

# Decisional Capacity

## A Guide for Healthcare Professionals

The ability to participate in decisions about one's own medical care is a central right. Unfortunately, residents may lose the ability to make some or all medical decisions due to illness or other complications.

### What is "Decision-Making Capacity?"

Decision-making capacity is a clinical determination. It is a judgment about whether the resident can participate in making a specific medical decision at that time. A resident may lose decisional capacity when ill but regain it once he or she gets better. A resident may have capacity to make some decisions but not others; for example, a resident may be able to decide what to eat for lunch but does not have the capacity to make decisions about his or her medical care.

Decision-making capacity is not the same as "competence." Competence is a legal determination that someone is unable to participate in medical and/or financial decisions. A legal proceeding before a judge is required in order for someone to be declared incompetent to make any health care decisions.

### How do you determine if someone can still make their own medical decisions?

Signs that someone may have impaired decision-capacity include difficulty paying attention, remembering relevant information, reasoning, or problem solving. Physicians are responsible for determining if a resident has the ability to make a specific medical decision. Nurses and other staff can help physicians by sharing observations about a resident to help figure out if the resident is able to participate in medical decisions. The four elements of decisional capacity are:

- Understands relevant information about the decision;
- Expresses insight into how their choices will impact their (short and long-term) health situation;
- Is able to reason rationally and make a decision;
- Makes a stable and consistent choice.

## When do questions about decisional capacity come up?

Contact the resident's physician about a capacity evaluation if you see one or more of the following:

- A recommendation or treatment plan with low risk that would likely result in a good outcome is refused.
- The resident does not demonstrate awareness of safety or consequences to statements and actions.
- The resident has recently had an acute infection/illness, change of condition, or altered mental status.

## How does illness, dementia or cognitive impairment affect decision-making ability?

Permanent or temporary health problems can affect a person's ability to comprehend information and make informed decisions. Some examples of conditions that may impair a residents' decision making ability include: impairments at birth, confusion from various illnesses and infections, side effects of medications, progressive dementias, brain injury from a stroke or accident, or acute mental illness.

## What if the person is hard of hearing, blind, or does not speak English?

It is important to help support residents so that they are able to make their own medical decisions. Some ideas to help support residents include ensuring that the resident has his or her hearing aids and glasses, using written information, drawing pictures, using sign language, showing information on a computer, and using an interpreter when possible.

It is important to ask the person to repeat information back in their own words. Discussions may need to be over several small meetings rather than one lengthy conversation. Other strategies to help maximize resident independence include meeting with the resident at a time of day when they are likely to be well rested and alert.

## What if the resident disagrees or refuses medical care? Can the HCR or family override the decision?

Residents with decision-making capacity have the right to make decisions about their own medical care. These decisions should be honored, even when the choices seem unreasonable to others. The Health Care Representative or family cannot legally overrule the resident unless there is a reason to believe the resident's decision-making capacity is impaired.