Decision-Making Capacity & Informed Consent

INFORMATION
Capacity to Give Informed Consent

- Don’t confuse Capacity & Competence
- Patients have the right to make intentional health care decisions without external, controlling influences.
- If patients do not have capacity, the attending physician can obtain consent from the designated surrogate decision-maker
- Attending physicians are in the best position to determine Capacity for decision-making
- Adults are assumed to be competent
<table>
<thead>
<tr>
<th>Capacity</th>
<th>Competence</th>
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<tbody>
<tr>
<td>• Clinical assessment by <strong>practitioner</strong></td>
<td>• Legal decision made by a <strong>judge</strong></td>
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<td>• <strong>Specific</strong> medical decision at a specific point in time</td>
<td>• Can be broad, global &amp; span a significant period of time</td>
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<td>• <strong>Purpose</strong>: Individual medical treatments, tests, AMA discharge, disposition after discharge</td>
<td>• <strong>Purpose</strong>: Ability to enter into a contract, prepare a will, stand trial, various medical decisions</td>
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<td>• <strong>Probate or LPS conservatorship</strong></td>
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Current Process

- Patient needs to make a non-emergent health care decision(s):
  - Procedure
  - Tests
  - Discharge plan or general care
  - Leaving AMA
- Medical decision-making capacity in question
- Psychiatry referral is requested to determine capacity
- PFS or PAT team coordinates referral
- Often leads to delays in treatment &/or discharge
CURVES: An easier way for Attending Physicians to evaluate medical decision-making Capacity

It begins with a conversation & an algorithm...

- **Choose & Communicate**: Can the patient choose from among the treatment options & communicate that choice?
- **Understand**: Does the patient understand the risks, benefits, alternatives, & consequences of any planned treatment?
- **Reason**: Can the patient reason & provide logical explanations for accepting or declining each intervention?
- **Value**: Is the patient’s decision consistent with their value system?
- **Emergency**: Does an emergent, serious & imminent risk to life or limb exist?
- **Surrogate**: Is there a surrogate decision-maker?
CURVES Algorithm

- Developed by Dr. G. Chow, Johns Hopkins School of Medicine
- Endorsed by our Medical Executive Committee
- Reviewed and approved by Kaweah Delta Health Care District and Medical Staff legal teams
- Endorsed by Kaweah Delta Health Care District Bioethics Committee
ADDENDUM A: Determining Medical Decision-Making Capacity

Would the delay in treatment to obtain consent result in severe disability, death or continuing severe pain?

No
Engage patient in conversation about their condition, treatment options, and risks, benefits, and alternatives

Choose & Communicate
Can the patient choose from among the treatment options presented and communicate that choice?

Yes

Understand:
Does the patient understand the risks, benefits, alternatives & consequences of any planned treatment? No

Yes

Reason:
Is the patient able to reason & provide logical explanations for accepting or declining each intervention? No

Yes

Value:
Is the patient’s decision consistent with their value system? No

Yes
Patient has capacity to make informed decisions regarding medical care.

Record Discussion & Decision in EMR

Yes

Surrogate:
Is there a surrogate decision-maker?

Yes
Consider: 1. Attempt on another day 2. Neuro consult

No
Consider: Rescind consult

Emergency: Does a time emergency exist – is there a crisis & imminent risk to life or limb?

Yes

No

Physician may proceed without informed consent as long as proceeding intervention would be acceptable to a reasonable person.
New & Improved Process

- Patient needs to make a non-emergent health care decision(s):
  - Procedure
  - Tests
  - Discharge plan or general care
- Medical decision-making capacity is in question
- Attending physician utilizes CURVES mnemonic to determine medical decision-making capacity
- May request mentoring by a “Psych Buddy” by consulting the Liaison schedule/contact information in AMiON
- Attending physician documents evaluation utilizing CURVES template in the patient’s medical record
Any physician can determine capacity, not only psychiatrists. In fact, many times the psychiatry team may request that the primary team to be present during the capacity evaluation, as psychiatrists may not be the experts on the risks/benefits/alternatives of certain medical managements or surgical interventions.

Having a psychiatric diagnosis, whether stable or acutely decompensated, does not preclude a patient from having capacity for any decision. For example, a patient who believes aliens have abducted him may still be able to decide if he wants to take a certain medication or not. It would need to be determined if the patient's psychiatric condition is interfering with their decision making capacity in that particular instance.

Capacity needs to be assessed for each individual decision (ex: just because they lack capacity to refuse a lab draw doesn't mean they lack capacity to refuse a certain medication). It is fluid and may even change day to day if conditions change.
Utilize the CURVES model. It guides a conversation with a patient that can help you assess the capacity of the patient. If needed you can request a psychiatrist to guide you through this. Ask your nurse to call PAT to help identify a psychiatrist that can be made available for you.
Once the physician signs their note, the documentation will be in the documentation section which can be filtered to narrow your search. You can choose “All Physician Notes” which will decrease the number of results.


End of Module

Thank you for completing the eLearning Module.