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Assisted Living Column

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Competency — Protecting rights, for good and bad

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As health care providers for older adults we have a responsibility to protect them. This sometimes means protecting their rights to make 'bad' decisions while at other times protecting them against their making bad decisions. This may seem like a conflict but there is a line between these two worlds. Competent individuals have the right to make their own decisions that we might consider bad; for health care providers this means protecting that right. But for incompetent older adults this means protecting them against themselves. The line between these two worlds is determination of competency of the individual. But determining competency is not easy as the terms of competency are dependent on the specific situation. Nurses and other health care providers need to know these details to protect the rights of their older adult patients. Following are many of those situations that health care providers in assisted living communities will likely face.

Competency is a legal issue. Competent individuals reserve the right to make "bad" decisions while incompetent individuals should be protected from making "bad" decisions. Determining whether or not an individual is competent is complicated as competency is not a binary issue. Issues of competence are time and situationally dependent. An individual may be competent today but because of a delirium or progressive dementia is not competent tomorrow. Further, different situations have different thresholds for competency.[1] As such, competency requires ongoing monitoring and assessment to protect individuals' rights.

Knowing these situations with their individual rules of competency will assure that nurses assisting older adults can protect their rights - although this may be protecting their right to make a 'bad' decision. Sometimes protection may result in poor health in the opinion of others but is the outcome in protecting the right of an individual. It's this conflict between a patients' health and rights that requires a great deal of consideration on the part of healthcare providers.

Family conflict

Beyond the issue of managing restrictions because of clinical concerns which may not be what a patient wants to follow. There is also the issue of family conflict when they are at odds with a patient's wishes. Take, for example, a situation of a particularly difficult brother and sister duo requested a care conference with the interdisciplinary team to discuss the care their father is receiving. During the dietary portion of the care conference the resident's children urged the dietary and nursing staffs to restrict what and how their father ate. The resident's children complained that their father would receive his entire lunch, only consume the sweetest and least healthy items, and then not have any room left for the more nutritious parts of the meal. The members of the dietary and nursing staffs present at the care conference explained that as the resident was an adult who had never legally been deemed incompetent he was free to eat whatever and however he wanted. Of course, this type of family conflict can exist with any situation from dietary restrictions, to driving, to consent for a lifesaving medical procedure — the bottom

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[1] Assessing Competence. Michael A. Hill, MD, University of North Carolina. https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/HillAssessingCompetence.pdf (accessed July 18, 2017).

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line is that competent individuals have the right to make what others may consider bad chooses.

Assessing competence

Don't get confused between the differing definitions of competence and capacity. These words are often used interchangeably but there are many readings are very different. Capacity refers to the mental or cognitive abilities for someone to understand the nature and consequences of the actions that they take. Determining capacity is important in situations where a resident is asked to make a specific decision about a clinical situation that they're facing. The four key components to think about when judging an individual's capacity includes:

- The ability to communicate choice
- Demonstrate an understanding of the situation that is presented to them
- Appreciate the situation and the consequences of their choices based on the options they have
- Being able to rationalize and show reasoning with respect to the decision that they are being asked to make.

An example of when a person's capacity may require assessment would be where a resident of an assisted living facility is admitted to the hospital for evaluation after a fall. He is disoriented to time and place and isn't quite sure, as he sits in the emergency room, where he is but the medical staff is talking to him about the need for transfusion because his hemoglobin has been confirmed to be less than 7 g/dL. He clearly states, even after you explain that his low hemoglobin may have contributed to his fall and that if it is not corrected more serious long-term complications may result, that he wants no part of having a transfusion. How do you proceed in a situation like this?

The answer is, you have to go about making a determination of this individual's capacity to understand his condition, his treatment options, and the consequences of refusing treatment. Capacity, in the sense, is a functional concept without legal implication.

Competency is a legal concept, referring to having the mental capacity to decide in accordance with one's goals, concerns and values.[1] Decision-making capacity is a mostly synonymous term. Patients are considered competent legally unless a court has found otherwise. In addition, competence is absolute but specific to a situation as well as being fluent, changing over time.

In determining competence, the four most frequently discussed elements include the ability to:

- Understand what is being discussed
- Appreciate the significance of the information
- Reason applied to the current context
- Communication of a choice, indicating a preference

Courts typically focus on the ability to understand and communicate while psychiatry focus on the ability for rational decision-making. These factors can be impaired by both medical and psychiatric disorders. Medical, neurological disorders that impair cognition such as dementia, delirium that usually impair memory, concentration and/or judgement. Psychiatric disorders that impair thinking and/or judgment including mood/emotional disorders and psychosis that may profoundly affect judgment even with clear cognition.

Specifically these impairments fall into several categories:

- Cognitive impairment – inability to understand or remember what is being discussed caused by dementia, delirium, epilepsy, brain injury, mental retardation
- Emotional disorders – pathological emotionally as a result of depression, mania, severe anxiety
- Thought impairment – idiosyncratic or delusional thinking from schizophrenia or paranoid disorders
- Dissociative disorders – fugue states that cause patient to 'not be all there' to make decisions

The assessing of competency requires several steps:

- Information gathering such as a history including hearing from associates of the patient since a patient-provided history may not be reliable.
- Defining past versus current functioning
- Identifying areas of concern
- Psychiatric assessment
- Further testing for clarification of deficits such as neuropsychological testing

This further testing may also include laboratory (chemistries, CBC, drug screens, ETOH screen, urinalysis, thyroid, B12, RPR), imaging and other diagnostic studies to rule out treatable etiologies.

A central component of this assessment is the mental status exam. In the skilled nursing facility this is required through the MDS in section C where the Brief Interview for Mental Status (BIMS) stands as the measurement. Whether it is the BIMS or the Folstein mini-mental status exam (MMSE), all mental status exams take into account common factors, such as:

- Appearance and behavior
- Speech (rate, rhythm)
- Sensorium (Cognitive, Perceptual, Intellectual)
- Emotional state
- Thought process and content

Special concerns in this process include appropriate consideration of cultural issues as a person's diverse cultural background and experience. Cultural variables include language, immigrant status, economical status, perceptions of institutions such as hospitals.

Commitment

If a person is an 'imminent' danger to self or others and this is due to a mental illness such as dementia then commitment is an option. Goals are safety and treatment; this can be used in lieu of guardianship in emergencies. Guardianship can be considered after safety is assured but is decided by the courts. To have a full guardian appointed is to lose all legal decision-making capacity. Prior to this happening it is idea for a competent adult to assign a power of attorney to act as their agent should they become incapacitated to make decisions.

It is equally important, that once an adult chooses an agent, they have ongoing conversations that give the agent of full understanding of what the patient would decide under certain circumstances if they become incapacitated and unable to make her needs known. Having to make decisions for someone else can be very stressful but that is not what the agent is theoretically being asked to do. What they are being asked is to have a level of understanding of the patient's wishes that would allow them to speak for the individual rather than having to make the decision for the individual. They are ultimately "representing" a decision rather than "making" a decision.