

Practice Guidelines
for
Determining
Incapability to Consent to Health Care
and
Need for Financial Protection

Under the
Care Consent Act

Yukon Health and Social Services
May, 2005

Practice Guidelines for Determining

- Incapability to Consent to Health Care; and
 - Need for Financial Protection

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Practice Guidelines for Determining Incapability to Consent to Health Care and Need for Financial Protection

1. Purpose of the Practice Guidelines

Prior to consent being obtained for any health care service, it is assumed that the health care provider has considered the **least intrusive, most effective** type of care. Once the health care provider has assessed the individual to determine the most appropriate type(s) of health care that can be offered, the health care provider must obtain a valid consent before providing the health care. A critical part of obtaining a valid consent is determining whether a person is **mentally capable to consent**.

These guidelines describe the process of determining whether:

1. A person is incapable of making a health care decision; and/or
2. A person is in need of financial protection.

The guidelines elaborate on the basic framework for determining incapability found in the **Care Consent Act** (Yukon). They reflect best practices for obtaining a valid consent and assessing incapability.

Health care providers are not “required” to follow these guidelines, but they may wish to do so to reduce potential liability. In addition, the decision of a health care provider that a person is not capable of making their own health care decision can be challenged. Anyone can apply to the **Capability and Consent Board** to have the decision reviewed. If a matter is referred to the Board, health care providers will be called upon to explain their determination of incapability.

Adults (19 years and older) are **presumed capable** until the contrary is demonstrated. Therefore, it is not necessary to do an assessment of a adult’s capability to consent to health care in most situations. However, where there is a known risk factor for impaired decision-making (see page 9), a more careful assessment should be undertaken. In these instances, these guidelines and the worksheets may prove to be useful to health care providers.

Note that consent can be obtained for a course of health care or a health care plan.

Along with these guidelines, worksheets have been developed to assist health care providers in carrying out the assessments. These can be

found as **Attachments A and B**. The worksheets include a quick checklist and sample questions.

Additional information has also been provided at the end of these guidelines. **Attachment C** outlines factors that affect decision-making and ways to enhance communication with people who may have difficulty communicating.

Attachment D is a sheet that can be given to individuals to inform them of their right to have a decision regarding their incapability to consent to health care reviewed by the Capability and Consent Board.

These Guidelines and forms are also available on the Health and Social Services website, www.hss.gov.yk.ca. Information and forms for the Capability and Consent Board can be found at www.yukoncapabilityandconsentboard.ca.

2. Who Will Use the Guidelines

These guidelines are intended to be used by **health care providers** in two instances:

1. In obtaining a valid consent to a proposed treatment or health care; and/or
2. In assessing whether to issue a certificate of need for financial protection.

Under the *Care Consent Act* the following professions are defined as **health care providers**:

- Medical practitioners
- Registered nurses
- Licensed practical nurses
- Chiropractors
- Optometrists
- Physiotherapists
- Psychologists
- Occupational Therapists
- Speech Language Pathologists
- Audiologists or Hearing Instrument Practitioners
- Dieticians and Nutritionists
- Dentists
- Dental Therapists
- Dental Hygienists
- Denture Technicians
- Medical Imaging Technologists

- Medical laboratory Technologists

The Act defines **health care** as:

Anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic, or other health-related purpose, and includes a course of health care (e.g. a series of dialysis treatments).

3. Application of Guidelines

These guidelines fall out of the *Care Consent Act*, which deals with consent for health care and other care decisions. Separate guidelines have been developed by the Department of Justice to guide the assessment of incapability for the purposes of an adult **guardianship** application to the Yukon Supreme Court under the *Adult Protection and Decision-Making Act*. Guardianship is appropriate when a person needs someone to make decisions for them in whole areas of their life (e.g. health care, personal care, financial) for some period of time.

Under the *Care Consent Act*, a person **of any age** can consent to their own care as long as they are capable of making that decision. These guidelines, therefore, apply to the assessment of minors and adults facing a health care decision.

The *Care Consent Act*, and therefore these guidelines, **DO NOT** apply to:

- the psychiatric assessment, care and treatment of an individual permitted under the *Mental Health Act*, sections 5-18 (i.e. involuntary assessment, examination and admission to a hospital but not ongoing treatment)
- the provision of treatment under the *Public Health and Safety Act* (e.g. for control of communicable diseases).
- treatment and transportation being provided by emergency medical services (i.e. ambulance attendants).
- organ tissues and transplants – these are governed by the *Human Tissue Gift Act*.

An **assessment of incapability to consent to health care is NOT required** when a legal guardian has been appointed by the Yukon Supreme Court to make all personal decisions or health care decisions for the adult.

