



Resident Capacity and Decision-Making

When questions about a resident's decision-making capacity arise, challenges may follow. This guide offers definitions of legal substitute decision makers, guidance, tips, and additional resources.

What Is "Capacity" and Who Are The Decision Makers?

Resident's capacity refers to a resident's ability to understand and make decisions about themselves and their own care. Adults are presumed to have capacity unless a court has ruled otherwise.

Resident's decision-making ability. The resident's chart should have documentation if there is a legal decision-maker, such as a guardian or power of attorney. That documentation should include the scope of the decision-maker's authority, e.g., regarding finances or health care decisions.

A guardian is appointed by a court to make decisions for someone who's been legally deemed to be incapable of making decisions for themselves. Guardianship might cover personal needs, living arrangements, healthcare, and finances. The court defines the guardian's scope of authority.

A Power of Attorney is a legal document that an individual signs while they're still competent, designating someone to act on their behalf if and when they become incapacitated. A healthcare Power of Attorney covers medical decisions, while a financial Power of Attorney handles money matters.

Individuals can also designate another person to help them make decisions, often a family member or close friend. These individuals may participate in care planning, consent to treatment, and advocate for the resident.

Guidance

- If you are unsure of a resident's decision-making ability, ask staff familiar with the resident. In addition, the "face sheet" of their chart should indicate who has authority to make decisions on the resident's behalf. Documentation of any changes in decision-making authority should be kept up to date in the resident's records and be in writing.
- Family members do not automatically have legal authority over medical or financial decisions. It is fairly common that nursing facility staff will refer to a family member as the "resident's representative;" this is not a legal term – you must focus on the written instruments around legal authority for decision-making for the resident.
- Even if the resident has a person designated as a guardian or power of attorney, they still retain the ability to make some decisions for themselves, and their wishes and preferences should be considered to the greatest extent possible.



Tips

- Capacity can fluctuate – talk to the resident first. If possible, discuss the same topic in two separate conversations at various times.
- It is important to verify the authority of a person saying they are a guardian or agent under power of attorney. Take the time necessary to sort out the capacity issue before any action is taken that could be contrary to the resident's wishes.
- Contact the Long-Term Care Ombudsman if the resident needs an advocate, or to get more information about the residents' rights in a long-term care facility.
- If EMS needs law enforcement to respond to a situation, they can contact their own dispatch by radio or onboard systems, and dispatch will coordinate directly with the police. Some EMS agencies also use direct phone numbers or priority lines to request law enforcement without calling 911.



RESOURCES

American Bar Association Commission on Law and Aging:

americanbar.org/groups/law_aging/resources/capacity_assessment

The American Bar Association:

americanbar.org/groups/law_aging/resources/health_care_decision_making

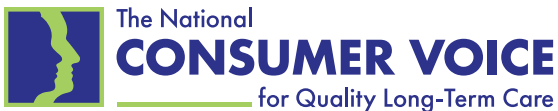
Supported Decision-Making:

supporteddecisions.org/about-supported-decision-making

U.S. Department of Health and Human Services, Administration for Community Living:

acl.gov/programs/legal-help/legal-services-elderly-program

Scan the QR code to watch the accompanying video.



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