

Legal Rights and Decision Making

Supplemental Resources

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This document contains the forms, tables, lists, and websites that were either displayed or referred to in the Legal Rights and Decision-Making training. This document also contains additional resources to aide new WSCs in gaining the skills necessary to effectively coordinate the supports and services for individuals on their caseload.

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Legal Rights and Decision Making

Defining Human and Civil Rights

While there is a lot that can be said about individual rights and how they impact decision making, the intent of this training is to lay the foundation for understanding the rights of persons with disabilities and the WSC's role in supporting those rights.

There is considerable overlap between these two terms because civil rights often expand upon human rights, which are regarded as the most basic, fundamental rights of all people. Some examples of human rights include the rights to life, safety, free expression, and a fair trial.

In the United States, civil rights are protected by federal or state law. Civil rights protect against discrimination, and protect individuals' rights to free speech, due process, and equal protection, among others. People with disabilities enjoy the same civil rights as anyone else and these rights are protected by law.

State and Federal Laws Protecting Rights of Persons with Disabilities

Florida Statutes Protecting Rights

Chapter 393.13 of the Florida Statutes defines the rights of persons with developmental disabilities.

WSCs must review yearly with their clients: *The Bill of Rights for Persons who are Developmentally Disabled* and the *APD Resident Rights for Individuals Living in APD Licensed Facilities* (for any clients living in an APD licensed facility).

Links to Resources:

The Bill of Rights for Persons who are Developmentally Disabled and the *APD Resident Rights for Individuals Living in APD Licensed Facilities* can be accessed on the APD website under forms and publications at:

<http://www.apdcares.org/waiver/support-coordination/>

Bill of Rights for Persons with Developmental Disabilities

- a) Persons with developmental disabilities shall have a right to dignity, privacy, and humane care, including the right to be free from abuse, including sexual abuse, neglect, and exploitation.
- b) Persons with developmental disabilities shall have the right to religious freedom and practice. Nothing shall restrict or infringe on a person's right to religious preference and practice.
- c) Persons with developmental disabilities shall receive services, within available sources, which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary to achieve the purpose of treatment.
- d) Persons with developmental disabilities shall have a right to participate in an appropriate program of quality education and training services, within available resources, regardless of chronological age or degree of disability. Such persons may be provided with instruction in sex education, marriage, and family planning.
- e) Persons with developmental disabilities shall have a right to social interaction and to participate in community activities.
- f) Persons with developmental disabilities shall have a right to physical exercise and recreational opportunities.
- g) Persons with developmental disabilities shall have a right to be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect.
- h) Persons with developmental disabilities shall have a right to consent to or refuse treatment, subject to the powers of a guardian advocate appointed pursuant to s. 393.12 or a guardian appointed pursuant to chapter 744.
- i) No otherwise qualified person shall, by reason of having a developmental disability, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under, any program or activity which receives public funds, and all prohibitions set forth under any other statute shall be actionable under this statute.
- j) No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections.

Resident Rights for Individuals Living in APD Licensed Facilities

(a) Clients shall have an unrestricted right to communication:

1. Each client is allowed to receive, send, and mail sealed, unopened correspondence. A client's incoming or outgoing correspondence may not be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.
2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication, to make and receive confidential calls, unless there is reason to believe that the content of the telephone communication may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable observation and monitoring to the telephone communication.
3. Clients have an unrestricted right to visitation subject to reasonable rules of the facility. However, this provision may not be construed to permit infringement upon other clients' rights to privacy.

(b) Each client has the right to the possession and use of his or her own clothing and personal effects, except in those specific instances where the use of some of these items as reinforcers is essential for training the client as part of an appropriately approved behavioral program. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client's record, and a receipt for such effects shall be immediately given to the client, if competent, or the client's parent or legal guardian.

1. All money belonging to a client held by the agency shall be held in compliance with s. 402.17(2).
2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and may not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be used or conserved for the personal use or benefit of the individual client as provided in s. 402.17(2).
3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the agency. All personal effects and money, including interest, shall be promptly turned over to the client or his or her heirs.