4. Guiding Principles

The following principles guide the process of determining incapability:

- All adults (19 years and older) are presumed capable of making their own health care decisions until the contrary is demonstrated. The assessment focuses on whether a person is incapable of making a particular decision, not whether a person is capable. Children are not presumed to be capable, so a more careful assessment of capability to consent is required.
- The process is concerned solely with determining whether a person is incapable of making a specific health care decision – it is not a global assessment.
- A capable person has the right to give, refuse or revoke consent to health care on any grounds, including moral or religious grounds.
- A person's way of communicating with others is not grounds for deciding that they are incapable of making a decision.
- Health care providers have a duty to communicate with the person in a manner appropriate to the person's skills and abilities.
- Incapability is dependent on the complexity of the decision to be made and the person's decision-making abilities. A person can be capable of making some decisions (e.g. consent to have an X-ray) and not capable of making other decisions (e.g. consent to heart surgery).
- The process should recognize and employ ways to enhance decisional capacity (e.g. for people who have fluctuating lucidity or for people who require support to understand information). Factors that can diminish decisional capacity include environmental factors, medication effects, psychological disorders, sensory deficits and physiological dysfunction. (**See Attachment C for more detail.**)
- The process must consider and respect the values, beliefs, wishes and cultural norms and traditions of the person.
- Assessing incapability requires a judgement. Health care providers need to be sensitive to the influence their own values and beliefs can have on their judgement.

5. Elements of Consent

The health care provider proposing the health care is responsible for obtaining a valid consent to the specific health care treatment before it is provided. There are some exceptions to this rule. **Consent is NOT required for:**

- a) **emergency health care** if it is necessary to provide the health care without delay in order to preserve the person's life, to prevent imminent serious physical or mental harm, or to alleviate severe pain and the patient can not give a consent and there is no substitute decision-maker readily available.
- b) **preliminary examination or triage** if the patient or in the absence of any indication from the patient, a relative or friend of the patient indicates that they want the examination.
- c) **health care in progress** if the patient is unconscious or semi-conscious and it is medically necessary to provide the additional or alternative health care to deal with conditions not foreseen when consent was given.

A **valid consent** must meet the following test:

- i) The consent must relate to the proposed care.
- ii) The consent must be given voluntarily.
- iii) The consent must not be obtained by fraud or misrepresentation.
- iv) The person must be capable of making a decision about whether to give or refuse consent to the proposed care.
- v) The person must be given the information a reasonable person would require to understand the proposed care and to make a decision, including information about:
 - The reasons why the care is proposed;
 - The nature of the proposed care;
 - The risks and benefits of receiving and not receiving the proposed care that a reasonable person would expect to be told about, and
 - Alternative courses of care.
- vi) The person must have an opportunity to ask questions and receive answers about the proposed care and the alternatives.

Consent can be **implied** in some situations. For example, if a person sticks out their arm for an injection, consent can be implied. Or if a person makes a doctor's appointment, consent to an examination can be implied. However, once a recommendation for treatment is made, a separate

consent should be obtained for any specific health care provided. Consent can be obtained for a health care plan or course of treatment.

6. The Legal Test of Incapability

The *Care Consent Act* sets out the test for incapability. The health care provider proposing the care is responsible for assessing whether a person is incapable to give, refuse or revoke consent to health care.

The determination of whether a person is incapable to consent to health care is a **legal** assessment (i.e. whether the person has the legal right to make their own decision). This is different than a **clinical** assessment where the health care provider is assessing the health needs and treatment options. However, health care providers use their **clinical skills** (e.g. interviewing techniques) in the legal assessment of whether a person is incapable to consent.

The Act requires that the health care provider base the **determination of incapability on whether or not the person demonstrates that he or she understands:**

- the information given by the health care provider about both the person's health condition and the proposed treatment (see section 5. (v) above); and
- that the information given applies to the person's situation.

In other words, does the person **understand and appreciate** the consequences of their decision?

7. Assessing Incapability to Consent to Health Care

Health care providers assume that an adult is capable of giving, refusing or revoking consent to health care unless they see evidence to the contrary. Children are not assumed to be capable, so a more careful assessment of their capacity to consent is required.

Health care providers should be aware of factors that can affect a person's decision-making ability and take steps to enhance decisional capacity. A listing of some of these factors and ways to enhance communication is included as **Attachment C** to these guidelines.

