



An Overview of Capacity Assessments in Alberta

HEALTHY AGING
CORE
Collaborative Online
Resources & Education
ALBERTA

DATE: February 26, 2021

TIME: 1:00 p.m. to 2:30 p.m.

HOST: Charlene Sitar

Regional Elder Abuse Prevention Coordinator
Yellowhead Elder Abuse Response Network

PRESENTER: Melanie Blackwell

Office of the Public Guardian and Trustee

Alberta Elder Abuse Awareness Council
and the
Yellowhead Elder Abuse Response Network



DECISION-MAKING CAPACITY ASSESSMENT

▶ Office of the
Public Guardian
and Trustee

Classification: Protected A

Office of the Public Guardian and Trustee

- ▶ OPG guided by the *AGTA, PDA* and *MHA*
- ▶ OPT guided by the *AGTA, Public Trustee Act, Wills and Succession Act, Minor's Property Act*
- ▶ *OPG and OPT merged in 2014 to become the OPGT*
- ▶ *Some clients in common, some processes in common*
- ▶ *Still have some differences in the way things are done*
- ▶ *Common referral can be made to both offices at once*



- ▶ During COVID19 all courses and workshops are to be virtual
- ▶ Generally each course or workshop is offered once year when possible
- ▶ No cost currently for workshops or courses but there will be in the future, likely by 2022

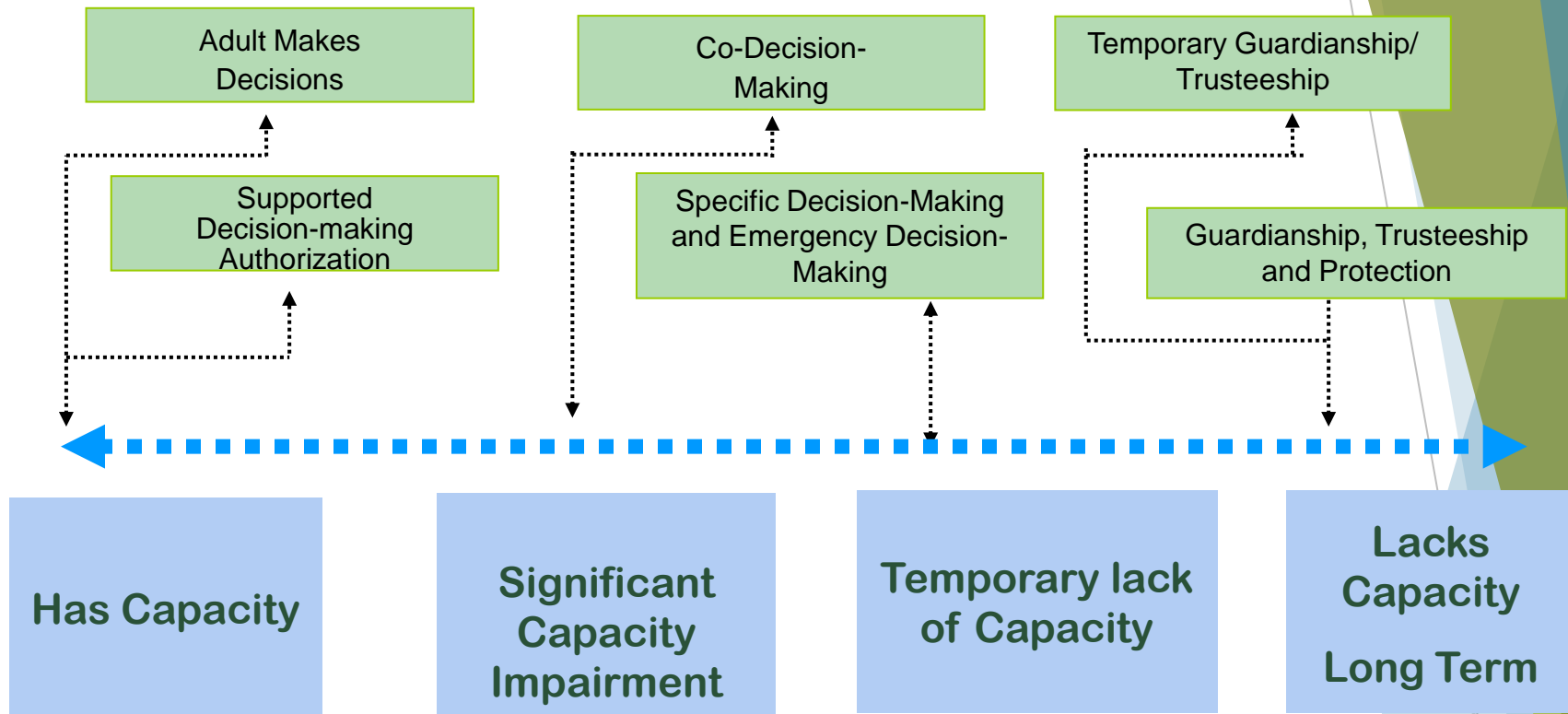


Adult Guardianship and Trusteeship Act (AGTA)

