



GOVERNMENT OF BERMUDA

**Ministry of Health**



# Making decisions about my care

Mental Health Act 1968, Code of Practice

Fact Sheet 4



# The Mental Health Act 1968

## Code of Practice

The Code of Practice explains how patients who are detained in hospital should be supported by the mental health services.

This Fact Sheet tells you how you will be involved in making decisions about your care, and what steps will be taken if you do not have the capacity to make them for yourself.

It is made easy to read for as many people as possible.

This is one of a series of different Fact Sheets that describe how different parts of the Code of Practice should be followed.

Cover art is Mo' Betta Blues by Lynwood Richardson, 2019

### Key facts:

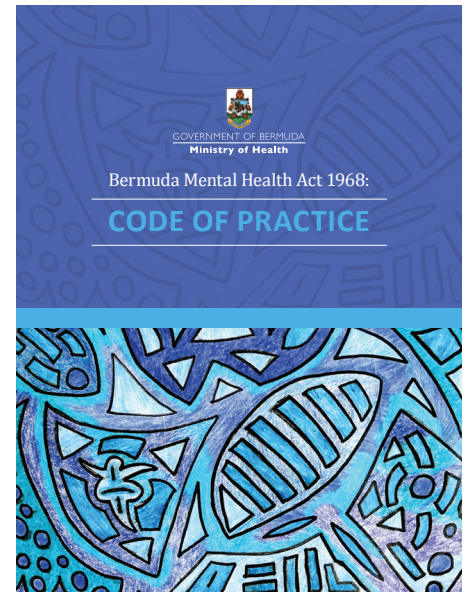
You should be able to make as many decisions as possible about your care

If your team has good reason to believe that you do not have the **capacity** to make a particular decision, they must carry out an assessment using the **capacity framework**

The capacity framework follows a number of clear steps

Even if they assess that you cannot make a particular decision, they must not assume that you do not have the capacity to make any other decisions

If you cannot make your own decisions, your individual rights must still be protected, and any decisions made must be in your best interests



## What does “capacity to consent” mean?

- Consent means that you give permission to receive a treatment
- To give valid consent, you must have the **capacity** to make that decision
- You must have enough information about the planned treatment. This will include:
  - The purpose of the treatment
  - What it consists of
  - Are there any side effects or risks?
  - How likely is it to succeed?
  - Are there any alternative treatments?



- You should be helped to make as many decisions for yourself as possible
- If your team believes that you are not able to make a particular decision (i.e. you do not have the capacity to consent), your team must follow the **capacity framework** (see pages 5 & 6)



# Five principles to assess your capacity to make a decision

## When your team is planning your treatment, they must follow these 5 principles:

1. They must assume that you have the capacity to make decisions about your care, unless it is assessed that you cannot
2. They must help you as much as they can to make the decision, before they come to the conclusion that you lack the capacity
3. They must not say that you lack the capacity to make a decision just because it may seem to be an unwise decision
4. If you lack the capacity to make a decision and one of your care team makes a decision for you, this must be done in your best interests
5. Before the team makes a decision about your care, they must check if they can do it in a way that does not restrict your rights and freedoms

Even if you have a mental illness and you are detained under the Mental Health Act, this does not necessarily mean that you lack the capacity to make specific decisions



# The Capacity Framework

If your team believes that you are not able to make a particular decision (i.e. you do not have the capacity to consent), your team must use the **capacity framework** to assess you

The members of your team must follow the **two-stage test of capacity**:

## Stage 1:

Do you have an impairment or disturbance of your mind or brain that affects how you make decisions?

This can include:

- Mental illness
- Dementia
- Significant intellectual disabilities
- Physical conditions causing confusion
- Sedating medication
- Concussion or brain damage
- Alcohol or drug use, etc.



## Stage 2:

Does this mean that you are unable to make the decision at the time that it needs to be made?



## Assessing whether you can make a particular decision

In order to assess the 2nd part of the **two-stage test of capacity**, these **4 criteria must be met**. You should be involved as much as possible in the assessment. If any one of these criteria is not met, it means that you cannot make that particular decision:

1. Do you have a general understanding of what decision you need to make and why you need to make it? And
2. Do you have a general understanding of the likely consequences of making or not making the decision? And
3. Do you understand, retain, use and weigh the information that you need to make the decision? And
4. Can you communicate your decision?



Your capacity can change over time and may need to be reassessed

Your capacity may need to be reassessed for different treatment decisions

The person who assesses your capacity to make a decision will usually be the person who is directly concerned with you at the time that the decision needs to be made

For some complex decisions, a more formal assessment may need to be made (e.g. by a psychiatrist or psychologist) to help the person who needs to make the decision

When a capacity assessment is carried out, the details of it will be recorded



## Best interest decisions if you don't have capacity

If you don't have the capacity to make a particular decision when it needs to be made, someone may need to make it for you. You should still be involved in the decision, and it should be made in your **best interests**



Your team should consider:

- Your wishes and feelings- you may have written these down as advance directives
- Your beliefs and values
- The views of other people (e.g. your family or friends) if you have told them what you want

When the team thinks about your best interests, they should consider:

- Your welfare in the widest sense
- What is the likely outcome of the planned treatment?
- How likely is it to succeed?
- Are you likely to be happy about the expected outcome?



This Fact Sheet has been developed from the Bermuda Mental Health Act 1968: Code of Practice, Chapter 9 “Mental Capacity”, pages 29 – 33; Chapter 10 “Applications for Detention in Hospital”, paragraphs 10.12 – 10.14; Chapter 13 “Community Treatment Orders”, paragraphs 13.4 – 13.8.

## Do you need more information?

The Mental Health Act and Code of Practice are found at:  
<https://www.gov.bm/mental-health>

More Fact Sheets on the Act and Code are found at:  
<https://www.gov.bm/mental-health>

If you have questions about the Act or the Code, contact the BHB Mental Health Act Administrator at Mid-Atlantic Wellness Institute:

Telephone: **236 3770**  
Email: **MHA@bhb.bm**



If you have a complaint about something to do with the Mental Health Act this should be directed to the unit/ department manager of the relevant service provider.

**BHB Complaints: Patient Relations Manager**  
at 239 1425, or [feedback@bhb.bm](mailto:feedback@bhb.bm) or

**Patient Relations Manager**  
Quality and Risk Department  
Bermuda Hospitals Board  
PO Box 1023  
Hamilton, Bermuda HMDX



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