

APA Official Actions

Position Statement on Consent to Mental Health Treatment by Guardians, Health Care Agents or other Legally Designated Surrogate Decision-making for Adults with Mental Illness

Approved by the Board of Trustees, July 2020

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“Policy documents are approved by the APA Assembly and Board of Trustees. . . These are . . . position statements that define APA official policy on specific subjects. . .” – *APA Operations Manual*

Issue:

- All states have established one or more legal mechanisms for judicially appointed guardians, individually appointed health care agents, or other legally designated surrogate decision-makers to consent to treatment for incompetent or incapable¹ persons with mental illness, although the procedures for consent and the scope of surrogate authority under these various mechanisms vary widely across states.
- In some states, a judicially appointed guardian may consent to psychiatric hospitalization or other mental health treatment, whereas in other states the only route for psychiatric admission is through involuntary civil commitment, leaving no mechanism for voluntary admission of non-dangerous, incompetent or incapable persons with mental illness.
- Whether an individually designated health care agent has the authority to authorize psychiatric admission or other treatment over objection typically depends on the terms of the document appointing the agent; however, in some states, statutes authorizing health care agents may preclude proxy authorization for psychiatric admission or non-consensual treatment unless it is expressly authorized in the appointing document.
- In the absence of a court order appointing a guardian or designation of a health care agent with the requisite authority, most states empower next-of-kin to make medical decisions when patients have lost capacity to make them and urgent decisions are required, but these statutes quite often deny the surrogate authority to authorize admission to a psychiatric hospital and non-consensual psychiatric treatment.

¹ ‘Incompetent,’ as used here, refers to the status of an individual judged by a court to lack the capacity to make health care or other decisions. ‘Incapable’ refers to the status of an individual whom a clinician has determined and documented to lack the capacity to make or communicate health care decisions, but for whom a legal adjudication of incompetence has not been obtained.

APA Position:

In order to ensure timely access to treatment balanced by protection of a vulnerable population, the following principles should guide authorization of all health care decisions, including mental health treatment, for persons with mental illness by guardians, health care agents or other legally authorized surrogates:

- 1. When a person has been reliably determined to lack decisional capacity according to applicable law, guardians, health care agents or other surrogate decision-makers should be legally empowered to make any mental health treatment decisions, including for psychiatric hospitalization, medication and electroconvulsive therapy (ECT), that the person would otherwise be entitled to make for him- or herself. In the case of a healthcare proxy, if the person has specifically limited the authority of the agent regarding any treatment decisions, those limitations must be respected.**
- 2. Alternatives to guardianship, such as appointment of a decision-maker under a health care power of attorney, that authorize temporary forms of substituted decision-making should be encouraged, thereby providing a readily reversible and flexible mechanism to authorize mental health treatment when a person lacks decisional capacity. These mechanisms also respect the incapable person's preferences by allowing individuals to identify whom they would select for their substitute decision-maker in the event of future incapacity.**
- 3. Advance instructions about preferences for future general medical and mental health treatment should be elicited and documented when a person can competently express them and identify his or her preferences. These instructions should be used to direct or guide future treatment decisions according to applicable law and should be reviewed periodically with the patient, and revised if necessary, to assure that the patient's preferences are still accurately documented.**
- 4. When incapacity is suspected but has not been formally determined in accordance with applicable law, the principles of informed consent should be respected and the patient's capacity evaluated. If the patient is determined to lack capacity to make the mental health decision in question, the treatment should be provided only in an emergency, or with the informed consent of a guardian, health care agent, or other legally authorized surrogate decision-maker, or in accord with other decision-making processes authorized by applicable law.**
- 5. For a patient who has been adjudicated to need a guardian, periodic clinician review of the person's capacity to make medical decisions and the ability of the guardian to faithfully serve the best interests of the patient should be conducted in accord with applicable law and reviewed by a court for continuation or termination of guardianship.**

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