



# Consent?

For what? By whom? When?...

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- \* Determine the reason(s) a decision is being made
- \* What is the time frame?
- \* Who is being affected; who will be affected?
- \* What are the legal ramifications of any requests or desires?
- \* Does everyone involved have capacity?

**\* Clarification!**

\* As addressed in the Uniform Health-Care Decisions Act, **capacity** refers to

- \* an individual's ability to understand and appreciate the nature and consequences of proposed health care,
- \* including the significant benefits, risks and alternatives to proposed health-care
- \* and to make and communicate an informed health-care decision.

\* **Capacity**

- \* Refusing treatment is not a determinant or indicator that the individual lacks capacity.
- \* Lack of capacity cannot be based solely on patient's disagreement with the doctor.
- \* Determination of a lack of capacity, according to the UHDA, requires
  - \* 2 professionals make an assessment-
  - \* one of whom must be the PCP
- \* When mental health or I/DD is present
  - \* At least one of the health care professionals must have expertise in assessing functional impairment

\* Capacity

## “Power of Attorney”

(the form with this name on the top)

Through this form, you, the Principal, can name a person (Agent or Attorney-in-fact) to take care of your affairs which covers two categories:

○Healthcare

○Finance or business

\*Power of Attorney

Best option is to have a “durable” POA or one that states “...this document will not be affected by my incapacity...” so, if you should lose your wits about you, the document is still in effect, otherwise it would be null and void.

However, for Finance- this form must be notarized in order for it to be a legal document. For Healthcare- witness & notary is recommended, *but not required.*

# \* Power of Attorney

## \*Keep in Mind

There is no POA that governs or takes away a person's civil rights, rights to privacy, etc.

No POA for: morals, who can date whom, what the Principal can spend his/her money on, etc.

# \*Power of Attorney

- ⊙ A guardian is a person appointed by the court to make personal and health care decisions for a person (the ward) who has been deemed “incapacitated.”
- ⊙ Guardianship is governed by the State Probate Code

- ⊙ Types of Guardianship

  - Full or Plenary

  - Limited

  - Treatment\*

  - Temporary

  - Guardian ad Litem

    - \* *Mental Health & Developmental Disabilities Code*

\* Guardianship



- \* An individual, other than a patient's agent or guardian, authorized under the NM UHDA to make health-care decision for them.
- \* Surrogate can be appointed if the agent is not "reasonably available" and there is an urgency in treating the health-care needs.
- \* Alternates can also be chosen based on their availability and willingness to be a surrogate.

# \* Surrogate Decision-Maker

- DDSD Form:
  - Documents that a surrogate has been identified to take on the role as decision maker
- Temporary -
  - in cases of serious/ delicate medical situations when a decision is needed
- Surrogate should also be actively pursuing guardianship if it is determined that the individual lacks capacity
- Questions?
  - Please contact Christine Wester, LBSW,MPA
    - IAA/DRP Unit-1-800-283-5548 or
  - Albuquerque (505) 841-5529

# \*Surrogate Decision-Maker

- \* Assent: agrees in general; may not be able to express purpose of treatment or alternative treatment available.
  - \* May be effective when someone *else* is providing informed consent.
- \* Consent: express understanding of risks/benefits; can express intent/purpose of treatment, and alternatives

## \* Consent for Rx

- \* Vulnerabilities are identified and addressed
- \* Reciprocity is assured; safety; age-appropriate
- \* Conversations, not coercions
- \* Managing money

## \* Consent in Relationships

- \* Emergency
- \* End of Life
- \* Accepting treatment
- \* Refusing treatment
- \* Meeting neighbors, making friends
- \* Standing in for someone
- \* Whenever authority is involved; issues of differentials of power and perceived power

\* When!



# \* Cases; Issues