

Helping Individuals and Guardians Make Informed Medical Decisions

All adult individuals have the right to make their own medical decisions, unless the individual has a court appointed guardian. For individuals receiving DD Waiver supports, this right is clearly stated in NMAC 7.26.3:

Unless expressly modified by court order or specifically granted to a guardian or conservator, all clients have: . . . the right to consent to or refuse medical treatment, medical services, and other forms of habilitation services or supports, consistent with the ISP regulations and the duties of a parent, guardian or treatment guardian pursuant to the requirements of the Children's Mental Health and Developmental Disabilities Act, Section 32A-6-14 NMSA 1978 (1993 Repl.) or the Mental Health and Developmental Disabilities Act, Section 43-1-15 NMSA 1978 (1993 Repl.).

If an individual has a guardian, the guardian has been appointed to assist the individual with decision-making. The guardian should always consult with the individual when making all decisions, particularly health-care and end-of-life decisions. When that is not possible, the Guardianship Code directs the guardian in the manner in which decisions are to be made:

If no agent is entitled to make healthcare decisions for the incapacitated person under the provisions of the Uniform Healthcare Decisions Act [24-7a-1 to 24-7a-17 NMSA 1978], then the guardian shall make health-care decisions for the incapacitated person in accordance with the provisions of that act. In exercising health-care powers, a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or services. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interest of the incapacitated person if the values are not known. 45-5-312 (B) 3.

Simply stated, the guardian should make decisions in the way the individual would want, if he or she can express his/her wishes. If the person's wishes cannot be known, then the guardian should make decisions consistent with the individual's best interest.

In order to make an informed healthcare decision, the individual, the guardian or both need information about the medical condition, treatment options, proposed treatment, and risks and benefits of the recommended treatment. By providing this information and discussing these items in a manner which is clearly understood by the individual and guardian, the IDT and physician can assure the informed consent of the individual/guardian to treatment.

Communicating in a manner understood by the Individual and Guardian

Medical terms and discussions are often very technical and difficult to understand. For individuals with cognitive disabilities, these discussions may be even more difficult to understand. It is important that the guardian, IDT, and physician use words or a system of communication which is easily understood by the individual. The discussion may need to take place in the individual's or guardian's native language. It may require the use of augmentative communication devices which the individual can use to indicate both an understanding of the conversation AND a decision regarding his/her treatment. It is helpful to have someone who is familiar with the individual's style of communication assist in conversations regarding medical information; however, this assistance should only be provided at the individual's request.

Assuring medical decisions are voluntary

Medical decisions are intended to be voluntary and to represent the desire of the individual for treatment. Best interest decisions made by a guardian should take into account only the best interest of the **individual**, not the guardian, the provider or friends. Individuals with cognitive disabilities are supported by many people on the IDT who have an opinion regarding the "correct" decision for the individual. While unintentional, the expressions of opinion by various IDT members may lead the individual or guardian to make a decision which is not what they truly desire. It is important for the IDT to work to avoid this type of situation for persons who make their own medical decisions or for guardians who may be easily influenced by others. Team members must remember that their role is to assist the individual or guardian to understand the condition, options, and risks/benefits for the individual regarding any medical condition or treatment.

When an Individual has a guardian

While the guardian acts in concert with the individual to make medical decisions, they may also desire the opinion or support of various team members. Typically, the guardian may consult the agency nurse, house manager, or someone else who is familiar with the individual's health needs and wants. Usually, however, the guardian will not consult the entire team until there is an implication for planning for the support needs of the individual. It is important to remember that the guardian is the decision maker and may act without team consultation, at their own discretion.

What if the team disagrees with the individual's or guardian's decision?

The team has a role in assuring the individual has adequate information to make an informed decision regarding healthcare needs and treatments, but the team cannot overrule the individual's or guardian's decision. The team should plan around the decision which is made to assure the best prospect of health, safety, and comfort. If a team member feels that he/she cannot support the decision which has been made, he/she should work with their supervisor to find an alternate assignment. If a provider agency

cannot support an individual with the decision which has been made, the provider agency should work with the IDT and DDS/D to work towards either a solution which allows the provider to continue providing services or to transition to an alternate supporting provider. In any case, the provider agency must continue to support the individual until the situation has been resolved.

Available resources to assist in making medical decisions:

If an individual or guardian is having difficulty coming to a decision regarding a proper course of action for an individual, there are various resources available in New Mexico to provide additional information. Below are a few of these resources:

University of New Mexico Continuum of Care, including Health Decisions Resources
E-mail: continuum@salud.unm.edu
Phone: 1-877-684-5259

New Mexico Department of Health/DDS/D Technical Assistance Guidelines:
Guidelines for Community Programs, Case Managers and Interdisciplinary Team
Members Regarding Advance Directives and Health Care Decisions

Link:

<http://www.health.state.nm.us/DDS/D/rules/TA/documents/LTSDTAGuidelineAdvanceDirandHealthCare.pdf>

Additionally, any of the parties listed on the Contact Information Document which is a part of this Toolkit will be able to offer assistance or guidance in finding additional healthcare resources.