

# Valley Medical Group, P.C.

## Clinical Policy and Procedure

**Title: Determining Capacity and Invoking the Health Care Proxy**

**Purpose:** Provide clear guidelines for the practitioner to determine and document a patient's lack of capacity for medical decision-making and to invoke the health care proxy

**Policy:**

**Determining capacity:** Using the guidelines in Addendum 1 to this policy, the primary care physician can determine and document that a patient no longer has the capacity to make their own health care decisions.

**Invoking the Health care Proxy:** A Health Care Proxy (HCP) is a legal document that designates the person/persons who can make medical decisions if/when the patient is not able. The HCP, in order to be actualized, needs to be invoked by the primary care physician.

**Procedure:**

**Determining capacity:** The physician will document the findings for lack of capacity in the Determining Capacity macro (.determining) available to add anywhere in the encounter. All 4 fields must be addressed as outlined in Addendum 1 though there is no strict guideline delineating how many elements must be met; this is per the provider's judgement, using all relevant clinical and anecdotal data. It is recommended to document over time to show progression or consistency.

For a patient of a non-physician provider, NP or PA will see their patient and summarize their findings with relevant dates and rationale for finding of lack of capacity in the visit note, then send a case summary to their collaborating physician regarding need for physician visit to confirm lack of capacity (and invoke health care proxy), referencing their note. The physician will review the note and arrange for a physician visit (30 minutes if physician is not familiar with the patient).

**Invoking the Health Care Proxy:** Once it is determined that a patient lacks capacity to make their own health care decisions, the health care proxy can be invoked. The primary care physician will document this lack of capacity in the chart (as above) and also write "health care proxy is invoked" in the yellow alert on the EHR banner as well as the name of the health care agent so that it is evident to all who work in that chart. In addition, there is a form titled: *ACP: Health Care Proxy Invocation* in print forms as seen in Addendum 2, for the physician to complete and give to the health care agent with a copy of the HCP.

Please note: Determining capacity and invoking a HCP must be performed and documented by a physician.

**Documentation and Billing** N/A

**References:**

Mass legislature link: *General Laws, Part II, Title II, Chapter 201D, Section 6:*

<https://malegislature.gov/Laws/GeneralLaws/PartII/TitleII/Chapter201D/Section6>

[https://www.uptodate.com/contents/image?imageKey=NEURO%2F100356&topicKey=NEURO%2F98592&search=competence&rank=1~150&source=see\\_link](https://www.uptodate.com/contents/image?imageKey=NEURO%2F100356&topicKey=NEURO%2F98592&search=competence&rank=1~150&source=see_link)

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**Addendum 1**

**Guidelines for Documenting Capacity in encounter notes**

There are four primary elements that need to be addressed to determine a lack of medical decision-making capacity. Each of these need to be documented in the patient’s medical chart and must include the attending physician's opinion regarding the cause and nature of the principal's incapacity as well as its extent and probable duration. It is recommended to include quoted patient’s words to substantiate when possible.

1. Patient’s ability to understand diagnosis or treatment, including the risks and benefits of options for care
2. Patient’s ability to communicate a clear choice of their own with reliability and consistency over time
3. Patient’s ability to appreciate how the information applies to them
4. Patient's ability to reason, to make a decision that balances the facts with their own values

**Lack of capacity due to mental illness or developmental disability**

If the attending physician determines that a patient lacks capacity because of mental illness or developmental disability, the attending physician who makes the determination must have, or must consult with a health care professional who has, specialized training or experience in diagnosing or treating mental illness or developmental disabilities of the same or similar nature in making such determination.

**Assessment tools can be utilized to support decision-making**

While testing is not required, below are some options that may support the decision to determine lack of capacity.

