

Specific Decision-making & Emergency Decision-making

Adult Guardianship and Trusteeship Act (AGTA)

Alberta

Freedom To Create. Spirit To Achieve.



How the AGTA was created

- Extensive community consultation
- 4330+ Albertans: guardians, trustees, physicians, dependent adults, health care providers, lawyers, community organizations, etc.
- Focus groups, town hall meetings, surveys, written submissions, etc.



Adult Guardianship & Trusteeship Act

Replaces 30-year-old
Dependent Adults Act



Needs of Albertans are changing

- AGTA balances autonomy and protection
- More choice for adults and their families
- More sensitive to the needs of the community and the health system



Agenda

- Key concepts
- Guiding principles
- Specific decision-making
- Emergency decision-making



Key Concepts



Key Concepts

- **Capacity is on a continuum**
 - Capacity is the ability to **understand** the information that is relevant to a decision and to **appreciate** the reasonably foreseeable consequences of a decision

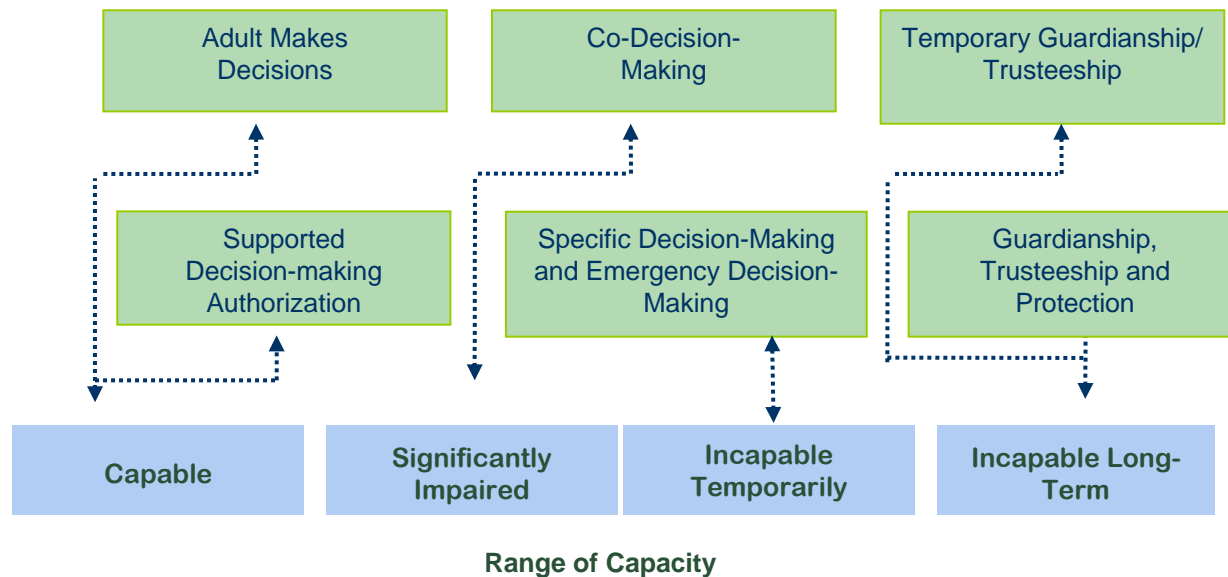


- There is a range between capable and incapable



Key Concepts

- **AGTA has new decision-making options**
 - Tailored to different levels of capacity
 - Designed to provide as much autonomy as possible



Key Concepts

- **AGTA balances autonomy with protection**
 - More safeguards to protect vulnerable adults
 - New complaints and investigation process



Guiding Principles



Guiding Principles

Why are they important?

