

Making decisions for others

Your role as a Substitute Decision Maker



At some time, your family member may not be able to make decisions about his or her health care. This can be a very difficult time for you and your family. You may have many questions about how health care decisions will be made. This information may help answer some of your questions. We encourage you to talk with members of your health care team if you have additional questions or concerns.

How do we know that a person is capable to make his or her own health care decisions?

Persons who are capable of making their own decisions about their health care have the legal right to do so. A capable person can:

- understand the information that is relevant to making the decision, and
- appreciate what could happen as a result of making or not making a health care decision

A person's ability to make their own health care decisions can change over time. This depends on their health condition and the type of health care decision they are facing. Health care decisions can include decisions about:

- medical treatments, including medications, surgery and other procedures
- being admitted to a Long Term Care Home
- receiving personal care and assistance following discharge from hospital

Each decision is considered separately, so your family member may be able to make some decisions and not others.

What does it mean to be a Substitute Decision Maker?

If a health care provider feels your family member is not able to make a health care decision, a Substitute Decision Maker is needed.

The Substitute Decision Maker is someone whose responsibility is to make decisions for a person who is not able to make his or her own health care decisions. There are laws in Ontario about making decisions for someone who is not capable of making their own health care decisions.

For more information on the Health Care Consent Act of Ontario and the Substitute Decisions Act of Ontario, visit the Consent and Capacity Board website : www.ccboard.on.ca

Who can be the Substitute Decision Maker?

The law provides a list of people who can be the Substitute Decision Maker. In order of priority, these are:

- a legally appointed guardian*
- the person named in a Power of Attorney for Personal Care document (not Power of Attorney for Property)*
- a Representative appointed by the Consent and Capacity Board*
- a spouse or partner
- a child or parent
- a parent with right of access only
- a brother or sister
- any other relative by blood or marriage
- Treatment Decision Consultant from the Office of the Public Guardian and Trustee

*These Substitute Decision Makers are appointed by the courts.

For a person to be considered as a Substitute Decision Maker, the person must be:

- capable of making the decision that is needed
- 16 years of age or older (unless he or she is the parent of a child requiring care)
- willing to take on this responsibility
- available to take on this responsibility

If there is more than one Substitute Decision Maker of equal ranking (for example, several children), they need to reach a consensus regarding the health care decision.

What kinds of decisions will the Substitute Decision Maker be asked to make?

As the Substitute Decision Maker, you will be asked to make only those health care decisions that your family member is not capable of making themselves. These can include decisions about recommended treatments such as:

- medications
- surgery or other procedures
- rehabilitation

You may also be asked to make decisions regarding discharge planning which may include admission to a Long Term Care facility, if needed.

How does the Substitute Decision Maker make such difficult decisions?

The Health Care Consent Act includes guidelines you must follow as the Substitute Decision Maker when making decisions for someone else.

The decisions you make about treatment should include:

1. The person's previously expressed wishes

Since the role of the Substitute Decision Maker is to make health care decisions for someone else, the most important question to think about is, “**What would this person want if he or she could decide for him or herself?**” It is important for the Substitute Decision Maker to focus on the wishes and values of their family member, not on their own preferences.

Your family member may have a written **Advance Directive** (such as a living will), that reflects his or her wishes. Perhaps he or she has talked about wishes in the past, when he or she was capable, that could apply to the current circumstance. These previously expressed wishes are important to consider for understanding what he or she would have wanted in this situation.

2. Best interests

If your family member has not expressed any wishes related to this situation when he or she was capable, your role as the Substitute Decision Maker is to decide what is in his or her best interests.

To determine your family member's interests, you need to consider all of the following:

- What are the values and beliefs of my family member?
 - What is the treatment being proposed?
 - What is he or she currently saying that they want?
 - Is this treatment likely to:
 - improve his or her condition or well-being?
 - prevent his or her condition or well-being from getting worse?
 - If he or she does not have this treatment, is their condition or well-being likely to improve, remain the same or get worse
 - Is this treatment likely to cause more harm than good?
-

Does the Substitute Decision Maker have to make these decisions alone?

No. This can be a difficult and emotional time. The Substitute Decision Maker is encouraged to speak with other people who can offer support such as:

- members of the health care team such as a doctor, nurse, social worker or chaplain
- other family members or close friends
- religious or spiritual leaders

If the health care team feels that a Substitute Decision Maker is not making decisions in the best interests of the person, the team can apply to the Consent and Capacity Board for review.

For more information

A Guide to Advance Care Planning is available from the Ontario Senior's Secretariat online at www.culture.gov.on.ca/seniors and search for "A Guide to Advance Care planning" or by phoning the Seniors INFOline at 1-888-910-1999.

Making Substitute Health Care Decisions is available from the Office of Public Guardian and Trustee, online at www.attorneygeneral.jus.gov.on.ca and search for "Making Substitute Health Care Decisions" or by phoning 1-800-366-0335.

For information about the Consent and Capacity Board of Ontario, speak to your social worker or visit the Consent and Capacity Board website at www.ccboard.on.ca

This guide provides general information about this subject area. Although we have tried to make sure that the information in this guide is accurate and useful, we recommend that you consult a lawyer if you want professional legal advice on this subject.

We gratefully acknowledge the Toronto Rehabilitation Institute for their permission to use and adapt information from *Substitute Decision Making: Making decisions on behalf of your loved one*.