



## Health Care and Developmental Disabilities

### *Suggestions for Providers*

- ◇ **Self-Determination.** Adult patients with developmental disabilities have a right to make their own medical decisions. Most of them do this independently. Others do so with assistance.
- ◇ **Disability Discrimination.** Denying medical rights on the basis of assumptions or a disability diagnosis rather than evidence of a patient's functional incapacity may be considered a form of illegal discrimination.
- ◇ **Medical Ethics.** Disability discrimination in health care services violates the code of medical ethics and may be grounds for investigation and discipline by a professional licensing board.
- ◇ **Capacity Evaluations.** Mental capacity is situation specific and depends on the level of risk involved. A finding of incapacity must be based on evidence adduced by a qualified professional.
- ◇ **Supported Decision-Making.** Incapacity does not exist if a patient is capable of making a particular medical decision with the help of a designated support person.
- ◇ **ADA Duties.** The Americans with Disabilities Act and other state and federal disability nondiscrimination laws require health care professionals to ensure effective communications with patients who have disabilities and to offer reasonable accommodations to such patients.
- ◇ **Powers of Attorney.** Adult patients with disabilities have the right to designate someone as a health care agent in the event they are incapacitated. POAs are presumed to be valid.
- ◇ **HIPAA Waivers.** Adult patients with developmental disabilities have the right to designate someone as their patient representative so that person can have access to otherwise confidential medical records and information.
- ◇ **Guardianships.** It may be considered a form of disability discrimination if providers recommend a guardianship without a thorough capacity evaluation and a full exploration of less restrictive alternatives.
- ◇ **Complaints.** A patient may file a complaint with management if they believe that patient rights have been unjustly violated by staff. Complaints may also be filed with state and federal government agencies as well as professional licensing boards.
- ◇ **Family Advocates.** As a form of disability accommodation under the ADA, a patient is entitled to have a family member or other person assist them in filing internal and agency complaints.
- ◇ **Continuing Education.** The risk of liability for providers can be reduced by offering continuing education programs for both staff and management on the rights of patients with developmental disabilities and the duties of staff to these patients.
- ◇ **ADA/504 Coordinator.** Providers should have a trained staff member with the responsibility to ensure compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

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**Further details on these topics are available at:**  
<https://alternativestoguardianship.com/providers.pdf>

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