

How to contact us

1 800-811-5146

southwestlin.on.ca/healthcareathome

London

356 Oxford Street West
London, ON N6H 1T3

Owen Sound

1415 1st Avenue West, Suite 3009
Owen Sound, ON N4K 4K8

St. Thomas

1063 Talbot Street, Unit 70
St. Thomas, ON N5P 1G4

Seaforth

32A Centennial Drive, PO Box 580
Seaforth, ON N0K 1W0

Stratford

65 Lorne Avenue East
Stratford, ON N5A 6S4

Woodstock

1147 Dundas Street, Unit 5
Woodstock, ON N4S 8W3

SouthWesthealthline.ca

For information about health services
visit southwesthealthline.ca
or call 310-2222

SUBSTITUTE DECISION MAKING

For Long-Term Care Admission



The who, why and how's of substitute decision making

The right to make our own health care decisions

In Ontario, people who are mentally capable have the right to make their own decisions on whether or not to go to a Long-Term Care home. Mentally incapable people cannot give consent and need a Substitute Decision Maker.

A mentally capable person has the right to make decisions even if others, including family, friends and health care providers, do not agree with those decisions.

Why do we need a Substitute Decision Maker?

Admission to a care facility cannot occur without consent of the individual being admitted, if they are capable of giving consent, or a Substitute Decision Maker, if the individual has been deemed incapable through a capacity evaluation process.

A person is incapable when they lack the ability to understand information relevant to a decision and/or are unable to appreciate the reasonably foreseeable consequences of a decision or absence of a decision.

Capacity can change over time. Changes in a patient's physical, cognitive or mental health status may warrant a capacity re-evaluation.

A person who is incapable of making the decision about admission to a Long-Term Care home may still be capable of other decisions including treatment, appointing a Power of Attorney or requesting a representative to decide on their behalf.

Care Coordinators – dedicated nurses, occupational therapists social workers and other health care professionals – are qualified to determine capacity for consent for admission to a Long-Term Care home. If a person is found to be mentally incapable of making a decision, the Care Coordinator will seek a Substitute Decision Maker to give consent on their behalf.

Who can be a Substitute Decision Maker?

In the Health Care Consent Act, 1996, the following (listed in rank-order) can be a Substitute Decision Maker:

1. Court-appointed guardian of person with authority for the admission decision
2. Attorney for Personal Care with authority for admission decision. The Power of Attorney may contain specific instructions about substitute decision making. Home and Community Care Support Services must have a copy of the document in order to recognize that individual(s) as the attorney(s).

3. Representative appointed by the Consent and Capacity Board. This type of appointment will only happen if someone applies to the Consent and Capacity Board seeking such an appointment.
4. Spouse or partner
5. An adult child (16 years or older) or parent or Children's Aid Society
6. Parent with right of access only
7. Sibling (16 years or older)
8. Any other relative
9. The Office of the Public Guardian and Trustee (as last resort)

What are the qualifications of a Substitute Decision Maker?

A Substitute Decision Maker must meet all the following criteria even if they are on the rank-ordered list.

- Capable of making the admission decision according to the person obtaining consent
- Be 16 years of age or older
- Not prohibited by court order or separation agreement from having access to incapable person or giving or refusing consent on his/her behalf
- Available (can be by various means –phone, fax, but not by proxy)
- Willing to assume responsibility of giving or refusing consent



How are substitute decisions made?

Being a Substitute Decision Maker is an important responsibility. It can also be stressful. The Substitute Decision Maker who gives or refuses consent on an incapable person's behalf must do so in accordance with the following principles:

Prior wishes

If the incapable person has expressed a wish when they were capable regarding Long-Term Care admission, the Substitute Decision Maker shall give or refuse consent in accordance with the wish.

Clarification of the wish or departure from it can be done through an application to the Consent and Capacity Board.

Best interests

If there is no known wish, make a decision based on the person's best interests, considering:

- The values and beliefs that the incapable person held when capable and that the Substitute Decision Maker believes that they would act on
- Any wishes expressed by the incapable person regarding Long-Term Care admission and whether admission to the care facility is likely to:
 - ▶ Improve the quality of the person's life
 - ▶ Prevent the quality of the person's life from deteriorating, or
 - ▶ Reduce the degree at which the quality of the incapable person's life is likely to deteriorate

- Whether the quality of the incapable person's life is likely to improve, remain the same, or deteriorate without admission to the care facility
- Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to them
- Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances

Substitute Decision Makers must act in good faith and according to the principles above. If you do not wish to be a Substitute Decision Maker regarding admission to a Long-Term Care home, then Home and Community Care Support Services will seek an alternate Substitute Decision Maker based on the rank-ordered list. The Substitute Decision Maker cannot assign the responsibility of making decisions to another individual.

For more information

The following resources may help you learn more about capacity and substitute decision making.

Consent and Capacity Board of Ontario

www.ccboard.on.ca

Office of the Public Guardian and Trustee

www.attorneygeneral.jus.gov.on.ca/english/family/pgt

Advocacy Centre for the Elderly

www.advocacycentreelderly.org