Before Assessing Incapability

- Identify and address any barriers to communication (e.g. hearing or visual impairment, language barrier, environment, etc.).
- Be aware that the backgrounds of both the person and the health care provider (e.g. language, culture, familiarity) will affect how information is given and understood.
- Be aware of **scenarios which should trigger a more careful assessment** of capability to consent. These threats to decision-making include:
 - An abrupt change in mental status that could be caused by hypoxia, infection, medication, metabolic disturbances, an acute neurologic or psychiatric process, or other medical problem
 - Refusal of treatment and not willing to discuss the reasons or when the reasons for the refusal are not clear or when the refusal is based on misinformation or irrational beliefs
 - Consent to treatment too hastily, especially risky or invasive treatment, without careful consideration of the risks and benefits
 - Known risk factor for impaired decision-making, such as
 - a chronic neurologic or psychiatric condition,
 - a significant cultural or language barrier,
 - an education level concern,
 - an acknowledged fear or discomfort with institutional health care settings,
 - unmanaged pain,
 - anxiety, or
 - who are at an age at either end of the age spectrum (people younger than 19 years or adults older than 85 years).
- Given the threats to decision-making present for the individual, think about how you will focus the assessment, for example:
 - if the individual suffers from memory loss or has a cognitive disability, their ability to “understand” information may be impaired
 - if the person is delusional or depressive their ability to realistically appraise the consequences of their choices may be impaired.
- Enlist the help of others (e.g. a family member or a translator) to assist the person to understand and communicate, where appropriate. A support person can clarify questions and information as necessary, but is not there to answer for the person or to act as the person’s substitute decision-maker.

- Explain the purpose of the conversation (i.e. to obtain consent) to the individual. If there is reason to doubt the person's capability to make the health care decision, explain the purpose of the incapability assessment and consequences of a finding of incapability (i.e. appointment of a substitute decision-maker to give or refuse consent).

Refusal to Participate

If a person refuses to participate in the assessment, they should be informed that the assessment will proceed based on input from other sources and observations only. Encourage the person to participate at any stage while the assessment is underway.

Determining Understanding

The health care provider can offer the information about the person's health condition and the proposed health care in one of two ways:

1. Each piece of information is given to the person separately. Immediately following each piece of information, the health care provider discusses it with the person to determine whether the person understands what has been said.

OR

2. All the information is given at once. The health care provider discusses all the information with the person, again to determine whether the person understands.

Health care providers should present information about all the options in a neutral fashion. It is particularly important when presenting information about consequences, that a person does not feel threatened or coerced into a decision.

Here are some **sample questions** for health care providers to use in determining whether a person demonstrates that they **understand and appreciate** the consequences of the health care decision. These questions can also be found in **Worksheet #1 (Attachment A)** as a quick reference tool for health care providers.

1. Determining understanding of health problem, and proposed options for care:

- What is your understanding of your condition?
- What is the treatment for your condition?
- What other options do you have? What would happen if you did nothing?

- What is your understanding of the **benefits** of the proposed treatment? What are the odds that the treatment will work for you?
- What are the **risks** of the proposed treatment? Can the proposed treatment cause problems or side effects?
- What are the benefits and risks of alternative options?

If a person is not able to understand the information and options (e.g. insufficient memory to remember information long enough to analyze choices) then **there is no need to go on with the rest of the assessment**. Incapability to consent to health care can be determined solely on the inability to understand the information presented. However, if a person does not understand the information because of a lack of knowledge (e.g. the person has no knowledge of how the body functions), the information should be provided and the person given a chance to demonstrate that they understand the information.

2. Determining whether the person appreciates how the information applies to their own situation:

- Tell me what you really believe about your health condition.
- Why do you think your doctor has recommended the proposed treatment for you?
- Do you think that the proposed treatment is the best treatment for you? Why or why not?
- What do you think will actually happen to you if you accept this treatment? If you don't accept it?

3. Determining the ability to reason with information in a manner that is supported by the facts and the person's own values:

- What factors/issues are most important to you in deciding about your treatment? What are you thinking about as you consider your decision?
- How are you balancing the pluses and minuses of the options?
- What do you think will happen to you now?

When deciding whether a person is incapable of making the health care decision, the health care provider must keep in mind that:

- The person's choice does not have to be what the health care provider would consider "reasonable". The person's choice must be "**reasoned**" meaning that it is consistent with the person's own belief system, and has some logical consistency grounded in the person's own values and beliefs. For example, refusal of a blood transfusion on religious grounds may seem irrational to a health care provider, but may be a reasoned choice for the person holding the religious beliefs.

