Decision Making Capacity (DMC) Assessment Tool

Updated 12/18/2019

Date/Time of Assessment: _____

I have attempted to provide optimal conditions for the patient's decision making capacity by considering things such as time of day, need for an interpreter, adjustment of sedation, etc. For non-verbal and intubated patients this may include use of a word board or considering their ability to write.	☐ Yes ☐ No

This tool is designed to assist with the assessment of the patient's ability to understand and appreciate the nature and consequences of medical decisions and to formulate and communicate decisions concerning medical care.

A.	Is the patient able to actively participate in this assessment?	☐ Yes ☐ No ☐ Unsure
B.	Is the patient able to communicate in his/her own words (verbal, letter board, written)?	☐ Yes ☐ No ☐ Unsure

Consider lack of DMC if "No" was selected under sections A-B and skip to Conclusion

In section D, consider using the bulleted example questions during your assessment.

C. Is the patient able to demonstrate the ability to:

1. Understand his/her medical condition and/or prognosis? ☐ Yes ☐ No ☐ Unsure
   - *Why are you in the hospital now? What brings you in [office] today? Can you tell me why we are here [homecare]?*
   - *What have you learned from the care team about your illness?*

   If there is a recommended course of treatment that has been discussed with the patient, move on to questions 2-4. "Treatment," for the purposes of this tool, is used as an overarching term that includes treatment, care plan, discharge plans, etc.

2. Understand the proposed treatment and alternatives to the proposed treatment (including the option to decline treatment)? ☐ Yes ☐ No ☐ Unsure
   - *Can you tell me what treatment the care team has recommended?*
   - *What other options have your care team discussed with you?*
   - *Can you choose not to have treatment? (Ask clarifying questions as needed, ex. "Why not?")*
   - *Could you choose to stop treatment? (Ask clarifying questions as needed.)*

3. Weigh the risks, benefits, burdens and potential consequences of treatment options (including the option to decline treatment)? ☐ Yes ☐ No ☐ Unsure
   - *Can you tell me the various pros/cons of treatment options? (This can be in simple terms.)*
   - *How could the treatment help you?*
   - *What problems or side effects could the treatment cause?*
   - *What would happen if you did not have the treatment?*

4. Make a decision regarding treatment that was achieved through a logical reasoning process? ☐ Yes ☐ No ☐ Unsure
   - *Can you tell me what you have decided regarding your treatment?*
   - *Can you tell me how you arrived at your decision?*
   - *What factors helped you come to your decision?*

Consider lack of DMC if "No" was selected in any section above

Conclusion –

☐ The patient appears to have decision making capacity at this time.

☐ The patient appears to lack decision making capacity at this time.

If applicable, name specific decisions the patient may have capacity for: _____

Condition *causing* lack of decision making capacity:_____

Nature of lack of decision making capacity:

- ☐ Patient demonstrates a lack of insight into his/her condition.
- ☐ Patient demonstrates illogical reasoning regarding medical decisions.
- ☐ Patient is unable to meaningfully communicate after attempting to maximize their capacity.
- ☐ Patient provides inconsistent or conflicting responses to similar questions or medical options.
- ☐ Other: _____

Duration of lack of decision making capacity: ☐ Unknown ☐ Other: _____

☐ The patient's ability to make medical decisions is unclear at this time.

- ☐ A Psychiatry/Neuropsychology consult will be placed.
- ☐ I will re-evaluate at a later time.
- ☐ Due to communication challenges, more resources are needed to better understand the patient and assess their capacity.

This document is not meant to be scanned into the medical record. To document in Epic using this tool please use SmartText "OSF Decision Making Capacity (DMC) Documentation Tool".

