BOARD ON AGING & LONG TERM CARE
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Provider Guide: Considerations for Resident Relationships

This document is intended to be used as a guide to assist in the assessment process for determining a resident's capacity to consent to a sexual relationship. It is not intended to replace a comprehensive, personalized assessment. These guidelines are intended as a guide and are not comprehensive. Each resident's situation is different and may require the consideration of different or additional information. This document does not constitute legal advice or direction. Long-term care settings should consult with their attorney if seeking legal advice or direction.

Resident Rights

All individuals residing in long-term care settings retain the full rights guaranteed by both state and federal law. Residents have the right to form friendships. When considering intimate and sexual relationships, the community where the resident resides is responsible for ensuring that residents can consent to these relationships. Consent for such relationships is a personal decision and cannot be delegated to anyone else, including a power of attorney for health care, guardian, medical doctor, staff member, or family member.

Person Centered Approach

Facilities should utilize a person-centered process to identify a resident's capacity to consent to a sexual or intimate relationship. Person-centered care incorporates all aspects of the individual's life, including their physical, mental, emotional, and social well-being. It focuses on empowering individuals to make informed decisions and provides support that is tailored to their specific circumstances.

Assessment

Staff should complete person-centered assessments to help determine a resident's capacity to consent to sexual contact with another person. These assessments also help the team understand the type of relationship residents are seeking. In addition, they help the team develop a person-centered care plan and uphold Resident Rights. Assessments may begin at admission but are further developed over time. The assessment process should not end after an initial determination of capacity; it must be updated and changed as the resident and situation require. Documentation and review of the assessment shall occur as part of the care planning process.

Assessment is:

- Knowing your resident
- Gathering information
- Asking questions

- Finding answers
- Making observations
- Analyzing information
- Never making assumptions
- An ongoing process

As in any good assessment process, a skilled, multi-disciplinary team must be involved. The focus must, always, be on the individual resident and should not include the opinions or comfort levels of staff, family members or surrogate decision-makers. With resident consent, facilities can obtain additional information from these individuals.

Wisconsin has not specifically defined what an individual must understand to consent to sexual contact. However, the Wisconsin Department of Health Services *Guardianship of Adults* handbook suggests that the following four guidelines could be used as part of an assessment to determine a person's capacity to consent to sexual contact. Additional considerations may be warranted.

1. The person understands the physical nature of the sexual contact involved, and that it enjoys a special status as "sexual."
2. The person understands that their body is private and they have the right to refuse to engage in sexual activity.
3. The person understands that sexual contact of some types may result in pregnancy, and an understanding of the health risks of sexual contact.
4. The person understands that there are social standards and potential social consequences that apply to sexual contact.

Approaches to assessment of capacity to consent may include:

- Discussion(s) with resident
- Observation of behaviors and routines
- Review pertinent medical information
- With resident consent, medical provider input
- With resident consent, legal decision maker/family may provide additional history

Care Planning

Care planning to address a resident's sexual expression should be based on the information gathered throughout the assessment process. The content of a care plan will depend heavily on the individual's capacity, or lack thereof, to consent to sexual contact. Residents should be part of the care planning process regardless of whether they have an activated power of attorney for healthcare or a guardian.

If it is determined that two residents can consent to sexual contact, the care plan focus will be on the rights associated with that relationship.

If one or both residents cannot consent to a sexual relationship, care planning needs to focus on balancing the rights of the residents to associate and have a friendship, while protecting them from sexual contact that could be exploitive or abusive.

When it has been determined, through assessment, that one or both residents are unable to consent, the following are some approaches staff could take to ensure the residents can have a friendship, if they desire, while protecting them from sexual abuse/exploitation:

- Early identification of the relationship. It is imperative that staff know their residents and observe their interactions, including how relationships are developing.
- Offer socialization in public, supervised areas. Provide frequent checks to ensure that contact does not become sexual or that affection does not become unwanted.
- Offer activities that the two residents can participate in together while staff is involved.

If staff have assessed the residents and find that one or both residents' sexual behavior is inappropriate or unwanted, the following approaches could be used. Interventions should occur before sexual contact takes place.

- Assess unmet needs (e.g. physical, social, emotional).
- Use distraction, redirection and activities. Knowing the resident will help you figure out what works for the person. Generally, it's easier to redirect to something the person is interested in.
- Provide increased supervision, if needed.
- Use the facility environment to separate residents, when necessary. Assessments will help determine if this is the only way to keep the two non-consenting residents safe. These measures should be used as a last resort.

Reassessment

Assessments should be ongoing. Documentation of the assessments shall occur as part of the care planning process.

Summary

Person-centered assessment must occur to determine a resident's capacity to consent to a sexual relationship with another person. The judgments of others should not interfere with a resident's right to have friendship or an intimate relationship. Everyone benefits from understanding resident rights and assessing for consent. Facilities may also consider implementing a sexuality/intimacy policy.

Questions? Contact the Wisconsin Long Term Care Ombudsman Program.
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