Patient Education

Making decisions for others

Your role as a Substitute Decision Maker

Your loved one may not be able to make decisions about his or her health care. This may be a very difficult time for you and your family. You may have many questions about how health care decisions for your loved one 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 the decision, and
- appreciate what could happen as a result of making or not making a decision

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

- medical treatments
- being admitted to a Long Term Care Home
- receiving personal care and assistance following discharge from hospital

Each decision is treated separately, so your loved one 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 loved one is not able to make a decision, a Substitute Decision Maker is needed.

The Substitute Decision Maker is someone whose role 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 else.

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 should 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 guardian
- the person named in a Power of Attorney for Personal Care (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
- a Public Guardian and Trustee

In order for a person to be qualified to be 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 the child requiring care)
- willing to take on this role
- available to take on this role

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 loved one is not capable of making themselves. These can include decisions about recommended treatments such as surgery, rehabilitation and tube feeding. In addition, you may be asked to make a decision about admitting your loved one to a Long Term Care facility, if that is needed.

How does the Substitute Decision Maker make such difficult decisions on behalf of a loved one?

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

Your decisions about your loved one include:

1. **Previously expressed wishes**
   Since the role of the Substitute Decision Maker is to make health care decisions for a loved one, the most important question to think about is, **"What would my loved one 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 loved one, not on their own preferences.

   Your loved one 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 for understanding what your loved one would have wanted in this situation.

2. Best interests

If your loved one 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 your loved one's best interests.

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

- What are the values and beliefs of my loved one?
- What is my loved one 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?

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.

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
- loved ones
- religious or spiritual leaders

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

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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.*

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