- (c) Each client shall receive prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community.
1. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for implementation of an individual or family support plan or behavior analysis services, or in unnecessary or excessive quantities.
 2. Daily notation of medication received by each client in a residential facility shall be kept in the client's record.
 3. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.
 4. When pharmacy services are provided at any residential facility, such services shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of chapter 465.
 5. Pharmacy services shall be delivered in accordance with the provisions of chapter 465.
 6. Prior to instituting a plan of experimental medical treatment or carrying out any necessary surgical procedure, express and informed consent shall be obtained from the client, if competent, or the client's parent or legal guardian. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:
 - a. The nature and consequences of such procedures.
 - b. The risks, benefits, and purposes of such procedures.
 - c. Alternate procedures available.
 7. When the parent or legal guardian of the client is unknown or unlocatable and the physician is unwilling to perform surgery based solely on the client's consent, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The client shall be physically present, unless the client's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures. The express and informed consent of a person described in subparagraph 6. may be withdrawn at any time, with or without cause, prior to treatment or surgery.

- a. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.
- (d) (Each client shall have access to individual storage space for his or her private use.
- (e) Each client shall be provided with appropriate physical exercise as prescribed in the client's individual or family support plan. Indoor and outdoor facilities and equipment for such physical exercise shall be provided.
- (f) Each client shall receive humane discipline.
- (g) A client may not be subjected to a treatment program to eliminate problematic or unusual behaviors without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused.
 - 1. Treatment programs involving the use of noxious or painful stimuli are prohibited.
 - 2. All alleged violations of this paragraph shall be reported immediately to the chief administrator of the facility and the agency. A thorough investigation of each incident shall be conducted, and a written report of the finding and results of the investigation shall be submitted to the chief administrator of the facility and the agency within 24 hours after the occurrence or discovery of the incident.
 - 3. The agency shall adopt by rule a system for the oversight of behavioral programs. The system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17. No behavioral program shall be implemented unless reviewed according to the rules established by the agency under this section.
- (h) Clients shall have the right to be free from the unnecessary use of restraint or seclusion. Restraints shall be employed only in emergencies or to protect the client or others from imminent injury. Restraints may not be employed as punishment, for the convenience of staff, or as a substitute for a support plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

1. Daily reports on the employment of restraint or seclusion shall be made to the administrator of the facility or program licensed under this chapter, and a monthly compilation of such reports shall be relayed to the agency's local area office. The monthly reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor. The area offices shall submit monthly summaries of these reports to the agency's central office.
 2. The agency shall adopt by rule standards and procedures relating to the use of restraint and seclusion. Such rules must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record. A copy of the rules adopted under this subparagraph shall be given to the client, parent, guardian or guardian advocate, and all staff members of facilities and programs licensed under this chapter and made a part of all staff preservice and in-service training programs.
- (i) Each client shall have a central record. The central record shall be established by the agency at the time that an individual is determined eligible for services, shall be maintained by the client's support coordinator, and must contain information pertaining to admission, diagnosis and treatment history, present condition, and such other information as may be required. The central record is the property of the agency.
1. Unless waived by the client, if competent, or the client's parent or legal guardian if the client is incompetent, the client's central record shall be confidential and exempt from the provisions of s. 119.07(1), and no part of it shall be released except:
 - a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or the client's parent or legal guardian, if the client is incompetent.
 - b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.
 - c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility where the client resides, or an employee of the agency when the administrator of the facility or the director of the agency

deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

- d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.
2. The client, if competent, or the client's parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.
- (j) Each client residing in a residential facility who is eligible to vote in public elections according to the laws of the state has the right to vote. Facilities operators shall arrange the means to exercise the client's right to vote.

Federal Laws Protecting Rights

The following are some of the most impactful laws regarding the rights and independence of people with disabilities.

