



**Keys to youth-friendly services:
Understanding evolving capacity**

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Evolving capacity is about individual development and autonomy – it refers to the way that each young person gradually develops the ability to take full responsibility for her or his own actions and decisions. This happens at a different pace for each individual. At any given age, some young people will be more mature and experienced than others; context and personal circumstances will almost certainly influence each individual's development. This key highlights important issues for health professionals to consider in finding the balance between protecting young clients and enabling them to exercise autonomy.

The concept of evolving capacity was first introduced into international human rights law by the United Nations Convention on the Rights of the Child (1989).¹ Articles 5 and 12 of this Convention establish the role of children as active agents in the exercise of their rights in all spheres of life, including the home, school and communities.² This concept has profound implications for the provision of sexual and reproductive health services and information to young people. It establishes that as they acquire competency and maturity, there is a reduced need for guidance from adults and an increased ability to take responsibility for their actions, including their own decisions about sex and reproduction.³

Assessment of the capacity of the child 44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

- UN Committee on the Rights of the Child General Comment 12 (2009)

Sexual rights



Sexual rights are an evolving set of entitlements related to sexuality that emanate from internationally-recognized human rights to freedom, equality, privacy, autonomy, integrity and dignity. By supporting young people to make their own decisions about their sexual and reproductive health and services when they have the capacity to do so, service providers can empower young people to be active agents in the exercise of their sexual rights.

Article 5 of Sexual Rights: An IPPF Declaration affords everyone the right to personal autonomy. Young people have the right to decide freely on all matters related to their sexuality, including when, where and how to access services, in line with their capacity to make autonomous decisions. Young people should also be free to exercise choice.

Article 3 of the Declaration is the right to be free from harm. Children and young people require special protection from all forms of exploitation or abuse such as: child prostitution, trafficking, sexual abuse, forced or coerced sexual activity, pornography and harmful traditional practices. When applied to young people, this right places a responsibility on adults – including parents and health professionals – to recognize and respond to suspected abuse as well as create environments, including clinics, which are safe for young people.

Legal determinants of capacity

Age is the most commonly used indicator for determining young people's capacity to exercise their rights and make autonomous decisions. In most jurisdictions, age-limits are prescribed for marriage, employment, consent to sex, consent to medical treatment and criminal responsibility, among others. This uniform approach is rigid and does not take into account the different rates at which young people develop and grow.

On the other hand, removing all age-limitations can be administratively unworkable and place significant pressure on health and other professionals to assess the capacity of young clients (e.g. customary law among certain tribes in Eritrea⁴).

A preferred model is where age limits are set, but young people have the right to demonstrate their competency before the set age (e.g. jurisdictions such as England, New Zealand and Sweden). For example, in New Zealand, the legal age for consent to medical treatment is 16, but young people under that age can consent to treatment if they demonstrate competency.⁵

Assessing capacity and involving young people in decision-making

Assessing the capacity of young clients to make autonomous decisions about their own health care can be challenging, especially in the absence of standards or guidelines (see *Keys to youth-friendly services: obtaining informed consent* for more detailed information). Here are a few pointers to keep in mind during your interaction with young clients:

1. Recognize that young people have valuable insights into their health and well-being that adults do not have.
2. Learn more about the family, friends and environment in which the client lives. This is important because the maturity of young people depends, to a large extent, on the context in which they live. A young person who is treated with hostility or indifference, either at home or in the clinic, is less likely to have the confidence to make mature, autonomous decisions.
3. Make sure privacy and confidentiality are guaranteed, and make sure the client knows it. A lack of privacy and confidentiality may adversely affect young people's decision-making capacity.
4. Make your client comfortable. Research shows that young people have a greater ability to understand information when they are in an environment that is familiar to them and that their capacity to take responsibility or demonstrate their maturity is dependent on the way in which their capacity to make autonomous decisions about health care is assessed.⁶
5. Look for evidence that your client has made autonomous decisions about their health care already. For example, if a young person visits a clinic by him or herself, it demonstrates responsibility and is a good indication that he or she has the capacity to make autonomous decisions. This presumption may be rebutted if signs of abuse are identified or if the young person is not able to consent to treatment.

Beyond these general points, it is important for service provision organizations to have guidelines in place to assist health professionals in asking the questions and gathering adequate information to assess a young person's decision-making capacity. Brook, a sexual health charity focused exclusively on young people in the UK, provides its health professionals with a list of questions that they should ask themselves while assessing the capacity of someone under 16 to make decisions relating to their sexual health. For example, "does your client appear nervous or refuse to provide full details of their sexual partners?" Having organizational or national guidelines in place to assist health professionals in interpreting the laws in relation to the provision of services to young people provides a legal safety net. Further, it ensures that health professionals feel comfortable and confident that they are providing the highest quality services to young clients.