- The presence of a mental illness, intellectual disability, physical illness, cognitive impairment or speech or language impairment does not mean that a person is incapable of making the decision.
- A person of **any age** can be capable of making a health care decision.
- A person has the right to **voluntarily incur risk** if he or she understands the consequences of making a decision not to receive the health care.
- The issue of incapability is focused only on the health care decision that has to be made at the time.
- A determination of incapability must be done for **each specific health care decision** regardless of any previous determination of incapability or the person's ability to make other types of health care decisions (except for adults for whom a guardianship order is in effect). Consent, however, can be given for a **health care plan or a course of health care**, for example a course of chemotherapy. If consent is given for a course of health care, the health care provider should reassess the person's capability to consent when clinically indicated. Generally, if the person regains mental capacity during the course of health care, a reassessment should be undertaken to determine if the individual can make their own health care decision.

If the health care provider is unable to reach a justifiable determination of incapability, continue to **assume decisional capability** for those people 19 years of age and older, and consider calling in a consultant (i.e. another health care provider) to assist with the determination.

8. Documentation and Notification

In cases where an adult is presumed to be capable and there is no reason to question this presumption, documentation of the assessment or presumption is not necessary.

In situations where the assessment of incapability to consent is straightforward, the determination of the health care provider should be documented as set out in the policies and procedures of the agency or profession (e.g. noted in the person's health record).

In situations where the assessment of incapability to consent is more complex, the health care provider should document all stages of the process including:

- Information provided to the person
- Any problems encountered in communicating with the person
- Steps taken to overcome communication problems

- The person’s expressed understanding of the information and that the information pertains to the person
- Determination of incapability and reasons for judgement.

Ensure that the process and results of the assessment are well documented with factual details of what the person said or did in response to certain questions. This is particularly important for a finding of incapability because the individual or any other person can apply to have the finding of incapability reviewed by the **Capability and Consent Board**.

Worksheets can be kept (e.g. on the person’s health record or in the health care provider’s files) as further substantiation of the assessment. However, it is not necessary to use the worksheets – they are simply a tool to assist the health care provider.

The health care provider should tell the individual and any support person who is accompanying the individual the result of the assessment of incapability. This may include explaining the reasons for the determination and answering the person’s questions.

Health care providers are not legally obligated to tell people that they have the right to have the determination of incapability reviewed by the Capability and Consent Board. However, the person should be advised of this right unless there are reasons for not sharing this information with the person (e.g. insufficient comprehension skills). If the information is not provided to the person, provide it instead to a family member or friend. (See the handout on “Rights” found in Attachment D).

A person found to be incapable of a health care decision may also need someone to **protect and/or manage their finances**. For example, a person in a motor vehicle accident who is unconscious may need someone to pay their bills in the short-term. In this case, the health care provider may want to assess the need and issue a certificate for financial protection. More information on this is presented in section 10 below. Note that a substitute decision-maker chosen by a health care provider to make a health care decision does not have any legal authority to make financial decisions for the individual.

9. Substitute Consent for an Incapable Person

If the person is incapable of making the health care decision, a health care provider should choose a substitute decision-maker to make the decision.

The substitute decision-maker should be chosen from the following list in **ranked order**:

1. **Guardian** of the person if they have authority to give or refuse consent to the care (the child's legal guardian or a court-appointed guardian for an incapable adult)
2. **Proxy** authorized by the patient's Advance Directive¹
3. **Spouse** of the person (including common-law and same-sex couples who have lived together for 12 months continuously)
4. **Child** of the person
5. **Parent** of the person
6. **Grandparent** of the person
7. **Brother or sister** of the person
8. **Any other relative** of the person
9. **Close friend**² of the person
10. **Last resort decision-maker**: two health care providers can give substitute consent to provide basic treatment. Three health care providers are required to give substitute consent to major health care³.

The process of obtaining a valid consent from a substitute decision-maker is the same as outlined previously – they must also be capable of consenting to the health care treatment. In addition, substitute decision-makers must be:

- 19 years of age or older unless they are the spouse of the patient
- willing and able to act as a substitute decision-maker
- available
- been in contact with the patient in the past 12 months
- willing to comply with the **duties of a substitute decision-maker**:
 - follow the wishes of the person made while still capable and after obtaining the age of 16 (unless the wish is impossible to comply with or if the substitute decision-maker believes that the

¹ **Advance Directives** are recognized in the *Care Consent Act*. A person 16 years or older can make a directive appointing a proxy (substitute decision-maker) for care decisions if they are capable of understanding the nature and effect of the directive. A directive may also contain the person's wishes or instructions about their health care. A directive takes effect when the care provider assesses that a person is not capable of making their own care decision.

² A **close friend** is an adult who maintains a long-term close personal relationship through frequent personal contact and a personal interest in the person's welfare. A close friend does not include a person who receives pay for providing care or other services to the adult.

