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| Date Adopted | 12/95 | Section | 1100 Guidelines |
| Date Revised | | Subject | 1101 Informed Consent Guidelines |
| Rule Referenced | 5123:2-17-03 | | |

1101 Informed Consent Guidelines

With respect to the client's decision making abilities, the following guidelines have been put into action.

General Principles

Generally, three elements must be present to establish competency to provide legal consent:

1. Knowledge of the important aspects of a decision and its risks and benefits.
2. Voluntariness, meaning that the person is not subjected to coercion and understands that there is a choice, and he or she has the ability to say "yes" or "no" to it.
3. Capacity, reason or understanding which shows that the knowledge is comprehended and/or it is applied in a manner consistent with a person's values or beliefs.

Another way of saying this is that informed consent involves that disclosure of sufficient information to the person whose consent is sought, so that such a decision can be based upon knowledge of the material risks, discomforts and benefits of the proposed procedure; the relevant details regarding the procedure to which the individual might attach significance, where it is determined by its importance to the individual; and the alternatives and risks involved is the procedure not accomplished.

Procedure

The procedure staff will follow in this regard will be:

1. Assure that the person has the knowledge required in a way that can be understood.
2. Assure that the person has the voluntariness to make a free choice.
3. Assure that the person has the capacity to process the information and make a choice that is consistent with the person's wishes and needs.

A person who has the capacity can make a legally effective and binding decision even though it may be based in irrational conclusions. A person who has capacity is entitled to reach a consent

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decision in the basis of whatever reasons are important to that person, providing the individual is capable of understanding and appreciating the nature and implications of such a decision.

Common criteria in which capacity is judged include:

1. Can the individual verbally or nonverbally communicate a preferred choice?
2. Can the individual make a reasonable decision (i.e. the type of decision a reasonable person would make in similar situations)?
3. Is the decision based upon reasons that are rational to the individual?
4. Does the person have the ability to understand the elements of informed consent (e.g. risks, benefits, alternatives) to the decision?

Assessment: To assure that the above criteria are met, staff will interview the person and ask these questions, documenting all responses. A set of standard questions will be developed, along with specific questions and psychiatric and psychological evaluations and consultations when deemed necessary by the team (see flow chart). The developed assessment will be a tool used when the team is unclear as to whether consent and capacity is present.

Further Information

Definitions

Consent Means an individual's agreement to allow a proposed action, treatment or service to happen after a full disclosure of facts and options needed to make the decision. A full disclosure of facts shall be communicated to the individual in a manner the individual can understand. "Full Disclosure" means providing all information about the purpose of the proposed action, treatment or service and the possible outcomes and consequences of agreeing to or not agreeing to the proposed action, treatment or service. Elements of consent are capacity, information and voluntariness.

Capacity Is the present ability to acquire or retain knowledge and to make and communicate decisions governing an individual's life when the individual

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us presented with adequate information about the range of options, their consequences and ramifications.

Information (Knowledge) Is a full disclosure of facts which includes, but is not limited to, a description of the situation or problem, proposed action, risks involved, alternatives, benefits and the right to refuse or withdraw the consent at any time. Information shall be presented in a manner most likely understood by the individual. The presentation of information can be but is not limited to written, verbal, pictorial, symbols, primary language spoken and understood.

Voluntariness The freedom to exercise the free power of choice in making a decision without any element of force, fraud, duress, threat or other undue influence.

Interdisciplinary Team Which is chaired by the individual, will include, but is certainly not limited to, parent, guardian, staff members, case managers or equivalent, friends, workshop or employment service representatives, and any other important people in his/her life. The minimum required standard team will consist of the individual, staff members, and case manager or equivalent.