

consent and decision making for medical treatment

palliative care and disability

fact sheet series

January 2019

Updated January 2024

southern metropolitan region palliative care consortium

Information for disability services staff working in group homes

overview

Decisions about medical treatment (including things such as x-ray, medication or operations), must be made with the consent of the patient.

- the patient can only consent when they have capacity
- the doctor has to assess capacity
- if the patient can't consent, someone needs to do it for them

assessing decision making capacity

A person has capacity to make a decision if they are able to:

- understand the information about the decision and the consequences of the decision
- remember that information to the extent necessary
- consider that information to make the decision
- communicate their decision views in some way, including by speech, gestures or other means

A person can have decision making capacity for some things and not others. For example, a person could understand what an x-ray does and what the consequences are, but they may not be able to understand chemotherapy and its side effects.

Also, the capacity to consent can change over time and with the illness. For example, if a person has a low fever they may be able to make decisions, but if they have a very high fever their decision making may be impaired.

Health Practitioners will usually assume that the person has decision making capacity unless they have information that this is not the case. You will usually know your residents better than the Health Practitioner. If you have the feeling that the resident does or does not have capacity to make a certain decision, it is important to let the Health Practitioner know.

making a decision with support

Sometimes people need support to make a medical decision. For example, using information or tools tailored to the needs of a person; helping a person to communicate the decision; giving a person more time and discussing the matter with the person, etc.

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when a person is unable to make a medical decision

If a person does not have decision-making capacity to make a medical treatment decision, the *Medical Treatment Planning and Decisions Act 2016* sets out the process for health practitioners.

The usual process is outlined below:

- Does the patient have an instructional directive or a refusal of treatment certificate?
- Has the patient appointed a medical treatment decision maker?
- Is there a person who could make the decision for the patient (i.e. parents, other family members)?

When the patient does not have decision-making capacity to consent and there is no relevant instructional directive or medical treatment decision maker, the Public Advocate has authority to consent to significant treatment.

resources

- [Office of the Public Advocate Victoria: Can your adult patient consent? – flowchart](#)
- [Office of the Public Advocate Victoria: Patient capacity to consent](#)
- [Department of Health: Medical Treatment Planning and Decision Act 2016](#)

 [smrpcc website](#)