³ Note that all decisions for major health care (and admission to a care facility) by last resort substitute decision-makers are automatically reviewed by the **Capability and Consent Board**. If the Board is satisfied with a paper review, a hearing will not be held.

person would no longer want to comply with the wish because of changes in care or medical technology);

- if the person's wishes are not known, make a decision based on the person's values and beliefs;
- if the person's values and beliefs are not known, make a decision in the best interests of the person.

(Note that if a substitute decision-maker does not comply with these duties, their decision can be reviewed by the Capability and Consent Board upon request.)

A health care provider is only required to make a reasonable effort given the circumstances to search for a substitute decision-maker. A health care provider can rely on the information they are given to determine if someone is eligible to be a substitute decision-maker. In other words, a health care provider does not have to check the information given to them to make sure it is correct.

Note that a substitute decision-maker chosen from the list above **cannot make financial decisions** for the individual. If a person needs someone to manage their financial affairs for them because they are incapable of making their own financial decisions, there are four options:

- **Informal measures** (e.g. family takes care of the financial issues while the person is incapable of managing);
- **Enduring Power of Attorney** made while the adult was still capable, comes into effect once the person becomes incapable of managing their financial affairs;
- A **financial guardian** is appointed through an order of the Yukon Supreme Court (temporary order or longer-term order); or
- A **Certificate of Need for Financial Protection** is completed by a health care provider and sent to the Public Guardian and Trustee to manage the person's financial affairs for up to 60 days. (See section below.)

10. Determining Need for Short-term Financial Protection

Under the *Care Consent Act*, if a person is found to be incapable of making a care decision and is incapable of making reasonable decisions regarding their financial affairs, a health care provider can issue a **Certificate of Need for Financial Protection**. The certificate is then sent over to the Public Guardian and Trustee who will manage the person's financial affairs for up to **60 days**.

The *Care Consent Act* says that a health care provider must **believe on reasonable grounds that, because of a health condition, the individual is incapable of making reasonable judgements or decisions regarding their financial affairs**.

“Reasonable judgements” are determined by assessing whether a person's choices are “reasoned”, meaning that they are consistent with the person's own belief system, and have some logical consistency grounded in the person's own values and beliefs.

This certificate is not meant to be used by people with developmental disabilities that are not due to a health condition. For people who were born with an intellectual disability, another tool that provides more long-term assistance (i.e. guardianship) may be more appropriate.

A health care provider (listed on page 4) must assess the person and sign the *Certificate of Need for Financial Protection*. This will most likely fall to physicians to complete. However, in the clinical setting, it is most likely that the **social worker** will gather the information about the person's financial situation ahead of time to assist in the health care provider's assessment.

Does the person need a Certificate of Need for Financial Protection?

- Determine what financial decisions have to be made in the short-term (e.g. next 60 days). Is there a need to have these decisions made or can it be delayed?
- Find out whether the individual has a court-appointed guardian with the authority to make financial decisions for the individual. If so, they do not need a *Certificate of Need for Financial Protection*.
- Find out if the individual has an Enduring Power of Attorney that names someone to make financial decisions. If so, then take steps to activate the Enduring Power of Attorney.
- If the person has no guardian or has not prepared an Enduring Power of Attorney, consider if the financial decisions could be resolved in a less intrusive way than issuing a *Certificate of Need for Financial Protection*. Are there informal measures that could be

put in place by friends and/or family to solve the financial problems in the short-term? (e.g. pay the bills while the person is incapable)

If a Certificate of Need for Financial Protection is needed, adapt and follow the general guidelines for assessing incapability to make a health care decision outlined in Section 7 of these guidelines.

Assessing Incapability re Financial Affairs

Here are some sample questions for health care providers to use in assessing whether a person is incapable of making reasonable judgments or decisions regarding their financial affairs. These questions can also be found in **Worksheet #2 (Attachment B)** as a quick reference tool for health care providers.

1. Identify the health care (or care) decision the individual was found to be incapable of making.

2. Determining understanding of the financial problem(s), and potential solutions.

- What is your understanding of your financial situation?
 - Assets (bank accounts, land and homes, other items)
 - Income
 - Expenses
 - Debts
 - Obligations to dependents
- What financial decisions do you have to make?