AGTA - Guiding Principles

- **Capacity** is to be presumed
- **Communication method** is not relevant to determination of capacity
- **Autonomy** is to be maintained through least intrusive and least restrictive measures
- Decisions are to be based on **best interests** and how the person would have made the decision if capable

Continuum of Decision-Making Choices under the AGTA





Co-Decision Making

- ▶ Court ordered
- ▶ The adult is capable of making some decisions but their ability to impaired enough that they need someone to make decisions with
- ▶ Requires a Capacity Assessment Report - Form 3
- ▶ CDM is a family member or friend trusted by the adult
- ▶ CDM cannot be the Public Guardian
- ▶ Cannot have a co-decision maker and a trustee

Guardianship

- For adults who have been assessed by a qualified capacity assessor as not having capacity to make personal decisions in any or all of the 8 domains
- A guardian can be a family member or friend or the Public Guardian
- Capacity assessment report (CAR) (**Form 4**)
- Temporary medical conditions that could affect capacity must be ruled out within three months **prior** to completion of a capacity assessment (applies to CDM, guardianship and trusteeship)
- Medical assessment can be completed by a physician or a nurse practitioner



Trusteeship

- adults who do not have capacity to make decisions in financial matters
- No range of capacity
- The RA can have a guardian, a trustee or both
- **Trusteeship cannot co-exist with co-decision-making**
- Application can be made when minor child is 17 years old – applies to CDM, guardianship and trusteeship, order is granted and takes effect on the 18th birthday



Specific Decision-Making (non-court)

- Applies only when there is no guardian or agent under a personal directive and adult cannot give informed consent
- Physician selects a decision-maker from ranked list
- Form 6
- Can only apply 2 specific types of decisions
 - health care
 - temporary admission to or discharge from residential facility
- Does not :
 - apply to psychiatric treatment decisions for formal patients under MHA ,
 - end of life decisions such as removal of life support



Specific Decision-Making

- If no one available from the ranked list, the physician may ask Public Guardian to name someone to act as the SDM or the Public Guardian may make the decision
- Form 6 can only be completed by a physician, dentist or nurse practitioner – **NOT DCA**



Capacity Assessment



- ▶ Three day course mandatory for RSW's, ROT's, RN's and RPN's
- ▶ Receive designation from the Minister to become Designated Capacity Assessors (DCA's)
- ▶ Can then conduct capacity assessments for co-decision making, guardianship and trusteeship
- ▶ Cannot complete PDA enactments or SDM assessments



- ▶ Physicians and Psychologists are allowed under the Regulations to conduct capacity assessments without specialized training
- ▶ Provide additional 2 day workshops for physicians and psychologists
- ▶ Educational credits are available for physicians



- Capacity assessor must conduct capacity assessment in accordance with regulations and complete a Capacity Assessment Report (CAR) in prescribed form
- Capacity assessments are required for CDM, guardianship and trusteeship whether it is an initial application or a review of an existing order
- **Exceptions:** sections 27 and 48
G and T orders in **urgent cases** – court may dispense with capacity assessment



Capacity defined in the AGTA:

“capacity” means, in respect of making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and a failure to make a decision.



Capacity assessment defined in the AGTA:

“Capacity assessment” means an assessment of an adult’s capacity to make decisions respecting personal matters or financial matters



Events that may indicate the need for assessment of capacity

- An event or circumstance which potentially places a patient, or others, at risk that necessitates investigation, problem-solving (and possibly action) on the part of a health care professional



Best practices that apply to capacity assessments:

- capacity assessment must be necessary (no alternative)
- adult has right to refuse to undergo or continue assessment
- adult has right to have observer present



- Adult has the right to have the assistance of an interpreter or the use of an assistive device to assist them to communicate
- Capacity assessments should be completed at a time when the adult is likely to be able to demonstrate their fully capacity
- Capacity assessor make reasonable efforts to obtain any information that is relevant to the assessment of the adult's capacity



Who Has Access to Capacity Assessment Report?

- Applicant – the person that requested the assessment
- Represented or Assisted Adult
- OPGT - Review officer
- Court
- Not family members



Liability

The *AGTA* states “ no action lies against the Public Guardian,... a capacity assessor, a review officer...for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities of functions under this Act.