Section 504 of the 1973 Rehabilitation Act was the first disability civil rights law to be enacted in the United States. It prohibits discrimination against people with disabilities in programs that receive federal financial assistance. This act also set the stage for the enactment of the Americans with Disabilities Act.

Americans with Disabilities Act. In 1990 (effective in 1992), President George H. W. Bush signed into law the Americans with Disabilities Act (ADA), which was quickly accepted as the most significant civil rights legislation since the Civil Rights Act of 1964. ADA prohibits discrimination based on disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunication.

The ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as offices buildings, warehouses, and factories.

The Fair Housing Act was passed in 1968 and is enforced by the US Department of Housing and Urban Development (HUD). The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, and familial status. Discrimination based on disability and familial status was added in 1988. This allowed people with disabilities to obtain housing. It also allowed tenants to modify housing to accommodate individual needs. According to the law, modifications are to be made at the tenant's expense.

The Individuals with Disabilities Education Act (IDEA)

The goal of IDEA is to ensure public schools serve the educational needs of students with disabilities.

IDEA provides very specific requirements to guarantee a free appropriate public education (FAPE) for students with disabilities in the least restrictive environment (LRE). FAPE and LRE are the protected rights of every eligible child, in all fifty states and U.S. Territories.

IDEA strengthens the role of parents in educational planning and decision-making on behalf of their children, primarily through the development of an IEP.

WSCs may be invited to participate in the IEP process. In this important role you can advocate for services through the school system and help ensure that your clients are engaged in their educational setting and that they are given opportunities to progress along with their peers.

Rights to Confidentiality

The Consent to Obtain or Release Protected Health Information must be reviewed yearly:

AGENCY FOR PERSONS WITH DISABILITIES (APD) CONSENT TO OBTAIN OR RELEASE PROTECTED HEALTH INFORMATION

YOUR LAST NAME	YOUR FIRST NAME	DATE OF BIRTH
STREET ADDRESS	STATE	ZIP
HOME TELEPHONE NUMBER	CELL PHONE NUMBER	EMAIL ADDRESS
<input type="checkbox"/> I hereby freely and voluntarily consent and authorize the Agency for Persons with Disabilities ("APD"), or its agents or representatives, to obtain my protected health information from the person(s), agencies, institutions, or entities stated below for the purposes of treatment, payment, and health care operations.		
<input type="checkbox"/> I hereby freely and voluntarily consent and authorize the Agency for Persons with Disabilities ("APD"), or its agents or representatives, to obtain <i>only specific portions</i> of my protected health information from the person(s), agencies, institutions, or entities stated below for the purposes of treatment, payment, and health care operations.		
<input type="checkbox"/> I hereby freely and voluntarily authorize the Agency for Persons with Disabilities ("APD"), or its agents or representatives, to discuss, access, use, and/or disclose matters related to my protected health information to or from the person(s), agencies, institutions, or entities stated below for the purposes of treatment, payment, and health care operations.		
The information requested below will be accessed, used, or disclosed for the following purposes:		
<input type="checkbox"/>	Medical Reports	<input type="checkbox"/>
<input type="checkbox"/>	Academic Records and Plans	<input type="checkbox"/>
<input type="checkbox"/>	Habilitation Plans / Support Plans	<input type="checkbox"/>
<input type="checkbox"/>	Psychological Reports	<input type="checkbox"/>
<input type="checkbox"/>	Other (Please specify)	<input type="checkbox"/>
<input type="checkbox"/> Social Service Reports <input type="checkbox"/> Speech and Hearing Reports <input type="checkbox"/> Physical Therapy Reports <input type="checkbox"/> Occupational Therapy Reports		
Name, address, telephone number, email address, and/or fax number of person, agency, institution, or entity from whom my protected health information is to be obtained:		
Name, address, telephone number, email address, and/or fax number of person, agency, institution, or entity to whom my protected health information may be discussed and/or disclosed:		
<ul style="list-style-type: none"> • I understand that my protected health information may be accessed, discussed, used, and/or disclosed for purposes of treatment, payment, healthcare operations, and as otherwise permitted or required by law. • I also understand that information disclosed under this Consent to Obtain or Release Protected Health Information might be re-disclosed by the recipient and it may no longer protect my health information under federal or state law, if the recipient of the information is obligated to comply with the requirements of HIPAA. • I understand that I may revoke this Consent by writing to APD, except to the extent that action has already been taken based on this Consent to Obtain or Release Protected Health Information. • I know that I may inspect or copy any information used / disclosed under this consent. 		
This consent expires on _____. I understand that if this consent has not been revoked by me or it does not specify a consent expiration date, it will automatically expire ninety (90) calendar days from the date of signing the consent.		
By your signature below, you acknowledge that you understand and agree to the above information.		
Signature of Client		Date
If you are a client's legal representative, you must state your title and provide documentation proving your legal authority to act on behalf of the client.		
Signature of Legal Representative		Date
		Relationship of Legal Representative

