

Substitute Decision-Makers

1. Guardian (appointed by the Supreme Court for an adult, or guardian of a child)
2. Proxy (appointed by the person through an Advance Directive)
3. Spouse (including common-law and same-sex partners who have lived together for the preceding 12 months)
4. Child
5. Parent
6. Grandparent
7. Brother or sister
8. Any other relative
9. Close friend
10. Last resort – two to three care providers

Care providers will make reasonable attempts to contact people on the list given the urgency of the matter. In an emergency, if the health care provider cannot get consent or substitute consent, they can treat without consent.

Making a Health Care Decision for a Loved One

The Role of a Substitute Decision-Maker

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. Family, friends and health care providers must accept the decision even if they do not agree with it.

How is a substitute decision-maker chosen?

If a person is not capable of understanding the benefits and risks of the decision, the care provider will seek out someone else to make the decision. A **substitute decision-maker** will be chosen from the following list. The care provider will start at the top and work their way down the list until they find someone willing to be the substitute decision-maker.

Who can be a substitute decision-maker?

A substitute decision-maker must be at least 19 years old (unless they are the spouse or parent). They must also be available and willing to take on the duties of a substitute decision-maker. They must have been in contact with the person during the last 12 months. And the substitute decision-maker must not have a conflict or court order that would prevent them from carrying out their duties.

How can a substitute decision-maker be chosen ahead of time?

If you want to appoint someone ahead of time to make decisions for you, appoint a **proxy** through an **Advance Directive**. For more information on Directives, visit the Health and Social Services website at www.hss.gov.yk.ca

What decisions can a substitute decision-maker make?

A substitute decision-maker may be asked to make decisions about:

- Health care (e.g. medical treatment, dental care, diagnostic procedures)
- Admission to a care facility (e.g. nursing home, group home for adults with cognitive disabilities)
- Personal assistance services (e.g. home care, personal care in a care facility)

What are the duties of a substitute decision-maker?

The duties of a substitute decision-maker are outlined in the *Yukon Care Consent Act*. To summarize, a substitute decision-maker must:

- Consult with the person to the extent reasonable, given their condition;
- Consult with any friend or relative who asks to assist if the substitute decision-maker does not know the person's values or wishes;
- Follow the wishes expressed by the person when they were still capable and after they turned 16 years of age unless:
 - It is impossible to follow the wish; OR
 - The substitute decision-maker believes that because of changes in knowledge, technology or practice, the person would no longer act on the wish;
- Use the person's wish as guidance where it does not clearly anticipate the specific circumstances that exist;
- Make a decision based on the person's values and beliefs if the substitute decision-maker does not know the person's wishes;
- Make a decision based on what is in the person's best interests if the substitute decision-maker does not know the person's values and beliefs or wishes;

- When making a decision based on what is in the person's best interests, 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 the care;
 - Whether the person's condition or well-being is likely to improve, worsen or stay the same if the person does not receive the care;
 - Whether the benefits of the care will outweigh the risks or negative consequences;
 - Whether a less restrictive or less intrusive form of available care would have greater benefits or less negative consequences;
- Only attempt to get information that is required to make the care decision and keep all personal information confidential and secure.

Can a decision by a substitute decision-maker be challenged?

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

If a substitute decision-maker consents to major health care on behalf of a person, the treatment may not be provided for 48 hours unless the person's health will deteriorate. This allows time for someone to apply to the Capability and Consent Board for a review of the matter if they disagree with the decision.

In an emergency, if a health care provider believes that the substitute decision-maker is not following their duties, the health care provider can disregard the decision of the substitute decision-maker.

Why be a substitute decision-maker?

Being a substitute decision-maker is a very important role. It can be very stressful – sometimes family members do not agree on the decision that should be made. However, having a clear idea of the role of a substitute decision-maker can help. 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. Family and friends are in the best position to make these decisions on behalf of the people they love.

