

Clinical Tips: Capacity to Consent

A mature minor is an adolescent under the age of 18 years who is capable of understanding fully the nature, consequences, risks and implications of the proposed health care or other action and of non-action.

Children over 15 years of age can obtain their own Medicare card, and in any Australian state a doctor may “bulk bill” a consultation with an adolescent using the family Medicare card without advising the parents.

Young people under 18 years require an assessment of competency to consent. In NSW and SA, additional laws allow for those 14 years (NSW) and 16 years (SA) and over to consent to their own treatment.

In practice, the capacity to consent is usually accepted for those aged 16 years or older.

The capacity of a person under the age of 16 to provide informed consent is determined through the mature minor or Gillick competency assessment. It is important to note that the assessment for Gillick competence does not universally apply to any treatment, but must be assessed individually and only applies to the specific treatment being considered.

The clinician should clearly document the case for competency. The young person should be encouraged to talk to their parents. The safety of the young person (if they did disclose to their parents) should be assessed before encouraging disclosure.

Assessment of Maturity

When assessing the maturity/competency of an adolescent, consider:

- Level of independence
- Communication Skills (including comprehension).

- Capability of understanding the general nature and effect of the issues and the proposed procedure or treatment.
- Capability of understanding the nature, consequences and risks involved.
- Maturity.
- The presence of other relevant health issues e.g. developmental disability, intellectual disability.

The person assessing the capacity must form the opinion that the young person has the ability to reason things out, to understand, retain, believe, evaluate and weigh relevant information. This is assisted by asking the young person to explain back the key information that has been explained, their choice as well as their reasoning behind it.

“Evaluation of maturity must take into account characteristics of the young person, gravity of the proposed treatment, family factors, and statutory restrictions”.

“It is important to ask why a young person has chosen to attend alone, what supports are in place including what adults, if any, are aware of the particular situation.”

It is also important to document discussions with the young person about involving their family or guardian and reasons given if the young person chooses not to do so. “Clear and contemporaneous documentation can:

- outline the practitioner’s reasoning in forming their opinion;
- provide evidence of an interaction sufficient to support the decision; and
- provide information required for medico-legal purposes.”

It is advisable to seek the opinion of another practitioner if you are unsure about whether the adolescent is mature.