APD OGC HIPAA Form 0012 (Effective Date: August 11, 2017)

APD Notice of Privacy Practices. WSC must provide a copy for new clients or their legal representative at initial contact, review with clients every three years, and if the notice undergoes any material revisions, provide a copy of the revised notice within 60 days.

**AGENCY FOR PERSONS WITH DISABILITIES (APD)
Notice of Privacy Practices**

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. *PLEASE REVIEW IT CAREFULLY.*

Your Information. Your Rights. Our Responsibilities. This notice applies to the information that we have about your health care and services that you receive through APD. APD is required by law to notify you of our legal duties and privacy practices, your rights, and describe the ways we may access, use, and disclose your protected health information. We must maintain the privacy of your health information and follow the terms of this notice.

Your Rights. When it comes to your health information, you have certain rights. You have the right to:

- **Get a copy of your health records.** You may review or get a copy of your health records except for psychotherapy notes, information compiled as part of a legal case, or as otherwise excluded by law. APD may impose a reasonable fee for copying, supplying, preparing, and mailing the requested records.
- **Ask us to correct or change your health information if you believe it is incorrect or incomplete.** Ask us how to do this. We may say no to your request but we will tell you in writing within 60 days.
- **Confidential communications.** If you ask us to contact you in a confidential way (for example, at a certain phone number, email address, or designated mailing address) we may grant reasonable requests.
- **Ask APD to limit what health information we use or share.** We do not have to agree if it would affect your care. If we do agree, we will limit the information unless it needs to be shared in an emergency.
- **Get a list of those with whom APD has shared your health information.** You can ask, in writing, for a list of the times we have shared your information (“accounting”), who we shared it with, and why it was shared, within the past 6 years, except for when it is used to carry out your treatment, pay for your care, for health care operations, disclosures you asked for, or prohibited by law. You are entitled to one free accounting a year.
- **Receive a paper copy of this notice.** You are entitled to a paper copy of this notice.
- **Choose someone to act for you.** Your legal guardian or someone with a medical power of attorney for you may exercise make choices about your health information.
- **You have a right to file a complaint.** If you feel APD has violated your rights, you may file a complaint with our office or the Secretary of the US Department of Health and Human Services. You will not be retaliated against for filing a complaint.

HIPAA Privacy Official
Office of the General Counsel
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399
Telephone: (850) 922-9512

Centralized Case Management Operation
US Department of Health and Human Services
200 Independence Avenue, SW—Room 509F HHH Building
Washington, DC 20201
Telephone: (800) 368-1019
TDD toll-free: (800) 537-7697 | Fax: (202) 619-3818
OCCRCComplaint@hhs.gov

Your Choices. For certain health information, you can tell us your choice about what we share.

