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Owner	Shama Faheem: Chief Medical Officer
Policy Area	Medical
Applicability	Detroit Wayne Integrated Health Network

Lack Of Capacity Protocol

PURPOSE

Every individual has the right to make an informed choice. The purpose of this protocol is to identify steps involved when a person-served is assessed for decisional capacity and is found to lack it.

APPLICATION

1. The following groups are required to implement and adhere to this policy:
 - a. DWHN Board,
 - b. DWHN Staff including the following
 1. DWHN PIHP Staff
 2. DWHN Community Care Clinic Staff (Direct Care Staff)
 3. DWHN Community Care Clinic Staff (DWHN staff operating as a CCBHC)
 4. DWHN Crisis Care Center Staff
 5. DWHN Mobile Crisis Staff
 - c. Contractual Staff
 - d. Clinically Responsible Service Provider (CRSP) and their subcontractors
 - e. Specialty Providers
 - f. Crisis Services Vendors
 - g. Credentialing Verification Organization (CVO)
 - h. Designated Collaborating Organizations (DCO)

2. This policy serves the following populations:
 - a. Adults
 - b. Children
 - c. Individuals with Intellectual and/or Developmental Disabilities (I/DD)
 - d. Serious Mental Illness (SMI),
 - e. Serious Emotional Disturbance (SED),
 - f. Substance Use Disorder (SUD)
 - g. Autism
 - h. Mild/Moderate levels of care
3. This policy impacts the following contracts/service lines:
 - a. Autism
 - b. Certified Behavioral Health Clinics
 - c. General Fund
 - d. Grants
 - e. MI-HEALTH LINK
 - f. Medicaid
 - g. SUD

KEYWORDS

1. Capacity
2. Guardianship:
3. DPOA: Durable Power of Attorney

PROTOCOL:

1. Report any suspicions regarding vulnerable adults who you believe have been harmed or are at risk of harm from abuse, neglect or exploitation to Adult Protective Services by calling call 855-444-3911. Check if you are a [mandated reporter](#).
2. Identify/verify if the person served already has a court-appointed **guardian**.
 - a. If so, then they make decisions for the person served. (MCL 700.5306)
 - b. If there is any reason to change guardianship, it can be done by submitting a petition to the court. (MCL 700.5310-11)
 - c. The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation (MCL 700.5308)
3. If a person-served is identified to lack capacity after an evaluation by two physicians or by a physician and a psychologist, identify if the person has a Health Care Durable Power of

Attorney.

DPOA-HC Identified

1. Under Michigan law, assessments of a patient's capacity to make medical or mental health treatment decisions are typically conducted by:
 - a. **Physicians**, and
 - b. **Licensed Psychologists**.
2. When activating a Durable Power of Attorney for Health Care (DPOA-HC), the determination of the patient's incapacity must be made in writing by the attending physician and a second physician or licensed psychologist. This assessment becomes part of the patient's medical record and must be reviewed at least annually. [Michigan.gov](https://www.michigan.gov)
3. In mental health contexts, the Michigan Mental Health Code provides guidance on assessing a patient's ability to make treatment decisions. Specifically, [Section 5515 of the Code](#) outlines procedures for determining a patient's capacity in relation to mental health treatment.
4. When legal decisions are involved, such as appointing a guardian for an individual deemed incapacitated, the probate court is responsible for assessing decision-making capacity.
 - a. According to Michigan Compiled Laws [MCL 700.1105\(a\)](#), an "incapacitated individual" is defined as someone impaired by reason of mental illness, physical illness, or other causes to the extent that they lack sufficient understanding or capacity to make or communicate informed decisions.
 - b. In such cases, the court may consider evaluations from medical professionals, psychologists, and other relevant experts to determine the individual's capacity.

