



Oifig an Stiúrthóra Náisiúnta
Folláine, Comhionannas, Aeráide & Sláinte Dhomhanda
Feidhmeannacht na Seirbhíse Sláinte
Seomra 1.51

Urlár 1

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12th August 2025

Richard Boyd Barrett

Dáil Éireann

Leinster House

Dublin 2

E: Richard.boydbarrett@oireachtas.ie / CC: PQuestions@hse.ie

Dear Deputy Boyd Barrett,

Re: PQ 37995/25

Question: To ask the Minister for Children; Disability and Equality if a decision-making representation order is required for a relative of a person in residential services to request a second opinion from a medical professional where there are concerns that the service user is receiving improper medical care, or whether the service provider should facilitate this upon request.

I refer you to the above representation you submitted in relation to decision-making representatives and seeking a second opinion.

I have examined the matter and the following outlines the position.

The Assisted Decision-Making (Capacity) Act 2015 (the 2015 Act), which pertains to decision-making representation orders and other formal supports, only applies when a person is a relevant person under the 2015 Act. That is someone whose decision-making capacity is or will shortly be in question or is lacking. This may be the case for some persons in residential services. Irrespective of where the person resides, the starting position must always be that a relevant person has capacity unless the contrary is shown and all practicable steps have been taken, without success, to help the person to make the decision in question.

When someone does lack decision-making capacity, the guiding principles of the 2015 Act apply. This includes giving “*effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable.*”

The Medical Council Guidelines states the following regarding another opinion:
You should facilitate a patient who requests another opinion unless you have reasonable grounds not to do so.

The Medical Council Guidelines also notes regarding the importance of confidentiality.
People close to a patient, whether family, friends or support persons may, out of concern, request information about the patient. While their concern is understandable, you should not disclose information to them without the patient’s consent.

The HSE National Consent Policy (page 44) states regarding those who lack decision-making capacity, that the views of those with a close ongoing personal relationship with the person should, unless it is not appropriate or practicable to do so, be sought and considered in those situations where it is not possible to ascertain the person’s will and preference.

Even if someone does lack decision-making capacity, as defined in the 2015 Act, a decision-making representation order is not required to request a second opinion.

If the family believes that the medical care that is being given is improper, they should, after seeking the permission of the person concerned if this is possible, discuss this with the clinician concerned in the first instance. Many concerns can be alleviated by such discussion. If concerns remain, they may request a second opinion.

The HSE National Consent Policy notes (Pg 44) regarding those who lack DMC :
“In some circumstances, where no resolution is possible, and the intervention is one with potentially serious consequences, legal advice may be required”.

It may also be beneficial in these circumstances to seek the support of an advocate for the person

If you require any further information or clarification please do contact us.

Yours sincerely,

Caoimhe Gleeson
General Manager
HSE National Office for Human Rights and Equality Policy
Office of the National Director
Wellbeing, Equality, Climate and Global Health