- **In these cases, you have both the right and the choice to tell us to:** Share information with your family, close friends, or others involved in the payment for your care. Share information in a disaster relief situation. *If you are unable to tell us your preference—such as if you are unconscious or during an emergency—we may share your information if we believe it is in your best interest. We may also share your information when it is needed to lessen a serious and imminent threat to health or safety.*
- **In these cases, we will never share your information unless you give us written permission for:** Marketing purposes or the sale of your information.

Our Uses and Disclosures of Your Protected Health Information. APD is permitted to use or disclose your health information for treatment, payment, and health care operations. If you are an APD Medicaid Waiver applicant or recipient, APD uses your health information to determine your eligibility for the Developmental Disabilities Individual Budgeting Medicaid Waiver program and to determine the amount of assistance that you need for your care. We also use it to manage the Developmental Disabilities Individual Budgeting Medicaid Waiver program. Here are some examples of how we typically access, use, and/or disclose your health information: We share information about your

diagnosis and care needs to determine your initial or ongoing eligibility for the program, as well as to coordinate supported living services and placement in a care facility. We share information to pay for your health care products and services, including federal and state funding programs such as Medicaid. It is used and disclosed to appropriate APD staff members, business associates, volunteers, as well as other government agencies who are involved in your treatment, payment for your care, health care operations and oversight, including those who evaluate the performance of people involved in your care.

How else can we use or share your health information? APD is allowed or required to share your information in other ways without your written authorization—usually in ways that help public health, safety, and research. We have to meet many conditions in the law before we can share your information for these purposes. Examples of other times when we can share your information include:

- We may disclose information to a family member or another person, if necessary, to assist you in an emergency.
- Reporting suspected abuse, neglect, or domestic violence, and preventing or reducing threats to you or another person's health or safety.
- With other state or federal agencies. For example, the US Department of Health and Human Services (HHS), Federal Emergency Management Agency (FEMA), the Centers for Disease Control (CDC), the Florida Agency for Health Care Administration (AHCA), the Florida Department of Children and Families (DCF), the Florida Department of Health (DOH), and other similar agencies.
- To conduct research that benefits persons with developmental disabilities and/or the Medicaid program.
- With organ procurement organizations, a coroner, medical examiner, vital statistics, or funeral director.
- For workers' compensation claims, law enforcement purposes, with health oversight agencies as authorized by law, and for functions such as military, national security, and presidential protection services.
- In response to a court order or administrative order, or in response to a subpoena.
- As required by federal or state law, we must use or disclose your information to the extent it is required by law.

Other Uses and Disclosures. Other uses and disclosures not described in this notice will be made only with your written authorization. If you give us written authorization, you may revoke it at any time.

Our Responsibilities. We are required by law to maintain the privacy and security of your protected health information. We are required to follow the duties and privacy practices described in this notice and give you a copy of it. We are required to let you know promptly if a breach occurs that may have compromised the privacy or security of your health information. We will not use or share your information other than described in this notice unless you tell us we can in writing. If you tell us we can, you may change your mind at any time.

Changes to this notice. APD reserves the right to change the terms of this notice; and, the changes apply to all information that we have about you. The new notice will be on our web site and we will mail a copy to you.

Contact Information. If you have any questions, requests, or would like a printed copy of this notice, please contact your APD office in your area at the telephone number listed below. We may ask that you make a request in writing. **Northwest Region** (for Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington counties) call (850) 487-1992; **Northeast Region** (for Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union, and Volusia counties) call (904) 992-2440; **Central Region** (for Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter counties) call (407) 245-0440; **Suncoast Region** (for Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota counties) call (813) 233-4300; **Southeast Region** (for Broward, Indian River, Martin, Okeechobee, Palm Beach, and Saint Lucie counties) call (561) 837-5564; **Southern Region** (for Dade and Monroe counties) call (305) 349-1478; **Sunland Center** call (850) 482-9210; and **Tacachale Center** call (352) 955-5580

Who receives this Notice of Privacy Practices. APD sends this notice to every recipient household. This notice applies to all consumers served by the Agency. To comply with Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, please contact the HIPAA Privacy Official at the address shown on this Notice if you would like to receive this Notice in an alternate format such as Braille, large print, or audio.