Assessment Fees

- ▶ Assessments completed while in facilities or in acute care do not have a fee
- ▶ Physicians will charge fees in their clinics if assessments are completed there.
- ▶ Assessments completed under private practice can charge fees only up the amounts stated in the regulations:
 - ▶ Co-decision making - maximum \$500
 - ▶ Guardianship only - maximum \$500
 - ▶ Trusteeship only - maximum of \$500
 - ▶ Guardianship and trusteeship combined - Maximum of \$700



Personal Directives Act



Definition of Capacity

- ▶ In the *Personal Directives Act*. “capacity” means the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the reasonably foreseeable consequences of the decision



- ▶ Definition is the same as the AGTA
- ▶ Difference is that now you are assessing of the “maker” of the personal directive has lost capacity
- ▶ Personal directives address personal, non-financial domains
- ▶ Cannot include financial decisions or be combined with a power of attorney
- ▶ PD’s are voluntary and made when the person has the ability to chose who they want to make their decisions of the lose capacity



- ▶ Should be someone they trust
- ▶ PD's remain dormant from the time they are written until the maker is assessed as having lost capacity at which time they are enacted following a capacity assessment
- ▶ Maker can name one agent, more than one agent to act jointly or a primary agent and alternate agent
- ▶ Can specify what areas of authority the agent is to have (same domains as for guardianship)



Forms for Capacity Assessment for PD

- ▶ Maker can name someone in their PD to determine capacity
 - ▶ Schedule 2
 - ▶ Person named completes Part 1
 - ▶ Physician or psychologist completes Part 2
- ▶ If they do not name someone:
 - ▶ Schedule 3
 - ▶ Physician or Psychologist completes Part 1
 - ▶ Second service provider such as an RN, facility manager, social worker or another physician completes Part 2



- ▶ Assessor must see and interview the individual to determine capacity
- ▶ Medical assessment prior to the assessment to rule out temporary medical conditions is also required
- ▶ PDA also has for the possibility that the maker has regained capacity
- ▶ Agents cannot just resign from being the agent, there needs to be a decision maker in place
- ▶ If there is an alternate named, the can assume the responsibility
- ▶ If not, a guardianship application must be made to the Court
- ▶ Only the maker can add a different agent

Important terms to know

- ▶ AGTA - Adult Guardianship and Trusteeship Act
- ▶ OPGT - Office of the Public Guardian and Trustee
- ▶ Assisted Adult - person in respect of whom a co-decision making order is in effect
- ▶ CAR - Capacity Assessment Report, a report completed under Section 102
- ▶ Capacity Assessor - member of a health profession designated in the regulations as being qualified to conduct capacity assessments who is designated as a capacity assessor under the regulations
- ▶ Court - means Court of Queen's Bench
- ▶ Financial matter - means any matter relating to the acquisition, disposition, management to protection of property
- ▶ Guardian - a person named as a guardian in a guardianship order



Terms to know

- ▶ Interested person - any person who is 18 years of age or older and who is concerned for the welfare of a person in respect of whom a co-decision making order, guardianship order, trusteeship order is sought or has been obtained
- ▶ Represented adult - an adult in respect of whom a guardianship order is in effect, a trusteeship order is in effect or both a guardianship and trusteeship order are in effect



Capacity Assessment Office:

Melanie Blackwell

780-638-3252

Capacity Assessment email:

JSG.OPGT-CapAssmnt@gov.ab.ca

OPGT website:

<https://www.alberta.ca/resources-for-capacity-assessors.aspx>



Please take time to join our Elder Abuse Group

The screenshot shows the user interface for the 'ELDER ABUSE' group on the CORE website. At the top, a blue navigation bar contains links for Home, Groups, Community Programs, Training & Events, Resources, and News, along with a search icon. Below this, the CORE logo and navigation icons for 'Add New', 'MY GROUPS', 'MSG', 'ALERTS', and 'MY PROFILE' are visible. The main content area features a group header for 'ELDER ABUSE' with a 'JOINED' button and a pencil icon for editing. A secondary navigation bar below the header includes links for Group Home, Discussions, Resources, Events, Training, Members, and Membership. The main text area contains two paragraphs: the first explains that anyone can be a victim of elder abuse and that a collaborative community of practice is the best way to address it; the second states that the group invites individuals, organizations, and agencies to develop strategies to address elder abuse. To the right, there is a section for 'ABOUT THIS GROUP' with a grid of member profile pictures and a note that all members are in the group. A blue arrow points to the 'JOINED' button.

Home Groups Community Programs Training & Events Resources News

HEALTHY AGING
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ALBERTA

Add New

MY GROUPS MSG ALERTS MY PROFILE

Home > Elder Abuse

ELDER ABUSE JOINED

Open group | 38 members

Group Home Discussions Resources Events Training Members Membership

Any older adult can become a victim of elder abuse, regardless of gender, sexual identity, race, ethnicity, income, or education. According to the National Prevalence Study on Mistreatment of Older Canadians, 8.9 per cent of older adults in Alberta experience one or more forms of abuse. One of the best ways to address elder abuse is through a collaborative community of practice.

The CORE Elder Abuse Group invites individuals, organizations, and agencies to develop strategies to address elder abuse in the least intrusive, but most effective way – respecting an older adult's rights while providing an appropriate level of support and care. Elder abuse existed prior to the 2020 global pandemic and it will remain post-pandemic. However, COVID-19 has presented us an opportunity to discuss elder abuse on a much wider scale.

ADD NEW GROUP CONTENT

ABOUT THIS GROUP

All members in this group

FEATURED RESOURCES

Thank you for participating & sharing your time and expertise!

SEE YOU ON CORE!



Remember to update your information on 211

Contact us at

healthyaging@calgaryunitedway.org