Guidelines for Decision Making Capacity (DMC)

Updated 12/18/2019

Determination of Decision Making Capacity (DMC)

- DMC refers to a person's "ability to understand and appreciate the nature and expected consequences of each health care decision" and "to formulate and communicate a clear decision about health care."[1]
- DMC is a clinical determination made by an attending physician, whereas competence is a legal judgment made through a formal judicial proceeding.
- Legally relevant criteria for DMC:
    1. The patient's ability to communicate a choice;
    2. The patient's ability to understand the relevant information. Information to be understood includes the nature of patient's condition, nature of recommendations given by the treatment team, list of possible benefits and the risks of available choices;
    3. The patient's ability to appreciate the situation and its consequences. The patient's ability to acknowledge their medical condition and likely consequences of options for treatment or discharge. Courts have recognized that patients who do not acknowledge their illness cannot make valid decisions about care;
    4. The patient's ability to engage in reasoning about options, applying relevant information to their circumstances. (This should focus on the process of decision making, not the outcome.)
- In Illinois an adult patient or minor who is their own legal decision maker, as determined by a court or law, is presumed to have DMC unless and until the lack of DMC has been documented in the medical record by their **attending physician**. It is not adequate for a resident physician or advanced practice provider to document DMC or for an attending to co-sign their notes as documentation of DMC.
- Assessment of DMC does not *require* a psychiatry /neuropsychology consult. A psychiatry/neuropsychology or Ethics consult can be useful if there is uncertainty about whether the patient has DMC.
- Patients with a psychiatric disorder, such as dementia or schizophrenia, may still have DMC if they meet the other criteria outlined above. The "rightness" of the decision a patient makes is less important than the process by which the patient comes to that decision. If the patient has a concomitant psychiatric diagnosis, a psychiatry/neuropsychology consult may be useful to help determine if the patient has DMC.
- Decision-making capacity is not determined by using the Mini Mental Status Exam, which evaluates cognition only, and not the ability to reason. Cognitive deficits may contribute to a lack of DMC, and MMSE scores of < 19 are often associated with lack of DMC. However, patients with normal MMSE scores may still lack DMC.

What happens when a patient has doubtful DMC?

- When a patient has doubtful DMC, the degree to which patient preferences are acted upon varies with the risks and benefits inherent in the decision. The greater the risk posed by following the patient's preferences, the physician has a stronger obligation to assure him/herself that the patient has DMC. Hence, for a life-threatening condition, the failure to meet any criterion might be sufficient to deem a patient non-decisional, while for less serious decisions, more evidence might be required.
- While patients may lack DMC for one type of medical decision, this does not imply that he/she lacks capacity for all other decisions. For example, a patient may have the ability to identify who they wish to make medical decisions for them (Power of Attorney for Healthcare), but may not have sufficient capacity to make medical decisions. Likewise, capacity can wax and wane over time requiring multiple assessments.
- The medical care team has an obligation to restore or attempt to maximize the patient's DMC through treatments. Thus, patients with delirium, sundowning, drug toxicities, etc. should be supported to help them regain DMC.

What happens when a patient lacks DMC?

- A patient **whose lack of decisional capacity has been documented** requires the identification/documentation of the appropriate legal decision maker(s) to make medical decisions on their behalf.
    - If the patient has a Power of Attorney for Healthcare (POAHC) or Living Will the paperwork should be scanned into EPIC. The POAHC should be utilized to make decisions that are not outlined in an advance directive.
    - If the patient does not have a POAHC or applicable Living Will, a substitute decision maker must be identified.
        - In Illinois, a surrogate decision maker(s) should be appointed by the attending physician, following the hierarchy provided in the IL Healthcare Surrogate Act. See OSF Policy *Healthcare Surrogacy: Illinois* for further guidance. For questions about this, please contact Ethics or Care Management.

For questions about the above information, please contact Ethics, Risk Management, or Legal as appropriate.

[1] Veterans Health Administration. VHA Handbook 1004.1, Informed Consent for Treatments and Procedures. Revised January 29, 2009.

Sessums LL, et al. *Does this patient have medical decision-making capacity?* JAMA 2011; 306: 420-427.

Appelbaum, PS. *Assessment of Patients' Competence to Consent to Treat*. NEJM 2007; 357; 1834-70.

(755 ILCS 40/) Health Care Surrogate Act.