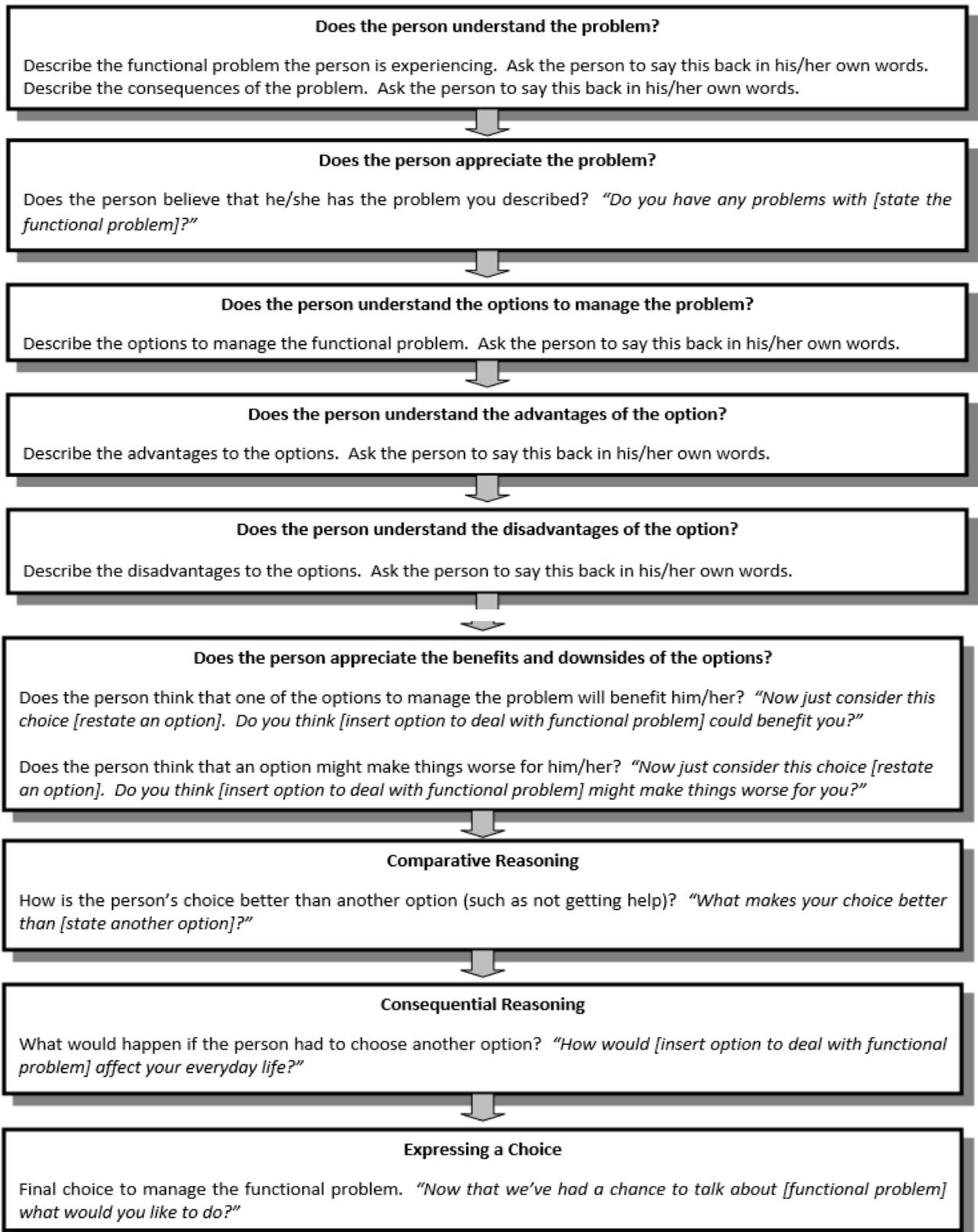
- **Specialist consult:** For assistance with determining capacity, a provider may choose to refer a patient to a geriatrician or neurologist for cognitive testing.
- **Montreal Cognitive Assessment (MoCA):** a brief 30-question test that helps assess people for dementia. Providers may refer patients to IBH for this test which can be performed in person or in virtual visit. Can also be used to note change over time.
- **The Short Portable Assessment of Capacity for Everyday Decision-Making (ACED):** The ACED decision-making grid, as shown below, assesses for functional capacity. The scoring criteria are intended to help guide judgment whether the person has sufficient decisional abilities to make their own choices. There are no guidelines for how to interpret total score but the ACED is another tool that may be used to support decision-making.

[file:///H:/Desktop/The\\_Short\\_Portable\\_ACED.pdf](file:///H:/Desktop/The_Short_Portable_ACED.pdf)

**To administer the ACED you need to identify a functional problem the person is having, and at least one option to solve that problem. You will then adapt the interview questions according to the functional problem the person is experiencing and the options to take care of that problem. For each question, decide whether the person's answer is adequate, marginal, or inadequate using the following scoring criteria:**

Understanding Scoring Criteria	Appreciation Scoring Criteria	Reasoning Score Criteria	Expressing a Choice
<p><b>0 (inadequate performance):</b> Person gives a clearly inaccurate response with serious distortion.</p>	<p><b>0:</b> Person offers reasons that are delusional or a serious distortion of <u>reality</u>, or cannot answer the question.</p>	<p><b>Comparative:</b> <b>0:</b> Person provides no comparative statements or an illogical one.</p>	<p><b>0:</b> Patient is unable to state a choice at all.</p>
<p><b>1 (marginal performance):</b> Person shows some recollection of the item content but gives an incomplete and vague response.</p>	<p><b>1:</b> Person may or may not believe the option will benefit/adversely affect his or her situation but the reason is vague and may represent distorted versions of reality.</p>	<p><b>1:</b> Person provides comparison statement without specific consequences.</p>	<p><b>1:</b> Patient states more than one choice or ambivalent.</p>
<p><b>2 (adequate performance):</b> Person recalls the content of the item and offers a fairly clear version of it.</p>	<p><b>2:</b> Person acknowledges at least some potential benefit/adverse effect from the option and offers reasons that have some reasonable basis.</p>	<p><b>Consequential:</b> <b>0:</b> Person provides no everyday consequences or an illogical answer.</p>	<p><b>2:</b> Patient states a clear, single choice.</p>
		<p><b>1:</b> Person provides a general statement without details.</p>	
		<p><b>2:</b> Person provides a clear and vivid statement of everyday consequences.</p>	

The following page has the ACED guiding questions to assess the above criteria:



**Addendum 2: Health care Proxy Invocation form in print forms:**



\* 13517431w55 A-Legal

In accordance with Massachusetts law, I, \_\_\_\_\_ MD/DO,  
have determined that (patient/DOB) \_\_\_\_\_  
lacks the capacity to make health care decisions.

I have determined the cause and nature of this incapacity to be: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The anticipated duration of this patient's incapacity is: \_\_\_\_\_  
\_\_\_\_\_

The health care proxy is invoked. The designated health care agent is:  
\_\_\_\_\_ and they have been notified of this  
determination.

Physician signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please attach a copy of the patient's health care proxy to this form and give to the health care agent.