DPOA-HC Not Identified

If a patient **has not identified a Durable Power of Attorney for Health Care (DPOA-HC)** in Michigan and **loses decision-making capacity**, there are specific legal and clinical pathways to be considered

1. Assess and Document Incapacity: Before any alternate decision-making process can begin:
 - a. A licensed physician (and sometimes a second physician and/or a psychologist) must assess and document the patient's lack of decision-making capacity.
 - b. This assessment should be based on the individual's ability to understand, appreciate, reason through, and communicate medical decisions.
 - c. Reference:
 1. Estates And Protected Individuals Code (EPIC)
 2. Capacity through a Clinician's Lens (MDHHS Feb 2025)
2. Determine Urgency of Medical Decisions
 - a. If immediate treatment is required to preserve life or prevent serious harm, and there's no surrogate:
 - b. Providers may proceed under Michigan's common law doctrine of implied consent.

- c. This allows treatment of incapacitated individuals when a delay would cause significant harm, and no legal representative is available.
- d. Reference: MCL 330.1716

3. Identify Next of Kin / Surrogate Decision-Maker

- a. Michigan does not have a statutory hierarchy of surrogate decision-makers (like some states do), but common law and medical ethics allow providers to consider including:
 - 1. Spouse
 - 2. Adult children
 - 3. Parents
 - 4. Adult siblings
 - 5. Other close family members or friends who are familiar with the patient's wishes
- b. It is acceptable for next of kin to provide consent for medical treatment for indigent patients needing essential care
- c. Providers can consider input from next of kin on a case-by-case basis on some routine or non-controversial care and should be documented clearly in the medical record.
- d. Reference:
 - 1. Social Welfare Act: Michigan's Social Welfare Act authorizes next of kin to provide consent for medical treatment for indigent patients needing essential care (400.66h)
 - 2. Dignified Death Act: The Dignified Death Act allows a physician to communicate with family members about end-of-life treatment choices for terminally ill patients but not necessarily make decisions.

4. Seek Guardianship Through Probate Court

- a. If:
 - 1. There is no surrogate, or
 - 2. There are conflicts among family members, or
 - 3. Decisions involve major, long-term care or chronic health conditions/treatment,
- b. Then the appropriate step is to petition the probate court for guardianship.
- c. Under MCL 700.5301, a court can appoint a guardian if:
 - 1. The individual is legally incapacitated, and
 - 2. There is no less restrictive alternative to guardianship.
- d. A petition can be filed by:
 - 1. A hospital or healthcare provider,

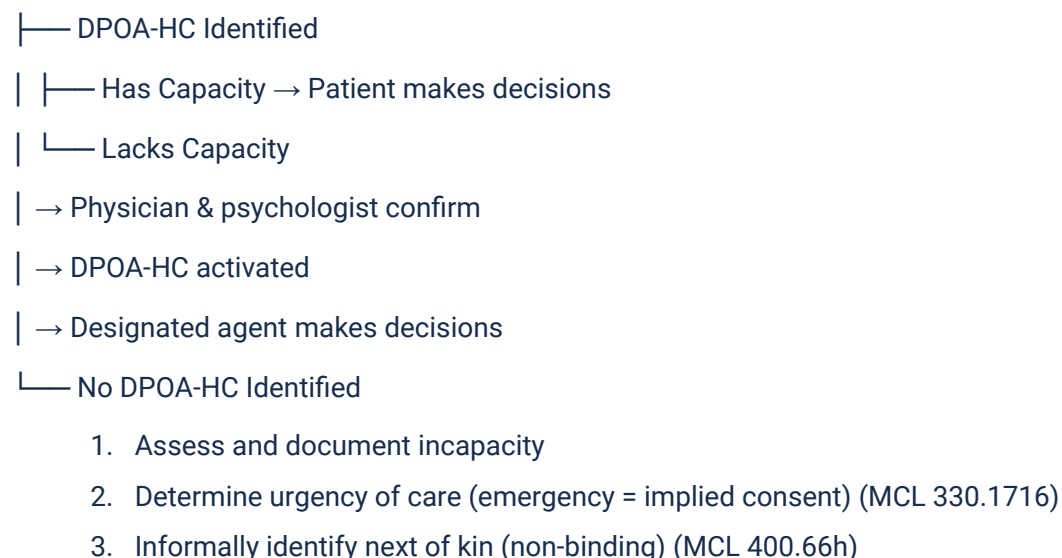
2. A family member, or
3. An interested party.
- e. The court may require:
 1. A report from a physician or psychologist, and
 2. A court-appointed guardian ad litem to represent the patient's interests.
5. Mental Health Treatment Under the Mental Health Code
 - a. During any time, if the individual meets 401 criteria of Mental health Code and requires mental health treatment (e.g., inpatient psychiatric care), and:
 1. Is refusing care,
 2. Is deemed unable to consent,
 3. And meets criteria for involuntary treatment,
 - b. Then a petition may be filed under the Michigan Mental Health Code (MCL 330.1401) for:
 1. Involuntary hospitalization, and/or
 2. Assisted Outpatient Treatment authorization via the court.

