

Surrogate Consent Policy	Attachments <input type="checkbox"/> Yes <input type="checkbox"/> No
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I. Background

Informed consent is a process of communication between a patient and the hospice provider that results in the patient's authorization or agreement to hospice services and medical care. The Minnesota Hospice Bill of Rights (MN Statutes Section 144.751) requires that hospice providers inform all adult patients of their rights to accept or refuse medical treatment interventions. In cases involving patients without decision-making capacity, a "surrogate" (substitute) decision-maker can be drawn upon to make decisions on the patient's behalf. If a surrogate decision-maker has not previously been designated by the patient before the patient loses the capacity to make and communicate health decisions, a natural surrogate decision-maker(s) can be identified or an emergency or permanent guardian can be appointed through the judicial system.

II. Purpose

The purpose of this policy is to ensure a process for determining and honoring health care preferences.

III. Policy

The process of informed consent will be used to educate patients and families regarding hospice philosophy and services. Hospice will honor decisions regarding health care preferences for hospice patients with decision-making capacity or by hospice patients who have lost decision-making capacity but have previously expressed their preferences in a health care directive or other prior communications. Surrogate decision-makers will be used primarily to make decisions regarding health care preferences when the hospice patient can not make and communicate health care decisions, and the patient either does not have a health care agent or legal guardian, or the patient's preferences are not clearly identified in a health care directive or other prior communications.

IV. Guidelines

1. Hospice providers should define a process for anticipating the need for a surrogate decision-maker(s). Planning ahead allows an opportunity for the surrogate to participate and benefit from a learning curve that would improve his/her understanding of the patient's values and wishes with subsequent application to evolving health care circumstances.
2. In order to obtain informed consent, the hospice Interdisciplinary Team (IDT) must first determine whether the patient has decision-making capacity to make health care decisions. A patient may have decision-making capacity for some decisions but not for others, or a patient's decision-making capacity may ebb and flow from time to time. Whenever the patient has decision-making capacity, the patient's decisions shall be honored and all information will be presented to the patient with ample time allowed for questions.
3. If the patient does not have decision-making capacity, the hospice IDT must determine if the patient completed a health care directive and/or whether the patient had otherwise designated a surrogate decision-maker(s) before the patient lost decision-making capacity. The designated surrogate decision-maker (health care agent or proxy) will make those decisions the patient lacks the decision-making capacity to make.
4. If the patient has a court appointed guardian who has been given the power to make health care decisions, informed consent for health care shall be obtained from the guardian. The patient will be involved and consulted as much as deemed appropriate under the circumstances.
5. If a surrogate decision-maker has not been designated by the patient and there is no court appointed guardian, then a surrogate decision-maker can be determined by the hospice IDT. The surrogate should be a person who is reasonably available, who will advocate in the patient's best interests, and understands or is most knowledgeable about the patient's goals, preferences and values.
6. If there are multiple surrogate decision-makers who are in agreement about the course of care selected and it seems reasonable to the hospice IDT, the IDT shall comply with the surrogate decision-makers' direction.
7. In situations where there is dispute among those involved or the care choices seem unreasonable to the IDT, the ethics committee shall be consulted and then legal counsel if necessary.
8. If the identified surrogate decision-maker(s) cannot be located and decisions must be made, the hospice IDT may direct the care.
9. The hospice IDT will assess whether the patient's surrogates are acting in good faith. The hospice IDT may refuse to comply with a surrogate's decision if it determines that the surrogate is not acting in good faith or is requesting services not in compliance with reasonable standards of medical and hospice care.
10. If the patient has no individuals in his/her life that could be a surrogate decision-maker, the hospice social worker will be notified and a process may be initiated to obtain a court appointed guardian.

V. Definitions

Act in good faith: Means acting in the best interests of the principal, considering the principal's overall general health condition and prognosis and the principal's personal values to the extent known (Minnesota Statutes Section 145C.01 Subd. 1a.).

Best Interests: Means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment.

Incompetency: In relation to decision-making capacity, it is a legal determination made by a court of law that a patient does not have the required capacity to make a medical decision.

Decision-making Capacity: Means the ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health decision (Minnesota Statute Section 145C.01 Subd. 1b.) All minors lack decision-making capacity as a matter of law, unless they are determined to be emancipated.

Guardian: Refers to someone who has all or some of the powers over the individual such as where to live, consenting to medical procedures, and taking care of food, clothing and shelter. (Minnesota Statutes Section 524.5-313)

Minnesota Health Care Directive: In 1998, Minnesota law was changed to make it easier and less confusing to complete an advance directive. The new advance directive is called a "health care directive". The health care directive is a document in which the wishes and preferences of a person about health care treatment decisions are stated. It is a plan intended to guide treatment decisions in the event that a person can no longer make those decisions. A health care directive is commonly used to appoint a surrogate decision-maker called a health care agent or proxy. The health care directive combines the living will and durable power of attorney for health care. (Minnesota Statutes Chapter 145C)

Natural Surrogate Hierarchy: Minnesota has no law that predetermines who may be a surrogate decision-maker for a person who lacks decision-making capacity and has not appointed a health care agent or proxy. A surrogate decision-maker may be the next of kin, (e.g. the person's spouse, domestic partner, adult children, parents, adult siblings, adult grandchildren) a significant other, a close friend or other relative.

Surrogate Decision-Maker (also "Surrogate"): An individual (such as a health care agent, proxy, and guardian or natural decision-maker), a committee, or a decision-making process authorized as recognized under Minnesota law to make health care decisions on behalf of a patient who lacks decision-making capacity. A surrogate must act in good faith (see above) and authorize or request services in compliance with reasonable standards of medical and hospice care.

VI. References

Hospice Minnesota. *Definition of Advance Directive*. The Advance Directive page. Available at: <http://www.hospicemn.org>. Accessed June 27, 2008.

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Minnesota Office of the Revisor of Statutes. *Definition of Guardian*. Minnesota Statutes. Available at: <https://www.revisor.leg.state.mn.us/statutes/?id=524>. Accessed June 27, 2008.

Determination of Decisional Capacity and Surrogate Consent. Available at: http://www.sfvafre.org/forms/Decisional_Capacity_6-23-05.doc. Accessed June 27, 2008.