APD OGC HIPAA Form #0000 (Effective date: August 11, 2017)

Links to Resources:

The Consent to Obtain or Release Protected Health Information and the APD Notice of Privacy Practices forms can be accessed on the APD website under forms and publications at:

<http://www.apdcares.org/waiver/support-coordination/>

Decision Making

Every day we are asked to make decisions that affect our lives. It's important to keep in mind that the ability to make decisions, even if the consequences have a negative effect, is the basis for person-centered planning and self-determination. However, in some situations an individual may require assistance with decision-making or have limitations to protect their health, safety, or finances. In these cases, an authorized representative is important and necessary.

The impact of determining incapacity

An incapacitated person is someone who has been determined by a judge to lack the capacity to govern themselves or to manage their affairs to some degree.

When someone is determined to be incapacitated, their rights to make decisions in their life are restricted and the decision-making authority is delegated to someone else. Because of this restriction, it is important that the individual's paperwork shows whether they have incapacity.

Additional Reading:

Rights of persons determined incapacitated are fully explained in Chapter 744.3215, F.S. You can access this information at www.leg.state.fl.us/Statutes.

The following are important guidelines to keep in mind regarding individual's decision-making capabilities. These are taken from Disability Rights Pennsylvania's, *Decision-Making by People with Intellectual Disabilities: The Importance of Self-Determination*.

- 1. The type of disability.** Every disability is different. It is necessary to consider the impact of the individual's disability on their capacity to make and understand their choices. Individuals with physical disabilities who have no cognitive limitations will rarely, if ever, need a substitute decision-maker.
- 2. The kind of decision being made.** Not all decisions are the same. Daily decisions range from very simple with little long-term affect to extremely complex. Someone may be capable to make some decisions but not others. Someone may be quite capable to decide for themselves what kind of job to get, clothes to wear, and how to buy healthy food, but they may not understand the complexities of a medical condition or medications. When determining if a substitute decision-maker is necessary or even lawful, the type of decision is as important as the type and extent of the person's disability.
- 3. Experience related to making decisions.** Often, people with developmental disabilities are considered unable to understand and learn how to make personal decisions. This lack of exposure results in being over dependent on others and perpetuating that assumption.
- 4. Available natural supports.** In many cases a person who needs assistance with decision-making may not need to choose formal options, including powers of attorney and guardianship. The existence of a natural supports system can substitute entering into legally binding agreements that can have long-term effects on the person's ability to make future choices independently.

(Disability Rights Pennsylvania, *Decision-Making by People with Intellectual Disabilities: The Importance of Self-Determination*, February 2018.)

What is a Legal Representative?

A legal representative is the person who has the legal authority to make decisions and act on behalf of an individual.

WSCs must have proper documentation for every legal representative unless the individual is a minor age 17 and under and their legal representative is the parent, or if the person is over 18 and is their own legal representative. A copy of all legal representative documentation should also be submitted to APD regional office.

If you have any questions about the validity of the documentation you receive about legal representatives, contact your APD liaison for assistance.

Chart on the following page shows quick reference tool of the decision-making options available to individuals over the age of 18. This chart may be helpful to understand the level of decision-making authority each type of representation has with the individual.

Decision-Making Quick Review Chart

DECISION-MAKING QUICK REVIEW CHART							
	Must be executed by a person with capacity	Delegates rights to another to make decisions	Is overseen by the court	May make medical or life care decisions	May make decisions on benefits and services	May make decisions on property and money	
Supported Decision-Making				✓	✓	✓	
APD Client Advocate							
Power of Attorney/ Durable Power of Attorney	✓	✓		✓	✓	✓	
Living Will	✓	✓		✓			
Health Care Surrogate	✓	✓		✓	✓		
Representative Payee		✓			✓		
Medical Proxy		✓		✓	✓		
Guardian Advocacy		✓	✓	✓	✓	✓	
Guardian of the Property		✓	✓		✓	✓	
Guardian of the Person		✓	✓	✓	✓		
Limited Guardian		✓	✓	✓	✓	✓	
Plenary Guardian		✓	✓	✓	✓	✓	

Court Orders and “393.11 Commitments”

Sometimes an individual is ordered to receive services from APD based on a court decision. These involuntary commitments are provided for by Chapter 393.11, Florida Statutes and are often referred to as “393.11 commitments.”

