

Are you a substitute decision maker? Do you need a substitute decision maker?

Information about Substitute Decision Making

Capable people can appoint anyone to be their Attorney for Personal Care.

This includes same-sex and common law marriages, as well as other arrangements.

This is an office of the Government of Ontario.

Who is a Substitute Decision Maker?

The *Health Care Consent Act* provides a list that must be used. Whoever is ranked highest on this list, and is also **willing, capable** and **available** is the Substitute Decision Maker.

- 1) A guardian
- 2) An Attorney for Personal Care (PoA)
- 3) A representative appointed by the Consent & Capacity Board
- 4) A spouse or partner
- 5) A child or parent
- 6) A parent with right of access only
- 7) A brother or sister
- 8) Any other relative
- 9) Public Guardian and Trustee (PGT)

When is a Substitute Decision Maker needed?

A Substitute Decision Maker is needed when a person is incapable to make a decision for him or herself.

How are Substitute Decision Makers supposed to make their decisions?

Ontario's *Health Care Consent Act* explains that Substitute Decision Makers must make the decision that honours their loved one's **prior wishes**; if there is no prior wish, then the Substitute Decision Maker must consider the person's **best interests**.

Does a Substitute Decision Maker make all decisions?

No. A person has the right to continue making all decisions he or she is capable of making.

Is someone appointed as Attorney for Property entitled to make health care decisions?

A Power of Attorney for Property document has to do with money and property decisions. Being a named Attorney for property does not necessarily mean that someone is also the Substitute Decision Maker for health care decisions as well.

Can Substitute Decision Makers decide to go against the person's wishes?

The law requires Substitute Decision Makers to honour the person's wishes. A Substitute Decision Maker who wants to go against the person's wishes must apply for permission to do so from the Consent and Capacity Board of Ontario.

What are "equally ranked substitute decision makers"?

These are two (or more) people who are of the same rank on the list stated in the law. They must make decisions together; if they are unable to do this, then the Office of the Public Guardian and Trustee will be asked to make the decision.

How can a person appoint an Attorney for Personal Care?

Capable people can appoint anyone they wish by completing a Power of Attorney for Personal Care document. A lawyer is not required to do this, and a free kit is available online at the Ministry of the Attorney General's website.

Who decides whether or not a person is capable to make his or her own decisions?

It is the responsibility of the Health Care Practitioner proposing treatment to determine whether or not a person is capable of consenting to it or not.

What should Substitute Decision Makers do if they believe that the person they are making decisions for is capable?

They should let the health care team know; the Health Care Practitioner proposing treatment might choose to do another assessment.

Whenever possible, the Substitute Decision Maker must make the decision that the incapable person would have made for him or herself.

What if someone doesn't want to be a Substitute Decision Maker?

Nobody is required to act as a Substitute Decision Maker if he or she doesn't want to. This choice should be communicated with the health care team so that they can approach the person of the next highest rank to make the decision.



This home is participating in the PoET (Prevention of Error-based Transfers) Project which aims to reduce errors related to consent, capacity, and substitute decision making, which will help to ensure that transfers from long term care to hospital are both wanted and beneficial.

If you have any questions about this poster or the project, please contact your home's Change Leader(s):

P o E T
Prevention of Error-based Transfers

www.poetproject.ca



Information About Substitute Decision Making by J Oliver & P Chidwick is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).

Production of this document has been made possible through a financial contribution from Health Canada. The views expressed herein do not necessarily represent the views of Health Canada.