NEXT OF KIN AND DECISION-MAKING IN PERINATAL SERVICES

Guidance for Healthcare Providers

This document is intended to provide clarity on the status of the next of kin and the frameworks for decision making for birthing mothers and newborn babies, including in situations where the birthing mother is incapacitated or unavailable. It aims to clarify the role and limitations of next of kin, address legal considerations, and ensure compliance with the relevant legislation.

Key Definitions

1. **Next of Kin (NoK)**: A person identified on medical records as a designated emergency contact. Note that this status carries no specific legal authority for medical decision-making for an adult unless supported by legal documents (e.g. Advance Decision, Lasting Power of Attorney for Health and Welfare, Court order).

2. **Emergency Contact**: A nominated individual recorded for information purposes; again, they cannot make medical decisions for an adult unless legally and explicitly authorized to do so.

3. **Parental Responsibility (PR):** the authority that a parent has in relation to their child and which allows parents to make decisions for their children including consent for medical treatment. The birth mother will always have parental responsibility for her child (unless removed by court order). The father will have parental responsibility if he is married to the mother, if he is named on the birth certificate or if it is granted by formal parental responsibility agreement or court order.

Legal Framework and General Principles

- *Next of kin has no formal legal status*: Merely identifying someone as next of kin in medical records does not confer decision-making rights in healthcare matters concerning an adult patient.

- *Decision-making authority*: When an adult patient is not able to make a particular decision (because of an impairment/disturbance in their mind/brain), and in the absence of any formal delegation of decision-making responsibility, the medical team retains primary responsibility for medical decisions. These must be taken in the patient's best interests under the Mental Capacity Act 2005 (applies to people aged 16 and above) having consulted with partner/family/friends/carers with an interest in the patient's welfare.

- *Parental decision making for children:* Under the Children Act 1989, parents with parental responsibility are authorised to make decisions regarding their child's healthcare, including consent to treatment.

- *Inclusivity and sensitivity*: It is essential to consider diverse family structures, including unmarried partners, LGBTQ+ families, and surrogate pregnancies

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Specific Scenarios

Scenario 1: Married Birthing Mothers

- In relation to decisions about the care of the newborn child:
    - The birth mother has parental responsibility automatically
    - A spouse of the birth mother has parental responsibility automatically for the newborn child, irrespective of biological paternity.
- If decisions are needed as to the care of the mother, and she is not able to make those decisions herself, the medical team will be the decision-maker in her best interests, unless she has formally appointed a decision or decision maker (by way of Advance Decision or Lasting Power of Attorney). The medical team should consult with other relevant parties (e.g. partner, biological relatives or close friends) as time permits to reach a conclusion as to her best interests.
- Safeguarding Note: If there are concerns about spousal conflict or safety of the mother or child, medical professionals should document these concerns and seek legal advice as appropriate. If the child has an assigned social worker there must be clear communication links with the social care team for information sharing as needed.

Scenario 2: Unmarried Birthing Mothers

- In relation to decisions about the care of the newborn child:
    - The birth mother has parental responsibility automatically
    - The mother's partner (if unmarried) does <u>not</u> have parental responsibility
    - The biological father does <u>not</u> have parental responsibility until he is named on the birth certificate or until it is granted by formal parental responsibility agreement or court order
    - If the birth mother is incapacitated and there is no one else with parental responsibility to make decisions as to the care of the child, medical professionals should consider seeking urgent advice about a court order to ensure the child's well-being
    - In the event that the baby requires emergency care to save its life or prevent a serious deterioration, care should proceed in the child's best interests in parallel with seeking urgent advice as above.

- If decisions are needed as to the care of the mother, and she is not able to make those decisions herself, the medical team will be the decision-maker in her best interests, unless she has formally appointed a decision or decision maker (by way of Advance Decision or Lasting Power of Attorney). The team should consult with other relevant parties (e.g., biological relatives or close friends) as time permits to reach a conclusion as to her best interests.

- Safeguarding Note: If there are concerns about spousal conflict or safety of the mother or child, medical professionals should document these concerns and seek legal advice as appropriate. If the child has an assigned social worker there must be clear communication links with the social care team for information sharing as needed.

Scenario 3: Surrogacy Cases

- The birthing mother (and her spouse if she is married) has parental responsibility for the child at birth, even if the child has intended parents who are biological parents through surrogacy or IVF.

- Intended parents may contribute to discussions about the child's care but they lack decision-making authority until there is formal transfer of parental responsibility (e.g. an order of the Court). Their contact details must be recorded to ensure proper communication.

- Medical teams must be cautious to confirm and respect any legal instruments transferring parental responsibility.

Scenario 4: Decisions About Withdrawal of Treatment (Newborn)

- If the prognosis for the newborn is poor and withdrawal of treatment is being considered:

    - The medical team should discuss with the parents the treatment or course which is assessed to be clinically appropriate including the benefits and burdens of each option.

    - Consideration should be given to a second opinion in line with professional guidance.

    - If the mother is unavailable for discussions then it should be considered whether it is possible to postpone the discussions until such time as she is available. This will need to be balanced against the child's condition and best interests.

    - In the absence of anyone with parental responsibility for the child, medical professionals should seek advice about an urgent court order

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Overall Responsibilities and Best Practices

Healthcare teams must:

1. Act in accordance with relevant legislation and professional guidance.

2. Take reasonable steps to engage all relevant parties in relation to decisions about care and treatment.

3. Ensure that discussions remain objective, compassionate, and inclusive of diverse family structures.

4. Document all communication and decision-making processes carefully, including assessments of capacity, the input of others and reasoning behind final decisions.

5. Where disagreements arise among involved parties, escalate to a mediator, safeguarding team, or seek legal advice to resolve disputes promptly without delaying urgent care decisions.

By following this guidance, healthcare providers can ensure that decision-making remains lawful, patient-centred, and holistic while addressing the needs of the birthing mother and newborn in complex situations.