

## **CAPACITY ASSESSMENT GUIDANCE DOCUMENT**

(Prepared by Expert Committee as per Section 81 of Mental Healthcare Act, 2017)

### **Overview**

Capacity is the ability to make a particular decision, having understood the information relating to the decision at hand and appreciating the consequence of making or not making that decision. Capacity is not static, but dynamic in nature. People may have a condition or illness that affects their ability to make decisions. A lack of capacity may be temporary such as that caused by some illnesses or the influence of drugs or alcohol or mood / affective state. A person's capacity may vary over time depending on the condition or illness that the person experiences.

A person is presumed to have the capacity to make a decision unless there are good reasons to doubt this presumption. In general, capacity is assessed with respect to a specific decision at a specific time. A person is entitled in law to make unwise imprudent decisions, provided they have the capacity to make the decision. Supported decision-making involves doing everything possible to maximise the opportunity for a person to make a decision for themselves. As per the MHA, 2017 All persons with mental illness shall have capacity to make mental healthcare or treatment decisions but may require varying levels of support from their nominated representative to make decisions. A person's capacity should be assessed in relation to a particular task or decision. Capacity cannot generally be inferred from one task or decision to another. The person's lack of capacity may be temporary, or fluctuating. If possible, an assessment of capacity should be done when the person's condition has improved. For example, if the person has a delirium, it is better to wait until this has resolved. In such patients with Delirium, Severe Manic Excitement, Stupor, Alcohol and other substance use intoxication. Capacity Assessment may not be feasible, and they can be deemed to have "Obvious" lack of capacity and may be recorded as such. Finally, the capacity assessment is based on combination of relevant history, symptoms, behaviour observation, mental status examination and diagnosis. It is a clinical judgement of a clinician.

## **Guidance document is drafted as per the Section 81 of the MHA, 2017**

81. (1) The Central Authority shall appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing the capacity of persons to make mental health care or treatment decisions.

(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental healthcare or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.

This guidance document is only a guidance document and does not replace the legal advice. This document is not a structured or checklist instrument and only a guidance document with provision for semi-structured assessment and documenting the capacity assessment findings. The final decision of capacity is based on holistic assessment of behavioural observation, clinical findings, mental status examination, diagnosis and capacity assessment as per the guidance document. Further it is the prerogative and the duty of the Mental Health Professional/Clinician to record the clinical findings in details and/or elaboration of the same.

### **Mental Healthcare Act, 2017 articulates following regarding the Capacity to make mental healthcare and treatment decisions.**

4. (1) every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to-

(a) Understand the information that is relevant to take a decision on the treatment or admission or personal assistance;

- (b) Appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance;
- (c) Communicate the decision under sub clause-(a) by means of speech, expression gesture or any other means.

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1).

**Assessment of capacity to make mental healthcare and treatment decision is to be carried out on any person (above 18 years of age) during the following situations:-**

- a) The registration of Advance directives as per Section 11(2) d
- b) Before invoking the Advance directive as per Section 5(3)
- c) Independent admission as per Section 86(2) c
- d) Supported Admission as per Section 89(1)c
- e) Every week, when admitted under section 89(8)
- f) Supported Admission as per Section 90(12)
- g) Every fortnightly, when admitted under Section 90(13)
- h) Before giving any information under section 22 of the person to the Nominated representative (information will be given to NR only if the PMI do not have capacity)
- i) for treatment related decisions other than admission) as per Section 4

**Capacity Assessment for Treatment decisions including Admission**

Name of the patient.....

Age..... Sex.....

Patient ID No.....

Date of Assessment.....

Place of Assessment.....

Purpose of this Assessment: Admission / Treatment/ AD / Any other

(if admitted under Section 102/103 of MHA, 2017 the rest of the assessment can happen in the ward)

Advance Directive.....(Present/ Absent)

Nominated Representative: Name.....

ID.....

Diagnosis (provisional).....

Note: Provide explanation for each question

Obvious lack of capacity:

Is he/she in a condition, that that one cannot have any kind of meaningful conversation with him/ her (such as being violent, excited, catatonic, stuporous, delirious, under alcohol or substance intoxication severe withdrawal, or any other (explain below)..... ?

(Yes / No)

If yes, then go to 4. If no, then go to 1.

1. Understanding the information that is relevant to take a decision on the treatment or admission or personal assistance (Understands the nature and consequences of the decision; possible options explained)

a. Is the individual oriented to time, place and person? (Yes / No / Cannot assess)

Explanation:

b. Has he/she been provided relevant information about mental healthcare and treatment pertaining to the illness in question? (Yes / No)

If no, provide explanation:

c. Is he/she able to follow simple commands like (i) show your tongue (ii) close your eyes (Yes / No / Cannot assess)?

Explanation:

d. Does he/she acknowledge that he has a mental illness? (Yes / No / Cannot assess)

Explanation:

2. Appreciating reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance.

a. Does the individual agree to receive treatment suggested by the treating team?  
(Yes /No / Cannot assess)

Explanation:

*If yes, go to 2b. If no, go to 2c, If cannot assess, go to 3*

b. Does he/she explain why he/she has agreed to receive treatment?  
(Yes/No I cannot assess)

Explanation:

c. Does he/she explain why he/she does not agree to receive treatment? (Yes / No / cannot assess)

Explanation:

3. Communicating the decision under sub-clause (1) by means of speech, expression, gesture or any other means (Specify).

a. Is the individual able to communicate his/her decision by means of speech, writing, expression, gesture or any other means? (Yes / No / cannot assess)

Explanation:

4. Based on the examination and relevant history, behavioural observation, clinical findings and mental status examination findings noted in the medical records, I believe that Mr./ Ms..... (Strike off the choice that is not applicable)

a. Has capacity for treatment decisions including admission

b. Needs 100 % support from his/ her nominated representative in making treatment decisions including admission

Signature of the Psychiatrist/ Mental Health Professional/  
Medical Practitioner.....

Name of the Psychiatrist/ Mental health professional/  
Medical Practitioner.....

5. Fill the following if the choice is 4.a

*I, Mr./Ms..... agree to make decisions in respect of my mental healthcare and treatment.*

*Signature of the assessed person (if it is 4.a) Name of the assessed person*

6. Fill the following if the choice is 4.b.

*I, Mr./Ms....., the nominated representative of Mr./Ms.....agree to make decisions with respect of his/her treatment.*

*Signature of the Nominated Representative (if it is 4.b).....*

*Name of the Nominated Representative.....*