<input type="checkbox"/> Pay bills	<input type="checkbox"/> Manage a business
<input type="checkbox"/> Pay monthly rent/mortgage	<input type="checkbox"/> Balance accounts
<input type="checkbox"/> Pay debts	<input type="checkbox"/> Manage investments
<input type="checkbox"/> Write cheques	<input type="checkbox"/> Make tax payments
<input type="checkbox"/> Handle small currency	<input type="checkbox"/> Do income tax return
<input type="checkbox"/> Handle large sums	<input type="checkbox"/> Other _____
- Do you have any problems or needs related to these financial decisions?
- What options do you have for dealing with these decisions/problems? What would happen if you did nothing? (e.g. what will happen if bills do not get paid?)
- What is your understanding of the **benefits** of the potential solutions?
- What are the **risks** of the potential solutions?

3. Determining whether the person appreciates how the information applies to their own situation.

- Tell me what you really believe about your finances.

- Why do you think your health care provider thinks you may need someone else to look after your finances for awhile?
- Do you think that you need someone else to look after your finances for you? Why or why not?
- What do you think will actually happen to you if someone else looks after your finances? If they don't?

4. Determining the ability to reason with information in a manner that it supported by the facts and the person's own values.

- What factors/issues are most important to you in deciding about your finances? What are you thinking about as you consider your decision?
- How are you balancing the pluses and minuses of the options?
- What do you think will happen to you now?

5. Determining the ability to carry out the decision, either by themselves or by arranging to have another person do it. (Does the person lack impulse control? Can they resist financial exploitation?)

- How will you carry out your decision and deal with your finances?
- Have you had trouble in the past making sure that your bills and rent were paid? What happened?
- What do you think will happen this time?
- Are you worried that someone will try to take your money?
- What would you do if someone tried to take your money?

6. What health condition is causing the person to be incapable of making reasonable judgements or decisions regarding their financial affairs?

After the Assessment

The results of the assessment should be **well documented**. Information from collateral sources should also be documented.

If the health care provider has reasonable grounds to believe that a person, because of a health condition, is incapable of making reasonable judgements or decisions regarding their financial affairs, they may issue a ***Certificate of Need for Financial Protection*** on the prescribed form (Attachment E).

Copies of the form must then be given to the individual and to the Public Guardian and Trustee. A copy of the *Certificate of Need for Financial Protection* should go on the person's health record.

The health care provider should tell the individual and any support person who is assisting the individual the result of the assessment. This may include explaining the reasons for the conclusion and answering the person's questions.

Health care providers are not legally obligated to tell people that they have the right to have the determination of incapability reviewed by the Capability and Consent Board. However, the person should be advised of this right unless there are reasons for not sharing this information with the person (e.g. insufficient comprehension skills). If the information is not provided to the person, provide it instead to a family member or friend. (See the handout on "Rights" found in Attachment D).

What if the person no longer needs financial protection?

If a person regains their capability to manage their financial affairs, the need for financial protection can be reassessed. If a health care provider reassesses the individual and finds that they are no longer in need of financial protection, they should complete the ***Cancellation of Certificate of Need for Financial Protection*** (Attachment F). Copies should be provided to the individual and the Public Guardian and Trustee. A copy should also be placed on the person's health record.

Worksheet #1

Determining Incapability to Consent to Health Care

Name of Person (Patient): _____

Health Care Provider's Checklist

(See the Practice Guidelines for Determining Incapability to Consent to Health Care for more information)

- Assessed communication needs.
- Addressed any barriers to communication.
- Assessed factors that may affect decisional capacity (e.g. medication, environment, language, culture, fluctuating lucidity).
- Took steps to address and enhance decisional capacity.
- Explained to person reason for conversation (i.e. to obtain a valid consent or to determine capability to consent).
- Advised person of possible consequences of a finding of incapability (i.e. substitute decision-maker will be chosen to make decision).
- Ensured the person was given the information necessary to make an informed decision in a way appropriate to the person's skills and abilities.
- Conducted interview using probing questions.
- Documented steps taken, interview and conclusions.
- Advised person of outcome of assessment interview.
- Where appropriate, advised person, family or friend of right to apply to the Capability and Consent Board for a review of the finding of incapability.

Name of Health Care Provider _____

Date _____

Worksheet #1

Determining Incapability to Consent to Health Care

Name of Person (Patient): _____
Date of Birth: _____ Health Care Number: _____

(Record observations, including exact responses of the person)

1. Able to understand health problem and proposed options for care

(Sample questions: What is your understanding of your condition? • What is the treatment for your condition? • What other options do you have? What would happen if you did nothing? • What is your understanding of the **benefits** of the proposed treatment? • What are the odds that the treatment will work for you? • What are the **risks** of the proposed treatment? • Can the proposed treatment cause problems or side effects? • What are the benefits and risks of alternative options?)