Summary: Decision-Making/Capacity Evaluation

Everyone has the right to autonomy and to make informed decisions for themselves. If you suspect that a person-served lacks insight and is not making right medical choices such as not following or refusing treatment:

Evaluate Decision-Making Capacity OR identify if there are criteria for involuntary treatment under Mental Health Code (MCL 330.1401). If person-served already has a guardian, involve them to help them make decisions for the person-served.

Pathway to Decision Making Capacity Evaluation:



4. File for guardianship (MCL 700.5301)

QUALITY ASSURANCE/IMPROVEMENT

DWIHN shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of direct contractors and their subcontractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWIHN staff, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

Michigan Department of Health and Human Services Medicaid Provider Manual (in effect, and as as amended)

RELATED POLICIES

1. This is attachment to Practice Guidelines for Persons Served Who Are Non-Engaging and Non-Adherent to Treatment

CLINICAL POLICY

NO

INTERNAL/EXTERNAL POLICY

EXTERNAL

Approval Signatures

Step Description	Approver	Date
Compliance/Administrative Review	Rai Williams: Director of Contract Management	Pending
Compliance/Administrative Review	Yolanda Turner: Vice President Of Legal Affairs	Pending

Compliance/Administrative Review	Sheree Jackson: Vice President Of Compliance	10/2025
Compliance/Administrative Review	Brooke Blackwell: Vice President Of Governmental Affairs	10/2025
Compliance/Administrative Review	Manny Singla: Deputy Chief Executive Officer	10/2025
Compliance/Administrative Review	Stacie Durant: Vice President Of Finance	10/2025
Clinical Review Committee	Marlena Hampton: Director of Utilization Management	10/2025
Clinical Review Committee	Stacey Sharp: Associate Vice President of Clinical Operatio	08/2025
Clinical Review Committee	Cassandra Phipps: Director of Childrens Initiatives	07/2025
Clinical Review Committee	Jacquelyn Davis: Associate Vice President - Access and Strateg	07/2025
Clinical Review Committee	Ryan Morgan: Director of Residential Services	07/2025
Clinical Review Committee	Matthew Yascolt: Interim Director of Substance Use Disorder	07/2025
Clinical Review Committee	Daniel West: Director of Crisis Services	07/2025
Clinical Review Committee	Shama Faheem: Chief Medical Officer	07/2025
Clinical Review Committee	Vicky Politowski: Director of Integrated Care	07/2025
Clinical Review Committee	April Siebert: Director of Quality Improvement	07/2025
Clinical Review Committee	Marianne Lyons: Director of Adult Initiatives	07/2025
Clinical Review Committee	Polly McCalister: Director of Recipient Rights	07/2025
Clinical Review Committee	Melissa Moody: Vice President Of Clinical Operations	07/2025
NCQA Committee	Margaret Keyes-Howard: Customer Service Engagement Manager	07/2025

NCQA Committee	Tania Greason: Quality Administrator	07/2025
NCQA Committee	Allison Smith: Director of Strategic Operations	07/2025
NCQA Committee	Justin Zeller: Project Manager	07/2025
Unit Approval	Shama Faheem: Chief Medical Officer	06/2025

Applicability

Detroit Wayne Integrated Health Network

Standards

No standards are associated with this document

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