Making Decisions for Others: The Principles of Substitute Decision-Making

Decisions about quality of life and end-of-life care can be difficult for residents, families and the health care teams who care for them. Although these subjects are often not easy to talk about, it is very important that we understand our obligations when we make decisions for others. When people are no longer capable of making decisions for themselves, someone else needs to make decisions for them. The obligations of that someone else, known as a “Substitute Decision Maker”, are outlined in the Substitute Decision Makers Act, according to the Health Care Consent Act, which establishes a set of rules for consent to treatment and personal care decisions.

What is capacity?
According to the Health Care Consent Act, a person is capable of consenting or refusing a treatment if he/she is able to:

1. Understand the information that is relevant to making a decision about the proposed treatment, and
2. Appreciate the reasonably foreseeable consequences of a decision or lack of a decision.

Capacity is specific to the treatment proposed, which means that a person may be capable of making certain decisions, but incapable of making others. Also, a person may be incapable with respect to a treatment at one time and capable at another. As well, a capable person has the right to change his/her mind at any time.

It is important to understand that whenever a resident has the capacity to make a decision, the decision of the resident must be respected. Substitute decision makers make decisions only for those determined incapable of making the decision.

What capacity is not…
Capacity does not refer to the person’s
- Physical status
- Psychiatric status
• Cognitive/mental status
• Ability to make a decision with a “rational” or “reasonable” outcome
• Ability to make a decision in accord with “best interests”

We are evaluating the decision-making process, not the actual decision made.

What happens when residents lack decision-making capacity?
When people are unable to make decisions for themselves, a person termed the Substitute Decision Maker is authorized to make decisions on their behalf. Most often this person will be a family member, as outlined according to a hierarchy in the Health Care Consent Act, where there is a list of people in order of priority who are the legal substitute decision maker (see box – Hierarchy of Substitute Decision-Makers).

What rules should guide Substitute Decision Makers?
Substitute Decision Makers must follow two principles:
1. Prior capable wishes
2. Best Interests

Prior Wishes
While capable, a person may express wishes in respect to treatment, admission to care facilities, personal assistance services and so on. The Substitute Decision Maker must follow these expressed wishes wherever possible, once the person is no longer capable. The manner in which these wishes are expressed can be in any format: by making out a Power Of Attorney for Personal Care, by completing an Advance Directive (living will), or in any other written form. Prior wishes can also be expressed verbally. For example, a person may have told family members that she would never want any tubes put in for feeding if she became unable to make decisions for herself.

As the Substitute Decision Maker, ask yourself “What would my _____ (father, mother, loved one) have wanted to do in this instance?”

It is also important to realize that later wishes expressed while capable prevail over earlier wishes, for example, “I said before that I would want everything done to keep me alive, but now, I think that if I can’t talk to and enjoy my family, I would just like to be allowed to go peacefully.”
**Best Interests**

If there are no known prior expressed wishes, or the wishes are impossible to follow, then the Substitute Decision Maker must act in the resident’s best interest. This can be determined by considering:

- Whether treatment is likely to:
  - i. Improve the person’s condition or well-being
  - ii. Prevent the condition or well-being from deteriorating
  - iii. Reduce the extent or rate of deterioration of the person’s condition or well-being

- Whether condition or well-being is likely to improve or remain the same or deteriorate without the treatment

- If benefit outweighs risk of harm

- Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment proposed

When deciding about best interests, **the Substitute Decision Maker must also consider the values and beliefs that he or she knows that the incapable person held when capable, and believes that the person would still act on.** One must also consider other wishes of the incapable person with respect to treatment, admission, personal assistance services that are not required to be followed (i.e. those wishes expressed AFTER the person became incapable).

**Supports and Resources**

Deciding for others is often difficult to do, but there are many resources to help Substitute Decision Makers follow the law and make the best decisions possible. The following are supports that SDM’s may refer to:

- Family physician
- Health Care Team members (e.g. Social Worker, Nurse)
- The Parkwood Ethics Education and Consultation Committee (have unit staff contact for you)
- Spiritual Care (Chaplain-on-Call – reach via Switchboard)
- Patient Relations at Parkwood Hospital (have unit staff contact for you)
- Clinical Ethicist (have unit staff contact for you)

**For more information:**
A Guide to Advance Care Planning is available from the Ontario Senior’s Secretariat online at www.gov.on.ca/mczcr/seniors or by phoning the Seniors INFOline at 1-888-910-1999.

Making Substitute Health Care Decisions is available from the Office of the Public Guardian and Trustee, online at www.attorneygeneral.jus.gov.on.ca or by phoning 1-800-366-0335

HIERARCHY OF SUBSTITUTE DECISION-MAKERS
(Health Care Consent Act, 1996)

1. The incapable person’s guardian (if one exists)
2. The incapable person’s Attorney for Personal Care (if one exists)
3. The incapable person’s representative appointed by the Consent and Capacity Board (if one exists)
4. The incapable person’s spouse or partner
5. A child or parent of the incapable person
6. A parent of the incapable person who has only a right of access
7. A brother or sister of the incapable person
8. Any other relative of the incapable person

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