

Determining the Appropriate Decision Maker

The patient with decision-making capacity is the appropriate decision maker unless the patient has delegated that authority to another.

For patients who have lost decision-making capacity, the following hierarchy should prevail:

Legally Authorized Decision Makers

1. Has the patient appointed a legal surrogate by informing the primary physician or supervising healthcare provider orally or in writing?
 - If “Yes,” the physician should document the designation in the medical record. Note: the appointment lasts only for the length of stay in the medical facility within which the appointment was made or for 60 days, whichever is shorter. The authority of a surrogate appointed in this manner supersedes that of an agent appointed by an Advance Health Care Directive during that period.
2. Has the patient named an agent through an Advance Health Care Directive, Power of Attorney for Health Care, or Durable Power of Attorney for Health Care?
 - If “Yes,” obtain and place a copy of the Advance Directive in the chart. The physician should document it in the medical record.
3. Does the patient have a court appointed guardian or conservator with medical decision-making authority?
 - If “Yes,” the physician should place a copy in the chart and document it in the medical record. Note: not all guardians or conservators have medical decision-making authority – check with the county Public Guardian if there is any question.

If “No” to all of the above, the physician should document that there is no legal surrogate and proceed below.

Informally Accepted Decision Makers

There is no legally mandated hierarchy of decision makers in this type of situation. The Patient Self-Determination Act refers to the “closest available relative or friend.”

1. Have attempts been made to identify and involve family members, significant others and friends?
2. Is there a close family member or friend present and willing to serve as a surrogate decision maker?
 - Does this person have a close, caring relationship with the patient?
 - Is this person aware of the patient’s values and beliefs?
 - Is this person willing and able to make the needed decisions?
3. Is there agreement among those contacted that this person should act as surrogate?
 - If “Yes,” document in the medical record and inform the patient.

If there is more than one person meeting the above criteria, proceed to the following:

4. Is there consensus among these individuals as to the proper decision or decision maker?

- If “Yes,” then document in chart and inform the patient.
- If “No,” then proceed below.
 - Attempts should be made to reach consensus or determine the most appropriate decision maker based on which candidate is most familiar with the patient’s wishes and values.
 - These attempts may include interviews and/or family meetings involving the primary physician and social services, consultation with the hospital ethics committees, etc.
 - If an impasse persists after the above efforts and an urgent treatment decision is needed, a Petition for Court Authorization to Make a Health Care Decision can be filed, with a decision within 24-48 hours.
 - In all cases, the physician will attempt to inform the patient lacking decision-making capacity who will serve as healthcare agent or surrogate and the decisions authorized by that person.

Decision Making Standards for All Surrogates

(from the California Health Care Decisions Law, Probate Sec.)

Both legally authorized and informal decision makers are to use the following decision-making standard:

- Healthcare decisions must be in accord with the patient’s individual healthcare instructions, if any, and other wishes to the extent known to the agent, surrogate or conservator.
- If the patient’s wishes are not known, decisions are to be made in accord with the agent, surrogate, or conservator’s determination of the patient’s best interest in light of the personal values and beliefs of the patient to the extent they are known.
- In the rare situation where a patient has a conservator, has not made an advance directive and is not terminally ill, permanently unconscious or in a permanent vegetative state, decision to forgo life-sustaining treatments must be supported with clear and convincing evidence of the patient’s wishes or personal values, or best interests concerning such treatment.