance.

Guidance to Readers / Users

The **reader** or **user** is a healthcare professional who attends a person with an FCP-RBID document.
If a person requires a clinical management decision to be made on their behalf because the person does not have mental capacity:

- A Future Care Plan (FCP-RBID) is only **one** source of information which should be taken into account, when making a best interests decision on behalf of the person.
- The presence of a FCP-RBID should not stop the usual principles of best interests decision-making at the time:
  - If it is practical/feasible, a family member, nominated next-of-kin and/or carer should be consulted.
  - Check the person's mental capacity to make decisions for themselves. Refer to local guidance on assessing and formally documenting decision-specific mental capacity

- Encourage the person to take part in any discussion about the decision being made, even when they may be deemed to lack mental capacity.
- If there is a Lasting Power of Attorney or Court Appointed Deputy, they must be consulted if practical/feasible.
- In the absence of any other available sources of information about what the person's wishes may have been, an RBID document may provide the main source of information to guide making a best interests decision. An RBID document which has been made following this policy (and recorded on an official NHS Wales form) may be used when necessary as the sole basis of a clinical decision.

Fluctuating or Borderline Mental Capacity

If the person's mental capacity:

1. is sufficient to make decisions about some of the issues addressed in the RBID but not others, or
2. fluctuates with time, or
3. cannot be agreed by those involved,

- then the RBID form should **not** be used (see below for Alternatives).

Disagreement about what is in the person's best interests

Sometimes there will be disagreement amongst those consulted as to what is in the person's best interests and what they would have wanted/decided. This may present a useful opportunity to help family members or carers consider the issues carefully and discuss them. However, if disagreement persists about what is in the person's best interests amongst any of those consulted, then the FCP-RBID form should **not** be used (see below for Alternatives).

Alternatives to an FCP-RBID document

There are a number of circumstances when an FCP-RBID document is not recommended because:

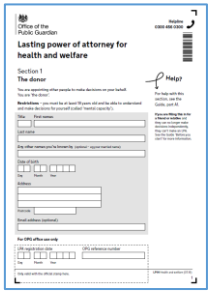
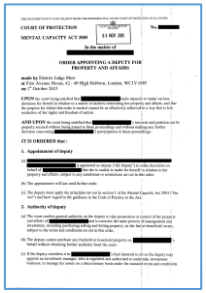
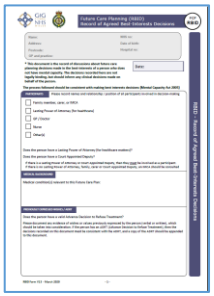
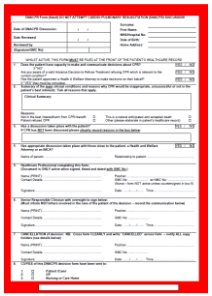
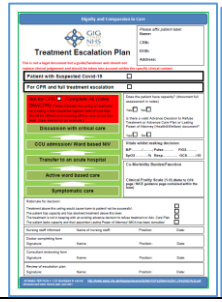
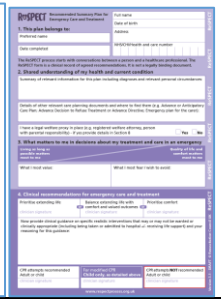
- there is fluctuating or borderline mental capacity
- there is a realistic chance that mental capacity will return
- there is insufficient time to allow wide consultation (including for example, appointing an IMCA)
- disagreement persists about what is in the person's best interests

Alternative methods of communicating information that may be helpful for future decision-making should be used e.g.:

- A Treatment Escalation Plan
- An entry in the patient's usual clinical record
- "Special notes/letters" to the out-of-hours service outlining the situation
- Patient Preferences Form on Welsh Clinical Portal for softer preferences that a patient may have expressed in the past, or that relatives are aware of and know about.

Documentary Evidence Table on Next Page

Documentary evidence used when making a best-interests decision on behalf of a patient who lacks decisional capacity.

<table>
<tr>
<td>Level 1
<u>Must act on</u> - if valid and applicable.
N.B. Any of these can refuse life-sustaining treatment, but none can demand a treatment which is not clinically appropriate.
N.B: Validity and applicability of ADRT forms have been raised in recent case law, where certain ADRTs were deemed not valid due to being filled in incorrectly</td>
<td>ADRT
 
Advance Decision to Refuse Treatment
Criteria to determine validity and applicability are specified in Mental Capacity Act 2005.
Use of the All-Wales form is recommended, but others acceptable.</td>
<td>LPA
 
Lasting Power of Attorney
For Health & Welfare
Needs to be registered by Office of the Public Guardian, and Section 5 signed if for life-sustaining treatments.</td>
<td>CAD
 
Court Appointed Deputy
Evidenced by an official court order from the Court of Protection. The court order details the scope of the deputy's authority.</td>
</tr>
<tr>
<td>Level 2
<u>Can act on</u> as sole basis of decision if required, but should still consult widely whenever possible. Needs to ensure document has been completed accurately, that the duty to consult (with patient, or those close to them/proxy) is fulfilled, and that it is the most up-to-date version.</td>
<td colspan="2">Advance Statement ACP-A
 
Advance Statement
Traditionally this is a type of advance care plan, and in legal terminology is an Advance Statement. This meets the criteria below* and will constitute Level 2 evidence. Otherwise, consider as below for Level 3.
Use All-Wales form from www.wales.nhs.uk/afcp .
RBID
 
Record of Best Interests Future Care Plan, made on behalf of people without decisional capacity
An RBID which is consistent with the All-Wales policy will constitute Level 2 evidence. Otherwise, consider as below for Level 3. Use All-Wales form from www.wales.nhs.uk/afcp</td>
<td>DNACPR form
 
Do Not Attempt Cardio-pulmonary Resuscitation
See All-Wales policy
www.wales.nhs.uk/DNACPR</td>
</tr>
<tr>
<td>Level 3
<u>Should inform</u> decisions.
Need to consider especially:
• The context in which the document was made;
• Is this the most up to date version?
• Have ALL appropriate people been consulted? (if family discussion)
• Is there evidence of how the patient's wishes or best interests were taken into account? (if clinical recommendation)</td>
<td colspan="3">• Any other documented conversations with patient
• Any other documented discussion with family
• Documented clinical recommendations by clinicians
Can include: Advance care plans, statements of wishes, Treatment Escalation Plans (TEP/TEG), ReSPECT forms etc.
 
  </td>
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