Once you assess their capacity for autonomous decision-making, young people should be involved to varying degrees in decision-making processes. At the very minimum, all young people are entitled to have their opinion heard and to be informed about decisions that are made on their behalf, regardless of their age or individual development. If a young person of any age expresses an opinion about his or her health, it should be taken into consideration. Depending on the maturity of the young person, he or she may either be a joint decision-maker or the main decision-maker.

Protecting young people from exploitation, abuse and harm

If, as a result of the provider-client interaction, you determine that a young client has insufficient capacity to make decisions regarding his or her sexual and reproductive health, the rights of the young person must remain protected. His or her best interests and rights must remain central to any decisions taken on his or her behalf. This means that decisions made for young people that violate their right to health, physical integrity, life or freedom of minors are prohibited.

Health professionals should be familiar with child protection laws in their country, and at the start of every consultation, you should explain to the young client the situations in which you may be legally obliged to report the case to law enforcement or other authorities. In some countries, for example, health professionals are obliged to report cases where it is determined that a young client has experienced sexual or physical abuse or where the young client is at risk of harming him/herself or others.

Supporting young people to become more autonomous

It is the responsibility of adults who work with young people to help them develop the capacity to make decisions on their own about their health and health care. Three interventions that support young people in this regard are comprehensive sexuality education, youth-friendly services and participatory approaches to service provision.

The provision of comprehensive sexuality education is the most effective way of giving young people the information and life skills they need to make informed, autonomous decisions about their lives, including their sexual and reproductive health. At a minimum, comprehensive sexuality education curricula should include the following topics: sexual and reproductive health, including HIV, rights, gender, pleasure, violence, diversity and relationships.

The act of accessing sexual and reproductive health services or information also has the potential to be an empowering experience for young people – from making the decision to go to a clinic to walking out the door with accurate information that promotes sexual health and well-being. As a health professional, you have a significant influence on the experience that young people have in the clinic; empower young clients by treating them in an age-appropriate manner and with the respect and dignity they deserve.

Adopting a participatory approach to service provision is one way that you can build capacity in young people. Young people should be involved in the design, provision and monitoring of sexual and reproductive health services at all levels. In addition, each young client who visits your clinic should have the opportunity to provide anonymous feedback about how services can be improved. Involving young people in this way not only builds young people's decision-making skills but, also, ensures that your services respond to the needs and fulfil the rights of your clients.

Parental involvement in young people's decisions

Although young people can be capable of making autonomous decisions about their sexual health and well-being, this does not negate the importance of support systems, including parents or guardians. Young people, like most adults, want support in making important life decisions.

While mandatory parental involvement has been shown to deter young people from accessing services, young people should be presented with advice on how to involve someone that they trust and who can support them. When providing services, health professionals should encourage young people to talk with their parents or guardians and involve them in decision-making processes. Alternatively, health professionals could encourage young people to involve friends or other trusted adults whose opinions they value.

Parental involvement and open communication about sexuality and health are critical components of healthy adolescent development. However, the parents and guardians of young people need evidence-based information and facts about sexual and reproductive health as well as assistance on the best ways to deliver healthy messages to young people.

A youth-friendly health professional...



- Considers each young person's capacity to make autonomous decisions on a case-by-case basis, taking personal circumstances into consideration.
- Assumes, until proven otherwise, that young people who autonomously decide to visit clinics for services are able to make decisions about their health care.
- Provides accurate and comprehensive information on all procedures and services.
- Knows how to identify and respond to signs of abuse.
- Recognizes that young people need support, and encourages young people to involve trusted peers or adults in decision-making processes.
- Recognizes that building young people's capacity to make decisions about their health is part of their job and seeks to do so at every opportunity.
- Enshrines the commitment to young people's autonomy and protection in an institutional policy that every member of staff must follow.
- Works with parents and guardians to raise awareness of their responsibilities to support young people to develop the ability to make decisions about their health care, and to support them in their decision-making.
- Knows the national laws in relation to consent to treatment for young people.
- Advocates on behalf of and with young people where the law provides obstacles to access,.
- Supports and adheres to existing standardized guidelines on assessing the decision-making capacity of young people.

Resources



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Published in May 2012 by the International Planned Parenthood Federation

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¹ The Convention on the Rights of the Child applies to young people under the age of 18. However, the concept of evolving capacity can be applied to all young people.

² UNICEF (2005) The Evolving Capacities of the Child. Available at: <<http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>> Accessed 23 March 2011, p 22.

³ Ibid, p ix.

⁴ Ibid, p 50.

⁵ Ibid, p 51.

⁶ Lansdown, Evolving Capacities of the Child, <http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>, p 41.