

Explanation of the “Capacity to Consent/Lacks Capacity to Consent Definitions: Provisions and Citations in Adult Protective Services Laws, by State” Chart

(Laws current as of 12/31/06)

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Research conducted on Westlaw compliments of West Group

The chart addresses the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the chart refer to these jurisdictions generically as “state” or “states.”

Unless otherwise indicated, this explanation (1) uses the term “abuse” generally to include abuse, neglect, and exploitation, and (2) uses “elder abuse” to include elder abuse and adult abuse.

CAUTION: This chart is based only on the state APS laws; APS regulations were not reviewed. It is important to recognize that there may be other state laws or regulations or federal laws or regulations that define capacity to consent or the lack of capacity to consent, such as state guardianship laws.

I. Why We Developed This Chart

The issue of capacity to consent is critical for APS professionals. They must determine whether an individual about whom a report of suspected elder abuse has been made has the capacity to consent to or refuse an APS investigation or the provision of other APS services. Additionally, as part of their investigation APS professionals may need to determine whether an alleged victim had capacity to make decisions, such as decisions about financial transactions or decisions about obtaining and following medical care, that may be at the center of an elder abuse allegation.

State and federal legislative staff, other policy makers, program administrators, practitioners, educators, researchers, reporters, and others often want to know how many state APS laws contain definitions of capacity to consent or lack of capacity to consent and what those laws say. The “Capacity to Consent/Lacks Capacity to Consent Definitions: Provisions and Citations in Adult Protective Services Laws, by State” chart offers that information.

II. Detailed Explanation of the “Capacity to Consent/Lacks Capacity to Consent Definitions: Provisions and Citations in Adult Protective Services Laws, by State” Chart

This chart contains the following two columns:

1. State. A small number of state APS laws contain provisions defining the capacity to consent or lack of capacity to consent. This chart only includes states that have such provisions.

2. Statutory Provision and Citation. The pertinent statutory provision(s) and citation(s) defining the capacity to consent are presented in this column. They are copied verbatim from the state laws. Some state laws contain multiple relevant provisions. All are provided; they are separated by a line.

III. If You Find an Error

We strived to be consistent in our interpretation and categorization of the statutes. Despite our best efforts, we may have made errors. It is also possible that APS or other professionals interpret a statute differently than we did or there are state regulations or policies that lead to a different interpretation. Additionally, state laws may have changed since December 31, 2006. If you think we erred or your state has a regulation or policy that leads to a different interpretation, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at lstiegel@staff.abanet.org or 202-662-8692.

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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