Guiding principles are the lens through which we interpret the *Act*



Guiding Principles

- **Capacity is presumed**
 - Regardless of age, disability, etc.
-
- **Communication method is not relevant to determination of capacity**
 - Hearing aid, language translator, sign language, assistive technology



Guiding Principles

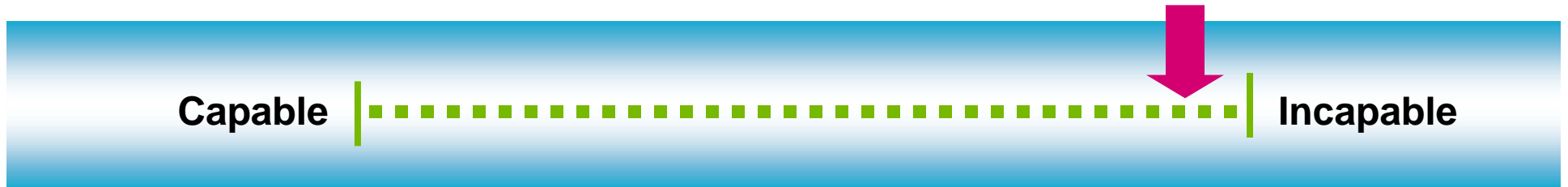
- **Autonomy is to be maintained through least intrusive and least restrictive measures**
 - New decision-making support options
-
- **Decisions are to be based on best interests and how the person would have made the decision if capable**
 - What were the adult's values and beliefs when the adult was capable?



Specific Decision-making



Specific Decision-Making



For adults who:

- require a time sensitive decision related to health care or temporary admission to or discharge from a residential facility; and
- lack capacity to make this decision; and
- do not have a guardian or a personal directive.



Health Care Provider Roles

- Physicians and nurse practitioners
 - Specific decision-making regarding health care and temporary admission to or discharge from a residential facility
- Dentists
 - Specific decision-making regarding dental care



Specific decision-making in 4 Steps

- Step One: Assess
- Step Two: Select
- Step Three: Decide
- Step Four: Record



Step 1: Assess

- Adult's capacity to make a specific decision is assessed
- Specific decision-maker has limited and temporary authority surrounding only that decision
- Health care providers must provide the adult with all relevant information needed to make a decision



Step One: Assess

Capable



Incapable

- Assess if the adult understands the information and appreciates the consequences:
 - Of a decision
 - Of a failure to make a decision
- Health care providers will complete:
Part 1 of form 6



Step One: Assess

- Adult has the right to **refuse** the assessment
- Adult is entitled to **communicate** by any means that enables understanding (e.g. translators or assistive devices)



What constitutes health care?

- Any examination, diagnosis, procedure, or treatment undertaken to prevent or manage any disease, illness, ailment or health condition
- Any procedure undertaken for the purpose of an examination or a diagnosis
- Any medical, surgical, obstetrical or dental treatment
- Anything done that is ancillary to any examination, diagnosis, procedure or treatment
- Any procedure undertaken to prevent pregnancy, except sterilization that is not medically necessary
- Palliative care
- A treatment plan



What constitutes health care?

Specific decision-making does not apply to:

- Psychosurgery
- Sterilization that is not medically necessary
- Removal of tissue for implantation or research
- Unbeneficial research or experimental activities
- A decision for an adult who is a formal patient as defined in the *Mental Health Act*, or
- A decision likely to result in **imminent** death



What is a residential facility?

- A nursing home
- A place of care for adults who are aged or infirm or who require special care
- An approved hospital or auxiliary hospital
- A premises, other than a private residence, in which four or more adults who are not related to the operator are provided with living accommodation, care and supervision



Residential Facility Decisions

- **Temporary admission** means admission for a period not exceeding 6 months (beginning on the day that a specific decision-maker consents to the admission).
- The specific decision maker may make a further decision regarding placement if less than 6 months have passed since the original decision and there has been no change in the adult's capacity.



Residential Facility Decisions

- If at any time during the 6 months the adult regains capacity, the adult will regain decision-making authority.
- NOTE: Planning for ‘what happens next’ is the responsibility of the service provider. The specific decision maker provides consent, but is not responsible for the continuing care of the adult.



