Substitute Decision-Makers
(Making decisions for other people)

What’s Inside:

Who can I talk to? ............................................................. 2
What kinds of treatment decisions might the Substitute Decision-Maker have to make? ....................................... 2
What information does the Substitute Decision-Maker receive before making a decision? .................................. 2
What is informed consent? .............................................. 2
How does the Substitute Decision-Maker make treatment decisions?.......................................................... 3
What are prior capable wishes? ..................................... 3
What happens if there is more than one Substitute Decision-Maker and there is a disagreement? ........... 3

In Ontario, people can make their own decisions about health care and treatment when they are capable of doing so. If a person is not capable of making a care decision, the responsibility is given to another person.

What does it mean to be incapable?
People are considered incapable if they do not understand or appreciate:

• The information they need to know to give consent for
• What might happen or not happen as a result of making a decision.

A person is assumed to be capable unless there is reason to believe otherwise. A person may be capable of some treatments and incapable of others. One’s capacity may change with time.

What is a Substitute Decision-Maker?*
A substitute decision-maker is someone who makes decisions about treatment and care for a person who is incapable.

The health care providers rely on a list of people in the Health Care Consent Act, 1996 to determine who is the Substitute Decision-Maker. We then ask the Substitute Decision-Maker to make the treatment decisions for the patient.

*In some circumstances, there may be more than one Substitute Decision-Maker responsible for making decisions.
Who can I talk to?

Please feel free to talk to the doctors, nurses, social workers, discharge care coordinators, chaplains/spiritual care providers and the bioethicist about any concerns you may have. We will help you make the best decisions for your loved one.

What kinds of treatment decisions might the Substitute Decision-Maker have to make?

The Substitute Decision-Maker might have to make treatment decisions about:

- Treatment and care
- Diagnostic procedures
- Placement or transfer to other health care facilities
- End of life wishes.

What information does the Substitute Decision-Maker receive before making a decision?

The Substitute Decision-Maker is entitled to all the information that the patient is entitled to before making any decisions.

Before any medical treatment can begin (except in specific cases of emergency), the patient or Substitute Decision-Maker must give informed consent.

What is informed consent?

Informed consent means the doctor must give you all information that a “reasonable person” needs to make a decision about treatment regarding:

- What the treatment is about
- Benefits of treatment
- Risks of treatment
- Side effects of treatment

The following is a list of Substitute Decision-Makers in order of priority from the Health Care Consent Act of Ontario.

1. A guardian with the authority to give or refuse consent to treatment.
2. An attorney for personal care with the authority to give or refuse consent to treatment.
3. A representative appointed by the Consent and Capacity Board.
4. A spouse or partner.
5. A child or parent or a Children’s Aid Society.
6. A parent who has only a right of access.
7. A brother or sister.
8. Any other relative (related by blood, marriage or adoption).
9. The Public Guardian and Trustee is the decision-maker of last resort if no other person is capable, available or willing to give or refuse consent.
• Other possible courses of action
• What happens as a result of not having the treatment

How does the Substitute Decision-Maker make treatment decisions?
The Substitute Decision-Maker must follow the rules in the Health Care Consent Act. The Act says that:

“If the Substitute Decision-Maker knows that the patient has, when capable, indicated a wish with regard to treatment, then that wish must be followed.”

If the Substitute Decision-Maker does not know the patient’s wishes, the Substitute Decision-Maker must make the decisions in the person’s “best interests.”

Determining best interests involves considering:
• The person’s values and beliefs
• If the treatment is likely to improve the person’s condition or prevent the condition from getting worse
• If the benefit to the patient outweighs the risk of harm
• If a less restrictive or intrusive treatment would be as helpful.

If the doctor thinks the Substitute Decision-Maker is not acting in the best interests of the patient, the doctor can apply to the Consent and Capacity Board for a ruling that the Substitute Decision-Maker comply with the Health Care Consent Act.

If the Substitute Decision-Maker or the doctor is not sure of the patient’s “prior capable wishes,” or wants to depart from those wishes, the Substitute Decision-Maker or doctor may apply to the Consent and Capacity Board for directions.

What are prior capable wishes?
A “prior capable wish” is a direction or instruction a person gave about the treatment while capable and at least 16 years old. The wish may be:
• Written in a power of attorney document
• Written in another document such as a living will or advance directive
• Said verbally.

When there is a prior capable wish, the Substitute Decision-Maker must make decisions according to the wish unless he or she has an order from the Consent and Capacity Board to depart from the wish.

What happens if there is more than one Substitute Decision-Maker and there is disagreement?
If there is disagreement about treatment decisions, our staff will help you resolve them. If there is still no agreement, there are two choices:

1. A public official in the office of the Public Guardian and Trustee will make the decision.
2. The Consent and Capacity Board appoints one person to make the decision. That person may or may not be one of the prior Substitute Decision-Makers.

For more information, please contact:
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This information is based on the Health Care Consent Act, 1996. To view this act, go to www.e-laws.gov.on.ca under Consolidated Law (includes Historical Versions) Statutes and Associated Regulations.