



DO YOU KNOW...

Health care surrogates

Sometimes, people cannot make health care decisions for themselves because of serious illness or other mental or physical limitations. This is called a "lack of capacity" to make health care decisions. Some people have made an advance directive. An advance directive is a legal document that says who may make decisions for them and how they want medical care provided if, in the future, they cannot decide for themselves.

Sometimes, adult patients who cannot make health care decisions have not made advance directives or the people they chose to make decisions for them are not available. In these cases, the decisions may be made by a health care surrogate. The decisions made by surrogates include whether the patient can take part in research.

What is a surrogate?

A surrogate is an adult who is not the patient's health care agent, attorney-in-fact, or legal guardian. A surrogate has the power to make health care decisions for an adult patient or an emancipated minor when that patient cannot make their own health care decisions. An emancipated minor is a child who is considered to be a legal adult.

What is the difference between a surrogate and a health care agent or other options?

A surrogate is not the same as a health care agent, attorney-in-fact, a conservator, or guardian.

Adults or emancipated minor patients who can make their own health care decisions may choose their own health care agent or attorney-in-fact. A court chooses a conservator or guardian. These roles are more likely to be accepted at other places than is a surrogate. Attorneys-in-fact, conservator, and guardians may be allowed to make decisions about other issues as well as health care depending on the circumstances.

What types of decisions do surrogates make?

Surrogates have only the power to make health care decisions. This may include decisions about taking part in research. They may not make financial decisions or other decisions not related to health care.

Surrogates can make any health care decision the patient could make if the patient were able to make such decisions. But in most cases, a surrogate may not make the decision to stop or withhold artificial nutrition and hydration except in certain limited situations. Surrogates also must follow the patient's wishes if those wishes are known or stated in a living will or Advance Care Plan.

When is a surrogate needed?

Surrogates are needed to make health care decisions for adult patients who lack the capacity to make decisions for themselves. They are needed when no one else has been given legal permission to make health care decisions for the adult patient. A surrogate is needed because the patient has not chosen a health care agent or the person chosen is not available, and the court has not chosen a conservator or guardian.

Who chooses the surrogate?

Patients who are competent adults or emancipated minors may choose their own surrogates. A doctor may choose a surrogate for an adult patient or emancipated minor who is not able to make health care decisions.

The chart below shows who may choose a surrogate, and in what situations, if the patient has not chosen a health care agent or the court has not chosen a conservator or guardian.

How is a surrogate chosen?

When the competent adult patient chooses a surrogate

An adult patient may choose a surrogate either in writing or verbally by stating the choice in front of a witness. It is best if a patient writes down those wishes by choosing a health care agent or power of attorney and gives this paper to the medical care team. When this is not possible, the patient does not have to write down the surrogate selection but can tell the doctor instead.

When the doctor chooses a surrogate

The doctor may choose a surrogate only if the patient cannot make health care decisions. The patient's inability to make health care decisions must be documented by either two medical doctors or by one medical doctor and one psychologist. Then, the doctor and a witness meet with the chosen surrogate, who must agree to act in this capacity. The doctors and the chosen surrogate sign a form.

Patient's status	Patient's capacity	Who chooses the surrogate	Must the person choosing write down the choice?
Patient is a legal adult or emancipated minor	Patient has capacity to make health care decisions and choose a surrogate	Patient chooses	No
Patient is a legal adult or emancipated minor	Patient lacks capacity to make health care decisions and choose a surrogate. This lack of capacity is documented by two medical doctors or one medical doctor and one psychologist.	Doctor chooses	Yes

Who may be chosen as a surrogate?

A patient who is a competent adult or emancipated minor may choose any adult as a surrogate. This should be a trusted person whom the patient believes will carry out the patient's wishes in making health care decisions.

When a doctor chooses a surrogate, the doctor looks for an adult who has shown special care and concern for the patient. A surrogate should be someone who knows the patient's values and wishes. A surrogate must be available and willing to serve as a surrogate.

When the doctor chooses someone to be a surrogate for the patient, the doctor will consider the people on the following list, in the order shown below:

- The patient's spouse
- The patient's adult child
- The patient's parent

- The patient's adult sibling
- Any other adult relative of the patient
- Any other adult who has shown special care and concern for the patient and who knows the patient's values.

To choose the best person to act as a surrogate, a doctor will look at several factors. Does this person:

- Know the patient's wishes and values;
- Show care and concern;
- Know what is best for the patient;
- Visit the patient regularly during illness;
- Have regular contact with patient;
- Talk face-to-face with the patient's caregiver;
- Show a willingness to be there and to serve as a surrogate; and
- Take part in making decisions?

What does a surrogate do?

Surrogates make health care decisions for adult patients or emancipated minors when these patients are unable to make decisions on their own.

Surrogates make health care decisions based on the patient's instructions and wishes. If the patient's instructions and wishes are not known, the surrogate tries to make health care decisions based on what they believe to be best for the patient, using the patient's personal values and beliefs as a guide.

How long does a surrogate's role last?

The choice of a surrogate remains in place until it is ended by a patient, should the patient regain the capacity to do so. In many cases, the surrogate's role is permanent or lasts until the surrogate is no longer available to serve.

What if a person claims to be the patient's surrogate?

If a person tells a St. Jude doctor that he or she is the patient's surrogate, the doctor may ask the person to give a written statement under penalty of perjury, stating enough facts and circumstances to prove that the person really is the surrogate for the patient.

May the surrogate act for the patient at places other than St. Jude?

Whether the surrogate at St. Jude is chosen by the patient or the doctor, other places might not accept a selection made at St. Jude.

Questions?

If you have questions or concerns about surrogates or other decision-makers, please talk to a St. Jude social worker.

Revised 4/15

This document is not intended to take the place of the care and attention of your personal physician or other professional medical services. Our aim is to promote active participation in your care and treatment by providing information and education. Questions about individual health concerns or specific treatment options should be discussed with your physician.

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