Residential Facility Decisions

- The specific decision maker can also provide consent to discharge from a residential facility.
- The specific decision maker must consider the adult's best interests and quality of life when making the decision



Step Two: Select

- If the adult does not already have a guardian or a personal directive, health care providers may select the “nearest relative” from a ranked list to make the one time decision regarding:
 - Health care
 - Admission to residential facility
 - Discharge from residential facility



Step Two: Select

- When selecting a specific decision-maker, the adult's eldest relative of full blood is preferred in the following ranked order:



- Spouse or adult interdependent partner
- Adult son or daughter
- Father or mother
- Grandfather or grandmother
- Adult grandson or granddaughter
- Adult uncle or aunt
- Adult nephew or niece
- Adult brother or sister



Step Two: Select

- 18 years of age or older
- Available and willing to make the decision
- Able to make the decision
- In contact with adult in previous 12 months
- Has knowledge of the adult's wishes
- Does not have a dispute with the adult

The selected decision-maker must complete a Part 2 of Form 6, a declaration to verify the above criteria before a decision can be made



Step Two: Select

- What if there is no one available to select?
 - Contact your regional Public Guardian who will make the decision
- What if there is a dispute over selection?
 - Contact your regional Public Guardian who will make the decision or, in some cases, will authorize someone from the ranked list to make the decision



Step Three: Decide

- A specific decision-maker must consult the adult, to the extent possible, and must make a decision that is in the adult's best interests
- In determining best interests, consider:
 - the adult's wishes, values and beliefs while capable
 - how the adult's quality of life/condition will be affected
 - possible benefits of a decision vs. risk of harm
 - the least restrictive and least intrusive option



Step Three: Decide

- A specific decision-maker shall also consider :
 - whether the adult's condition or quality of life is likely to be improved by the proposed health care,
 - whether the benefit that the adult is expected to obtain from the proposed health care is greater than the risk of harm,
 - whether a less restrictive or less intrusive alternative form of the health care would be as effective and as beneficial



Step Four: Record

- You must keep a copy of: Form 6
- (Specific Decision Making) Specific decision-makers must notify the adult's nearest relative, or if no nearest relative, the Public Guardian.



What if someone disagrees?

- An interested person may:
 - initiate a full Capacity Assessment by someone else using Form 10 (Capacity Assessment Report)
 - apply to the Court for a review of
 - the specific decision
 - the assessment of the adult's capacity
- The individual must take action to initiate within seven days. If they do not, the health care provider has authority to act on the decision.



Review Process

- Any interested person may apply for a review of:
 - an assessment of an adult's capacity,
 - a decision of a specific decision-maker.
- The Court may:
 - require a capacity assessment report,
 - confirm or set aside and assessment of the adult's capacity, and/or
 - confirm or set aside the decision of the specific decision-maker.



Personal information

- Health care providers may access, collect or obtain personal information about an adult (except financial):
 - To assess the adult's capacity
 - To select a specific decision-maker
- Health care providers may not disclose any personal information, except:
 - To select a specific decision-maker
 - To a person selected as specific decision-maker
 - As authorized by FOIP, HIA, PIPA



Liability

- No action lies against a health care provider or specific decision maker for anything done or omitted to be done in good faith.
- Health care providers may rely on the accuracy of the information in a specific decision maker's declaration - Form 6 Part 2.



Court Orders

- If the adult still requires assistance after the specific decision is made, an interested party may apply to the Court for a co-decision-making, guardianship and/or trusteeship order
- A more extensive capacity assessment will be conducted to determine the appropriate level of support for the adult.



Emergency Decision-making



Emergency Decision-making

Capable



Incapable

- Adult needs emergency health care:
 - to preserve the adult’s life,
 - to prevent serious mental or physical harm, or
 - to alleviate severe pain.
- Adult lacks capacity to consent or refuse to consent to the emergency health care as a result of drug or alcohol impairment, complete or partial lack of consciousness, or another cause.



Emergency Decision-making

- Only **physicians** can make the decision
- Where practical, physician shall consult with a 2nd physician or registered nurse confirming that health care is **necessary** and **adult is not able to provide consent**.



Questions? We're here to help

- Office of the Public Guardian
toll-free information line

1-877-427-4525

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