

C-HEAL Info Sheet: Capacity Assessments and Consents

What is capacity and how do we know if it should be assessed? A person's capacity determines the rights of the individual to make their own choices (where they live, what medications to take, what they do with their money).

Red flags that suggest capacity should be assessed: Confused & irrational thinking • Fluctuating wishes & alertness • A person is presumed capable until proven otherwise.

Capacity assessments relate to situations in which individuals cannot understand the information needed in order to provide *informed consent*.

A fundamental principle of health care in Ontario is that treatment shall not be provided to an individual without the provision of informed consent. Information must be shared with an individual for there to be informed consent – this includes:

- The nature of the treatment
- Expected benefits of the treatment
- Material risks and side effects of the treatment
- Alternative courses of action
- Likely consequences of not having the treatment

To demonstrate that a person has the ability to provide “informed consent” to a treatment, the person must have received *the same information about a treatment that a reasonable person in the same circumstances would require to make a decision*. And the person has received responses to his/her requests for additional information about the treatment.

The Test for Capacity The test for capacity is set out in subsection 4(1) of the Health Care Consent Act. There is a presumption of capacity with respect to treatment - absent “reasonable grounds”, a health care practitioner can assume that a person is capable. Based on the statute, an evaluation of capacity involves a “two-part test” with consideration of the following: That a **capable person** is

- Able to understand the information relevant to making a decision about the proposed treatment **and**
- Able to appreciate the reasonably foreseeable consequences of their decision. A person may be found incapable if he or she does not meet one part of the test, or both.

Decisions relating to assessing capacity are dictated by legislation, including: The Health Care Consent Act, The Mental Health Act, The Personal Health Information Protection Act, The Substitute Decisions Act, Part XX.I of the Criminal Code of Canada.

What happens when a person is deemed “incapable”? When a person is found to be incapable, the health care provider proposing treatment will look to their Substitute Decision Maker (SDM) to make decisions on their behalf. There is a specific hierarchy for determining who may give consent/be the SDM on behalf of an incapable person.

What happens if a person is assessed as being incapable and disagrees?

- If the assessed person is a patient in *an inpatient mental health unit*, they will be given the option of having a formal hearing in the hospital with the Consent and Capacity Board (CCB). The CCB is an independent body that holds hearings to consider a variety of things, *including an individual's capacity to make decisions about health treatment, finances, or admission to a long-term care facility*.

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- If the assessed person *is outside of the hospital*, they may ask the Consent and Capacity Board to review the finding. Information about the review process can be obtained from the Consent and Capacity Board at 1-866- 777-7391.

Financial Capacity assessments are undertaken in order to provide a formal, independent assessment of an individual's capacity to make financial decisions. An assessment is generally requested when there are serious concerns about the person's ability to manage their funds. The assessor will:

- Try to determine whether the person's understanding of the issues is *factually correct*.
- Find out whether they can accurately *identify their income, assets, debts and other financial involvements*.
- Will help the person being assessed by giving them relevant information and testing how much the person *can retain, interpret and use that information*.
- The person's responses are then analyzed to see whether they demonstrate an understanding of the information.

Making poor decisions (i.e. deciding to spend funds on drugs, giving money away to other people) is not a ground for being deemed financially incapable.

According to the Mental Health Act, all patients in an in-patient psychiatric facility must be examined by their attending physician regarding their abilities to manage their finances.

Who completes Financial Capacity assessments? A Capacity Assessor: Someone who is trained and qualified to determine if an individual is mentally incapable of making certain types of decisions, as per the Substitute Decisions Act. Specific health care professionals are eligible to become capacity assessors following a registration process.

	Capacity to make <i>psychiatric treatment decisions</i>	Capacity to make <i>financial decisions</i>
What the assessment covers	Individual's ability to provide <i>informed consent</i> – requires ability to understand information and appreciate consequences of decisions	Whether an individual can accurately identify their income, assets, debts and other financial involvements
Who can administer the assessment	Treating psychiatrist of the patient	<ul style="list-style-type: none"> • Capacity Assessor • Attending MD in-patient psychiatric unit
Process for obtaining assessment	Treating psychiatrist assesses patient and makes decision	<ul style="list-style-type: none"> • Designated Capacity Assessor • Attending MD in-patient psychiatric unit