

The Role of a Substitute Decision-Maker

Making a Long-Term Care Admission Decision for a Loved One

All people have the right to make their own health care decisions as long as they are capable of understanding the risks and benefits of their decision. If someone is capable of making a decision, family, friends, and health care providers must accept the decision even if they do not agree with it. In Ontario, the Health Care Consent Act identifies a person as capable of making a decision to be admitted to a long-term care home if:

- The person understands the information that is needed to make the decision, and
- The person is able to appreciate the consequences and risks of their decision.

Who Determines Capacity for Consent to Admission to Long-Term Care?

An evaluator must determine whether a person is capable of making a decision to be admitted to a long-term care home. Evaluators are health care practitioners and members of a professional college. All Care Coordinators at the North Simcoe Muskoka Local Health Integration Network (LHIN) are able to determine capacity for admission to long-term care.

Why is a Substitute Decision-Maker Chosen?

If a person is not capable of making their own decision, a Care Coordinator will seek out someone else to make the decision. A substitute decision-maker will be chosen from the following hierarchy. The Care Coordinator will start at the top and work their way down the list until they find someone able and willing to be the substitute decision-maker.

Hierarchy of a Substitute Decision-Maker

- 1st Guardian appointed by the court with authority for health care decisions
 - 2nd Attorney for personal care
 - 3rd Representative appointed by the Consent and Capacity Board
 - 4th Spouse or partner
 - 5th Child or parent of an incapable person
 - 6th Parent with right of access only
 - 7th Brother or sister
 - 8th Any other relative
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What is the Requirement to be a Substitute Decision-Maker?

A substitute decision-maker needs to be:

- At least 16 years of age and capable of making decisions on behalf of an incapable person.
- Not prohibited from access to the incapable person by court order/separation agreement.
- Both available and willing to assume the responsibility of giving or refusing consent.

If there is no person in the hierarchy who meets the requirements, the Care Coordinator will contact the Ontario Public Guardian and Trustee (OPGT).

What are the Duties of a Substitute Decision-Maker?

Being a substitute decision-maker is a very important role and it can be stressful in situations where not all family members agree with a decision. Understanding the role of a substitute decision-maker can help, and duties are outlined in the *Health Care Consent Act*.

To summarize, a substitute decision-maker must:

- Consult with the person to the extent reasonable given their condition.
- Only attempt to get information that is required to make the care decision and keep all personal information confidential and secure.
- Follow the wishes expressed by the person when they were still capable unless it is impossible to follow the wish.
- Consult with any friend or relative who asks to assist if the substitute decision-maker does not know the person's values or wishes.
- Make a decision based on the person's best interests if the substitute decision-maker does not know the person's wishes. Consider the following:
 - The person's current wishes.
 - Whether the person's condition or well-being is likely to improve, worsen or stay the same if the person receives or does not receive the care.
 - Whether benefits of the care will outweigh risks or negative consequences.
 - Whether a less restrictive or less intrusive form of available care would have greater benefits or less negative consequences.

Can a Decision by a Substitute Decision-Maker be Challenged?

If the Care Coordinator believes that a substitute decision-maker has not carried out their duties in making a decision for someone else, they may ask the Health Care Consent and Capacity Board to review the decision. The Board may give the substitute decision-maker direction, or they may ask that another substitute decision-maker be chosen.

Why be a Substitute Decision-Maker?

Being a substitute decision-maker is a very important role that comes with responsibilities. It is important to focus on the needs of the person at the centre of the situation - the person who needs the decision made on their behalf.

If you do not wish to take on the role of the substitute decision-maker, please connect with us:

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