

Identifying and Addressing Temporary Changes in Cognition

PRACTICE TIP • April 2021

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Legal assistance providers and other advocates should constantly be aware of the capacity of a client while communicating with them, monitoring possible changes in cognition. Assessing a person's ability to understand an issue or question, the risks and benefits of choices, and the person's ability to make or communicate a choice may lead to recognizing a temporary change in the cognition of a client.

What is Cognition and How Can it be Temporarily Impaired?

Cognition is the process by which the brain collects, organizes, and analyzes information, stores and recalls memories, evaluates risks and benefits, makes choices, and comprehends the short-term and long-term impact of choices.

Cognition can be temporarily impaired. The cause of temporary impairment may include physical illness, brain injury, stress, grief, pain, reactions to medications or anesthesia, after-effects of surgery or debilitating medical treatments, impaired nutrition or hydration, or delirium.

The result may be difficulty concentrating or thinking; a temporary inability to give informed consent; problems with memory; impaired communication abilities; and difficulty making choices big and small. The challenges are not unlike those experienced by persons with mid to late-stage Alzheimer's or other causes of permanent dementia. At its worst, the person may experience confusion, disorientation, agitation, depression, or withdrawal. Delusions or hallucinations are even possible. For many people experiencing temporary changes in cognition, capacity will return with improvements in health or through learning and developing new skills.

Providing Assistance in Times of Temporary Impairment

Legal assistance providers and other advocates may find themselves in a position where they are called on to evaluate the capacity of individuals who are in need of services, but are experiencing a temporary change in cognition. Assessing a person's capacity to make and understand decisions during these periods of temporary changes in cognition can be a challenge for advocates. Here are some tips for taking steps to assist in these circumstances:

- For lawyers, look to the [comments to Model Rule of Professional Conduct 1.14](#) for guidance on working with a client with diminished capacity.
- Delay decisions that can be put off until the person has an opportunity to heal and recover.
- Always assess the person's understanding by asking questions and carefully listening to the answers. Legal decisional-capacity can be transient—it can come and go, and come back again.
- Work with the individual to determine when they might be feeling their best in a given day or period of time. For impairments related to medical treatments, try to schedule calls or appointments which give them time to recover.

- Actively avoid permanent solutions to temporary challenges. Until health care professionals have confirmed a permanent change in cognition with little or no hope of recovery, treat the change as temporary and assume the person will recover.
- Impacts may diminish when the medication causing an impairment is no longer needed. Some patients experience short term post-operative effects from anesthesia—avoid major decisions in the days after surgery.
- If there is no advance health care directive in place, look to [statutory provisions on who can make health care decisions](#). In states without a statute, absent conflict, many health care [providers will accept consent](#) from close family who appear to be genuinely interested in the best interest of the person.
- Address family conflict with [facilitated family meetings](#), or [mediation](#). Some health care facilities have social workers or nurses skilled at hosting these meetings. The goals include assuring that everyone's concerns are heard, seeking common ground, and agreeing on goals of care that reflect the values of the person.
- Only seek a court order if the person is unable to make a choice or express a preference with assistance and support, and there is a time sensitive decision that requires legal consent and no one has the authority to consent. In these situations, only seek [temporary or limited orders](#) tailored to what is urgent. File motions to terminate orders as appropriate, based on the client's recovery.

Preparing for Temporary Periods of Incapacity

Advocates can also help people prepare for temporary periods of incapacity when they are foreseeable, such as may be the case with aggressive medical treatments, and can use practical strategies to support decision-making. Here are some tips to help with preparation:

- Before a person starts treatment for serious illness, encourage them to engage in basic advance care planning. This should start with a [discussion of personal values and goals of care](#). Encourage them to name in writing, in accordance with state law, [someone to help with health care](#) decisions and [financial management](#) as needed through the progression of their treatment, using the [person centered and person driven decision support model](#).
- While pain management can be essential to allow rest, recovery, and healing, pain medication can cause changes in cognition, paranoia, and depression. Encourage the individual to ask their health care providers about concerns and read the drug information for a better understanding of what to expect.
- If the opportunity exists, encourage the person to arrange supports to help with things from paying the bills, to reviewing the mail, and walking the dog.
- If there will be a delay in paying bills or debts while the person is temporally unable to direct financial management, reach out to creditors and explain what is happening. Communication can go a long way in gaining accommodation.

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