

## Decision-making and Consent

– Supporting Decision-making in the absence of a legal framework

### **HIQA - Supporting people's autonomy: a guidance document**

Autonomy is a core human rights principle in HIQA's standards and service assessments. The guidance on autonomy is to help services demonstrate they show respect for human dignity, provide person centred care and how they ensure an informed consent process that values personal choice and decision-making. The guidance document explains the meaning of autonomy and outlines a supporting autonomy framework. The guidance document outlines in detail what each step of the supporting autonomy framework means.

#### **Supporting the decision-making process**

An important part of supporting autonomy is that people are supported in the decision-making process but are not subject to undue influence. The will and preferences of the person is central to the process and includes respecting what others may consider to be unwise decisions. The person should be aware of their right to an active role in decision making and service providers are required to appreciate the power imbalances that can occur within services and take a lead in promoting autonomy.

#### **Presumption of Capacity**

Every person is presumed to have capacity to make his or her own decisions unless there is evidence to the contrary. Pre-conceived ideas about autonomy are not appropriate. It is important not to underestimate the ability of the person to make his or her own decisions or to overestimate the extent to which a person may be confident to make decisions of their own.

## **Accessible Information**

A person must be given information in a manner they can understand to assist them to make decisions. The communication process should accommodate any specific communication needs and be culturally sensitive. Communication should ideally take place at a time that people are best able to assimilate information. Plain language and easy-to-read documents will help with communication.

## **Consulting with Others**

Among other actions the guide advises that services consult with family and friends to assist in identifying the preferences of the person receiving care, support or treatment. Where other people are included in the decision-making process it must be with the services users consent and in line with the law. Services are mindful of confidentiality in this regard. The guide provides many examples of effective communication which demonstrate ways to establish explore and promote the preferences of the person.

## **Balancing Rights, Risks and Responsibilities**

The guide outlines the need to balance rights, risks, and responsibilities. People are responsible for the decisions they make when those decisions are informed, voluntary and made with sufficient capacity. Service providers should promote autonomy to avoid a risk adverse culture, while appreciating the importance of safeguarding when facilitating the person's autonomy and choices.

## **Where the person lacks capacity.**

The guide advises that under existing legislation if the person is considered to lack capacity, they may become a ward of court. Then decisions made regarding care will either be made by the high court or by a Committee of the Ward appointed by the Court. This may be a family member but not necessarily so. While family members may be consulted

about an adult's care and treatment (with permission from the adult). They do not have a legal right to consent to, refuse treatment on the person's behalf unless formally appointed in law to do so. Even when deemed to lack the capacity to make his own decisions, the person's autonomy can be promoted by ensuring that care, support and treatment reflects any previously expressed will and preferences. Advance care planning documentation, a life-story book, a communication or hospital passport or communication with family and friends could assist in providing this evidence.

### **Discussing autonomy**

The guidance document explores autonomy and ethical principles. Sometimes principles can conflict with one another. For example, from time to time a person's choices (respecting autonomy) could result in harm to themselves or others (principle of beneficence and non-maleficence). The guidance provides an ethical decision-making framework to assist in this process and an example is provided. The guidance document explores autonomy and community. It discusses how people often consult with or may consider others when making decisions. A summary of autonomy and the law is also provided.

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#### **HIQA - Supporting People's Autonomy: a guidance document**

<https://www.hiqa.ie/sites/default/files/2017-01/Supporting-Peoples-Autonomy.pdf>

#### **HIQA – My choices, my autonomy: information leaflet**

<https://www.hiqa.ie/sites/default/files/2017-01/Autonomy-Service-User-Leaflet.pdf>

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## **HIQA – Guidance - communicating in plain English**

<https://www.hiqa.ie/sites/default/files/2017-02/Guidance-Communicating-in-plain-English-adults.pdf>

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