Informed Consent for Trauma Services

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Informed Consent is:

A COMMUNICATION that -
- is between a provider and a patient (a legal relationship exists);
- outlines the risks and benefits of a service;
- discusses the affects of and alternatives to the service; and
- gives the patient the option of whether or not to receive the service.
Definition of “Informed Consent”

Informed Consent is:

- A legal concept related to liability
- A moral concept related to humanity/interrelationships
- A best practice related to ethics in your profession
The goal for this presentation is to convey to you that the goal of informed consent is to make sure that consent (or refusal) is informed.
Okay, how about this one instead:

The goal for this presentation is to teach participants ways to ensure that informed consent is properly obtained from trauma survivors/patients/clients and in a manner that reduces liability, is patient focused, and follows best policies and practices.
Important legal concepts related to informed consent

- **Capacity to Consent**
  - Minors
  - Vulnerable Adults with Guardians
  - Incapacitated Persons
  - Person Found by a Court to be Incompetent

- **Privileged Relationships**
  - Doctor/nurse-patient
  - Mental Health Therapist-Patient
  - Substance Use Disorder Counselor-Client
  - Psychologist-Patient
  - Victim Advocate-Victim
"I didn’t choose to be here!"

What about informed consent for trauma patients, as opposed to elective patients? How is the information communicated differently? Should it be communicated differently?
Initial Consideration: Is the setting for your communication (as much as is possible):
- secure
- private
- confidential
- safe
Components of an Informed Choice

Informed Consent

- Capacity to decide
- Complete information communicated
- Information is understood
- Signed consent form/document
- Can be withdrawn anytime

Informed Assent

- Capacity to decide
- Complete information communicated
- Information is understood
- Signal of “assent,” e.g., oral expression or body gesture
- Can be withdrawn anytime
Components of an Informed Choice

- **Informed Refusal** – Trauma survivors/patients/clients have the right to refuse treatment.
  - Capacity to decide
  - Complete information communicated
  - Information is understood
  - Refusal to sign consent form/document or give assent orally or otherwise
  - Can be withdrawn anytime
Offer a Support Person (or Animal)
Offer any written materials you have. Although, it’s not about the form.
Communicating information to a trauma survivor/patient/client should be done with mindfulness of issues that impede that information being understood, and, therefore, any consent not being “informed”:

- Detachment
- Flashbacks
- Neuroception – in constant “fight or flight” mode
- Lack of ability to concentrate or absorb information
Awareness by the Provider: Trauma Type

- Types of trauma-related treatment may impact a trauma survivor/patient/client’s ability to absorb information needed to make an informed decision:
  - Medical, including HIV, SDT, Pregnancy, Rape Kit Testing
  - Crisis Counseling
  - Abortion Related
  - Submission to “Evidence Gathering,” e.g., mouth swab, rape kit, clothes, photographs, fingerprints
  - Substance Use Related
A person’s “learning style” may impact their ability to receive, process, understand and retain information. There are essentially 3 learning styles:

- Tactile
- Visual
- Auditory
Awareness by the Provider: Language

Instead of:
- “Victim” or “Addict”
- “You have to sign this form before I can treat you”
- Sterile, clinical terms or “legalese”

Say:
- “Patient” or “Client”
- “Let me tell you some things that you need to know before we get started”
- Trauma-informed, inclusive, protective, simple, plain words
Some additional considerations in dealing with trauma survivors/patients/clients:

- Can they hear and speak?
- Is English a second language?
- Do they have capacity to be informed and make decisions?
  - Can the treatment wait until this is determined?
- Do you know for sure if they are a minor or an adult?
  - If a minor, who is the legal parent(s) or guardian(s)?
  - If an adult, is there a legal guardian?
Is this going to end up in court?
Specific to Trauma Informed Consent

- Procedure or service is a result of a traumatic event
- More likely to be an emergency circumstance
- May end up in a court proceeding, e.g., criminal, domestic, protective order, juvenile court, etc.
Have you Explained Everything Fully and Completely?

- A description of the procedure, service or treatment?
- The risks and benefits of proceeding or not?
- Alternatives to proceeding with the procedure, service or treatment?
- Whether confidentiality applies?
- Information about the provider’s mandatory reporting obligation?
- That they can refuse to consent to disclosure of their medical/mental health information (HIPAA, 42 CFR Part 2)
Some Best Practices to Consider

- The critical component to informed consent is to make sure the consent is truly informed, so the form is less important than the informed, still . . . Get consent orally and in writing if possible
- Speak slowly (even if you think they want to “get this over with” quickly
- Ask if they have any questions throughout the process
- Let them know you will stop at any time they ask to explain things
- Speak in a way that is tailored to their communication skill level, modality and language/terms
- Allow for breaks if needed
Some Best Practices to Consider

- Be aware of your verbal and nonverbal cues – they may work to negate your message
  - Honor personal space
  - Nervous laughter can be misperceived
  - Inappropriate references, misplaced empathy, e.g.
    - “I know you’re not going to sue me, but I have to go over this with you . . .”
    - “You wouldn’t sue me, would you?!?”
    - “My sister-in-law was raped, so I know how you must feel.”
    - “Nothing is bad enough to kill yourself over.”
Some Best Practices to Consider

- Complete your explanation, don’t assume understanding just because someone is nodding you through
- If you offer a consent form, make sure it is completely filled out, don’t take short cuts – no one wants to repeat this process
- Notify about mandatory reporting laws as applicable
- Have dignity, compassion and consideration for every person’s circumstances and do not make assumptions – this is where our inherent biases creep in
- What if the trauma survivor/patient/client is unconscious? Impaired?
| PRIVILEGE                                      | INFORMED CONSENT FOR STERILIZATION                  |
| MANDATORY REPORTING                          | INFORMED CONSENT FOR SEX ED/SCHOOL ACTIVITIES       |
| CONFIDENTIALITY                               | INFORMED CONSENT FOR INSTALLATION OF A MONITORING DEVICE IN A NURSING HOME RESIDENT'S ROOM |
| FAILURE TO OBTAIN INFORMED CONSENT – DEFENSE TO MEDICAL MALPRACTICE | |
| INFORMED CONSENT FOR ABORTION                 | |
|                                              | |
FAILURE TO OBTAIN INFORMED CONSENT – DEFENSE TO MEDICAL MALPRACTICE

- Presumption that service or treatment was authorized
- Burden of proof is on the patient rather than the provider
- A written consent was signed (maybe sometimes it is about the form?!)
QUESTIONS?

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