Observations: _____

Able to understand health problem? Yes No

Able to understand proposed options for care? Yes No

2. Able to appreciate how the information applies to their own situation

(Sample questions: Tell me what you really believe about your health condition? • Why do you think your doctor has recommended the proposed treatment for you? • Do you think that the proposed treatment is the best treatment for you? • Why or why not? • What do you think will actually happen to you if you accept this treatment? • If you don't accept it?)

Observations: _____

Able to appreciate that information applies to them? Yes No

3. Able to reason with information in a manner that is supported by the facts and the person's own values

(Sample questions: What factors/issues are most important to you in deciding about your treatment? • What are you thinking about as you consider your decision? • How are you balancing the pluses and minuses of the options? • What do you think will happen to you now?)

Observations: _____

Able to reason with information? Yes No

SUMMARY OPINION

Capable Incomplete (e.g. requires further assessment)
 Incapable

Reasons: _____

RIGHTS INFORMATION – Provide to person, family or friend

Person, family or friend informed of results of assessment: Yes No

Person, family or friend informed of right to have decision regarding their incapability to consent reviewed by the Capability and Consent Board (CCB) and provided information (e.g. Rights Info Sheet): Yes No

Comment _____

HEALTH CARE PROVIDER INFORMATION

Name : _____ Profession: _____

Address: _____ Phone: _____

Fax: _____ Email: _____

Signature: _____ Date: _____

Worksheet #2

Determining Need for Financial Protection

Name of Person (Patient): _____

Health Care Provider's Checklist

(See the Practice Guidelines for Determining Need for Financial Protection for more information)

- Determined that financial decisions have to be made in the short-term.
- Determined that there is no guardian or Enduring Power of Attorney appointed to make financial decisions.
- Determined that there are no informal measures that could be put in place by family or friends to solve the financial issues in the short-term.
- Assessed communication needs.
- Addressed any barriers to communication.
- Assessed factors that may affect decisional capacity (e.g. medication, environment, language, culture, fluctuating lucidity).
- Took steps to address and enhance decisional capacity.
- Explained to person reason for conversation (i.e. to assess need for short-term financial protection).
- Advised person of possible consequences of a finding of incapability (i.e. Public Guardian and Trustee will manage finances for up to 60 days).
- Conducted interview using probing questions.
- Documented steps taken, interview and conclusions.
- Advised person of outcome of assessment interview.
- Issued *Certificate of Need for Financial Protection*
 - Copy to Individual
 - Copy to Public Guardian and Trustee
- Where appropriate, advised person, family or friend of right to apply to the Capability and Consent Board for a review of the finding of incapability.

Name of Health Care Provider _____

Date _____

Worksheet #2
Determining Need for Financial Protection

Name of Person (Patient): _____
Date of Birth: _____ **Health Care Number:** _____

(Record observations, including exact responses of the person)

1. Financial decisions that need to be made in short-term (i.e. next 60 days)

- | | |
|--|--|
| <input type="checkbox"/> Pay bills | <input type="checkbox"/> Pay monthly rent/mortgage |
| <input type="checkbox"/> Pay debts | <input type="checkbox"/> Write cheques |
| <input type="checkbox"/> Handle small currency | <input type="checkbox"/> Handle large sums |
| <input type="checkbox"/> Manage a business | <input type="checkbox"/> Balance accounts |
| <input type="checkbox"/> Manage investments | <input type="checkbox"/> Make tax payments |
| <input type="checkbox"/> Do income tax return | <input type="checkbox"/> Other _____ |

2. Able to understand financial decisions/problems and potential solutions

(**Sample questions:** What is your understanding of your assets, income, expenses, debts and obligations to dependents? • What financial decisions do you have to make? • Do you have any problems related to these financial decisions? • What would happen if you did nothing? • What is your understanding of the **benefits** of the potential solutions? • What are the **risks** of the potential solutions?)

Observations: _____

Able to understand financial issues? Yes No

Able to understand potential solutions? Yes No

3. Able to appreciate how the information applies to their own situation

(**Sample questions:** Tell me what you really believe about your finances? • Why do you think your health care provider thinks you may need someone to look after your finances for a while? • Do you think that you need someone else to look after your finances for you? • Why or why not? • What do you think will actually happen to you if someone else looks after your finances for you? • If they don't?)

Observations: _____

Able to appreciate that information applies to them? Yes No

4. Able to reason with information in a manner that is supported by the facts and the person's own values

(**Sample questions:** What factors/issues are most important to you in deciding about your finances? • What are you thinking about as you consider your decision? • How are you balancing the pluses and minuses of the options? • What do you think will happen to you now?)

