Journal of Life Care Planning, Vol. 2, No. 3, 141-188.

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Obtaining Valid Informed Consent

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Abstract. *Life care planners should obtain valid informed consent from their clients in order to practice effective risk management. If life care planners also are case managers, they are specifically required by national standards of care published by the Case Management Society of America to obtain valid informed consent from their clients. This article presents frequently asked questions regarding informed consent and relates to life care planners as well as case managers.*

Revised standards of care published by the Case Management Society of America (www.CMSA.org) require case managers to obtain consent to provide case management services. Below are some questions that case managers frequently ask about informed consent along with answers that take into account national standards of care.

(1) When must informed consent be obtained?

Informed consent must be obtained prior to initiation of case management services regardless of practice setting.

(2) Who is responsible for obtaining informed consent?

Case managers are required to get informed consent for case management services. In terms of valid informed consent for clinical services, only treating providers may legally obtain informed consent.

(3) Are there any prerequisites to valid informed consent?

Yes, the two (2) prerequisites to valid informed consent are capacity and voluntariness.

(4) What does "capacity" mean?

There are two (2) aspects of this term that case managers must take into account: (a) chronological age and (b) whether patients are able to understand information given to them. Both of these criteria must be satisfied in order to conclude that patients have capacity to consent to case management services.

(5) How old must patients be in order to be able to give valid informed consent?

Generally, patients must have reached the age of adulthood. The age at which individuals become adults as opposed to minors is defined by state law. Thus, the age of adulthood varies from state to state. Case managers who provide services in multiple states must take this fact into account when obtaining consent.

(6) Are there any exceptions to this rule?

Yes, patients who are not adults but who are seeking certain types of care such as treatment for sexually transmitted diseases or who are "emancipated" may consent on their own behalf depending on the law in the state in which the patient resides.

(7) What tools can case managers use to document the ability to understand information?

Case managers should use mental status exams or mini-mental status exams to determine mental capacity. The results of such exams should be documented in the patients' records.

(8) What does "voluntariness," the second prerequisite to valid informed consent, mean?

This term means that consent was obtained without fraud or duress.

(9) If the prerequisites for valid informed consent are met, what should case managers do next?

They should obtain consent by providing patients with the following information:

- A description of proposed case management services.
- Possible benefits of such case management services.
- Significant risks, if any, associated with the case management services.
- Possible alternatives.
- A statement that the patient has the right to refuse case management services and the risks and consequences that patients may incur if they refuse such services.

(10) What evidence of valid informed consent should case managers obtain?

Case managers may (1) Ask patients to sign a consent form; (2) Document consent in patients' chart with or without patients' signatures on the documentation; (3) Tape record consent; (4) Video the consent process; (5) Give patients a short written quiz on the material provided and, if patients answer the questions correctly, put a copy in patients' charts; and/or (6) Utilize any other credible form of evidence of consent.

(11) If patients cannot consent, who can consent on their behalf?

The answer to this question varies depending on the laws of the state in which the patient resides. Generally, parents may consent on behalf of their minor children. Consent may be provided on behalf of incapacitated adults by: (1) an attorney-in-fact, i.e. someone who has

authority under a durable power of attorney; (2) individuals authorized to consent under state substitute consent statutes; (3) guardians or conservators of the person; or (4) Courts.

(12) Why is it important to get valid informed consent?

Consent is a complete defense to many types of claims of malpractice. Case managers who fail to get valid consent automatically lose this viable defense.

About the Author

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