Chapter 393.11, Florida Statutes will not allow involuntary commitments unless the court finds the following:

1. The person has an intellectual disability or autism
2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person’s needs; and
3. Because of the person’s degree of intellectual disability or autism, he or she:
 - Lacks sufficient capacity to give express and informed consent to a voluntary application for services
 - Lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person’s well-being; or
 - Is likely to physically injure others if allowed to remain at liberty.

Annual review of continued residential services

APD ensures that an annual review by a qualified evaluator is conducted to assess the most appropriate and least restrictive type of residential placement for the person. The individual’s placement, including the results of this assessment, is reviewed annually by the court at a hearing, unless a shorter review period was ordered at a previous hearing. The assessment and hearing must determine whether the person continues to meet the criteria requiring involuntary placement and whether the person is receiving adequate care in the residential setting.

Minors who were involuntarily admitted to residential services are given a hearing to determine the continued appropriateness of his or her involuntary admission once they turn 18.

The WSC should be prepared to provide information to the evaluator to assist with this process.

What to Consider When an Individual Turns 18

The following is a checklist of decisions that should be discussed as the individual turns 18, and the WSC can guide the process:

Things to Do Before Turning 18

- Reassess the IEP**
If the person has an Individualized Education Plan (IEP), it is good to begin gearing education goals toward the functional life skills of adulthood. A WSC can help initiate the process and guide the discussion during the support planning meeting.
- Deciding on a legal decision-making option**
The process of understanding legal decision-making options takes time, and it's best that this conversation begins well before the person turns 18.
- Update the Consent to Obtain or Release Protected Health Information**
If an individual wants someone else, such as a parent, to be able to receive confidential information, this option should be discussed and decided before they turn 18.

Things to Do After Turning 18

- Review SSI eligibility**
When an individual turns 18, the WSC should take the time to review the individual's SSI benefits to make sure that they are in place.
- Apply for SSDI (if applicable)**
- State-Issued, Non-Driver ID Card OR Driver's License**
Once an individual turns 18, he or she will need proof of ID for just about everything, from setting up a bank account to getting a job.
- Obtain a Social Security Card (if applicable)**
- Checking Account**
When an individual turns 18, it is important to have a checking account since an account is required to deposit any paychecks and SSI benefit funds.
- Transportation Services**
If the individual is not able to drive a vehicle, he or she can use the local bus system, or a door-to-door transit program for people with disabilities.

Necessity of Maintaining APD Data Systems

It is important that the individual's legal representation information is up to date in APD's data system. The WSC is responsible for entering, updating, and ensuring the accuracy of all demographic and client-related information, including the individual's legal representative information. This information should include:

- Client address and county of residence
- Correct legal status and program component
- Primary language
- The type of benefits received
- Legal representative name and address

It is very important to know that failure to enter or update information within seven calendar days of becoming aware of a change could result in recoupment of waiver funds paid to the WSC.

Staying on top of client data

Consider taking the following steps every month:

- **Ask** about changes in your client's status during monthly contacts. Ask specific questions such as: has your legal status changed? Has your legal guardian or your legal guardian's address changed?
- **Update** your progress notes as well as the APD data system immediately upon learning of any changes
- **Place** a copy of any legal information in your client's central record.

Additional Reading:

Because of the complexity of legal rights, we strongly recommend two resources:

- *Planning Ahead and Lighting the Way to Guardianship*
- *Other Decision-Making Alternatives.*

These can be obtained through the Florida Developmental Disabilities Council website at www.fddc.org/publications