Observations: _____

Able to reason with information? Yes No

5. Able to carry out decision

(**Sample questions:** How will you carry out your decision and deal with your finances? • Have you had trouble in the past making sure that your bills and rent were paid? • What happened? • What do you think will happen this time? • Are you worried that someone will try to take your money? • What would you do if someone tried to take your money?)

Observations: _____

Able to carry out decision? Yes No

6. Health condition causing the person to be incapable of making reasonable judgements or decisions regarding their financial affairs:

SUMMARY OPINION

- Capable of managing finances Incomplete (e.g. requires further assessment)
 Incapable of managing finances

Reasons: _____

RIGHTS INFORMATION – Provide to person, family or friend

Person, family or friend informed of results of assessment: Yes No
Person, family or friend informed of right to have decision regarding their incapability to consent reviewed by the Capability and Consent Board (CCB) and provided information (e.g. Rights Info Sheet): Yes No
Comment _____

HEALTH CARE PROVIDER INFORMATION

Name : _____ Profession: _____
Address: _____ Phone: _____
Fax: _____ Email: _____
Signature: _____ Date: _____

Factors Affecting Decision-Making Ability and Ways to Enhance Communication

One of the principles outlined in Section 4 of the Guidelines states that:

- The process should recognize and employ ways to enhance decisional capacity.

There are many environmental, sensory, psychological and physiological factors that can affect decision-making ability. Some factors can be addressed in order to minimize the effect they have on the person. For example, confusion due to medication can be treated by a change or adjustment to the medication. Some factors cannot be altered and health care providers should be aware of the impact particular factors (e.g. lack of memory) can have on decision-making ability. In all situations, the health care provider should attempt to enhance decisional capacity.

Idiosyncratic or eccentric beliefs are not, in and of themselves, indicators of incapability to give, refuse or revoke health care.

The following factors, while not an all-inclusive list, should be considered in assessing incapability:

1. Cognitive

- memory (e.g. ability to remember information long enough to make a decision)
- attention (e.g. ability to concentrate on the information being provided)
- reasoning (e.g. consistent with person's values and beliefs)
- judgement and insight (e.g. ability to appreciate consequences of choices)
- communication disorders (e.g. aphasia) where it is not possible to communicate at a level to ascertain a valid consent

2. Mental Health/Psychiatric/Neurological

- delirium (i.e. fluctuating attention and cognitive functioning associated with altered psychomotor activity and disturbed sleep-wake cycle)
- depression or mania which may include firm, fixed and false beliefs maintained despite evidence to the contrary
- delusions
- hallucinations
- phobias, panic, anxiety or obsessions
- inability to control one's actions (e.g. lack of impulse control, executive functioning)
- recent loss, grief, anxiety

3. Physiological dysfunction, sensory deficits, medication effects

- confusion caused by hypoxia, infection, medication, or metabolic disturbances
- pain, trauma
- hearing loss
- speech and language disorders
- visual limitations

4. Environmental factors

- unfamiliar surroundings
- language used (e.g. complexity, unfamiliar terms, etc.)
- amount of time given to respond
- room lighting
- cultural and language issues
- psychological response (e.g. stress) triggered by an environmental factor such as first time out of their community or even the mannerisms or look of the assessor

Ways to Enhance Communication

Communication may be enhanced by the use of support materials, communication techniques and environmental adaptations such as:

- communication aids (e.g. Bliss Boards, Pic symbols, voce prostheses)
- hearing devices (e.g. hearing aids, pocket talkers)
- interpreter assistance for the deaf and hard of hearing and for non-English speaking adults
- visual materials to supplement information presented verbally (e.g. illustrations, written materials, videotapes)
- using clear language
- eliminating jargon or technical terms
- presenting manageable amounts of information
- using eye-blink, movement responses (e.g. nodding head) or facilitated communication
- using examples and making reference to issues/events from the adult's life
- providing opportunities for feedback and clarification by repeating or paraphrasing what the adult has said
- matching verbal and nonverbal cues
- providing full explanation, avoiding the need for inferences
- providing adequate privacy and time
- ensuring safety and comfort

ATTACHMENT D

RIGHTS INFORMATION SHEET

If you disagree with the decision made by your health care provider about your capability to make your own decision to: *(check all that apply)*

- give or refuse consent to health care; or
- manage your financial affairs

you or anyone else with a substantial interest in the matter have the right to ask the **Capability and Consent Board** to review that finding.

To apply for a review, contact the Capability and Consent Board at **633-7614** to request an application form or print off a copy of "**Form 6(CCA)** -- Application to the Capability and Consent Board for Matters under the *Care Consent Act*" from the Board's website (www.yukoncapabilityandconsentboard.ca).