

HEALTH CARE SURROGATES: What Do I Need to Know?

What is a Health Care Surrogate?

A health care surrogate is an adult who is appointed to make healthcare decisions for you when you become unable to make them for yourself.

What is the difference between a Medical Power of Attorney and a Health Care Surrogate?

The main difference between a medical power of attorney and a healthcare surrogate is that you appoint a medical power of attorney representative to make healthcare decisions for you when you become unable to make them for yourself. You can specify what healthcare decisions your medical power of attorney can make. A healthcare surrogate, on the other hand, is someone who is appointed to make healthcare decisions for you when you become unable to make them for yourself. You have no say in who becomes your healthcare surrogate. You can avoid having a healthcare surrogate appointed if you have appointed a medical power of attorney representative and that representative is still willing and able to serve.

What healthcare decisions are you talking about?

Any decision to give, withhold or withdraw informed consent to any type of health care, including but not limited to, medical and surgical treatments, life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home, home health care and organ donation.

Who appoints my Healthcare Surrogate?

The physician who is attending to you or the advance practice nurse working with the physician who is attending you will select the person to serve as your healthcare surrogate.

When will a Healthcare Surrogate be appointed for me?

Two things must occur before a healthcare surrogate will be appointed for you.

1. You must be unable to make healthcare decisions for yourself AND
2. Your attending physician or advance practice nurse must have determined that you did not appoint a medical power of attorney and that you do not have a court-appointed guardian.

If you cannot make healthcare decisions for yourself and there is no representative or court-appointed guardian that is authorized or capable and willing to serve, then a healthcare surrogate

can be selected.

How will I know if I am unable to make healthcare decisions for myself?

A doctor or psychologist or advance practice nurse working with a doctor will make this determination. Commonly, the doctor will say that you lack the capacity to make healthcare decisions. He or she may also say that you are incapacitated. If you are conscious, you will be told that you have been found to be incapacitated and that a surrogate decision maker may be making decisions regarding your treatment.

How Does the Doctor decide that I am unable to make medical decisions for myself?

The doctor, psychologist or advance nurse practitioner will evaluate your ability to :

1. Appreciate the nature and implications of a health care decision; (Are you able understand what your doctor is telling you and understand the consequences of any choices that you make?)
2. Make an informed choice regarding the alternatives presented; (Are you able to process the information the doctor gives you and make your decision based on this process?) and
3. Communicate that choice in an unambiguous manner. (Are you able to let your doctor know what you have decided? You may state your choice, write it down, or in some case, just nod your head. The important thing here is that there must be no doubt about what your are trying to express.)

If the doctor determines that you are unable to do these things, he or she must write this in your medical records. The doctor's statement must include the reason why you were found to lack capacity.

How is my Healthcare Surrogate selected?

The attending physician or advance practice nurse must make a reasonable effort to determine if any of the following people exist:

1. Your spouse;
2. Your adult children;
3. Your parents;
4. Your adult brothers and sisters;
5. Your adult grandchildren;
6. Your close friends.

If you have people in all of these categories, they are considered in decreasing order of priority. In other words, your spouse would be considered first, then your adult children, then your parents and so on down the list. Your attending physician or advance practice nurse considers

whether the person is reasonably available and willing to make healthcare decisions for you. The first person on the list who is both available and willing to make these decisions for you will usually be appointed as your healthcare surrogate.

I don't have anyone in those six categories, does that mean I won't have a healthcare surrogate appointed?

No. These are just the six categories of relationships that the law requires that your attending physician or advance nurse practitioner consider first. If there is no one in those six categories who is available and willing to serve as your healthcare surrogate, then your attending physician is free to consider any other person or entity, including, but not limited to, public agencies, public guardians, public officials, corporations and any other person or entity allowed by law. If there is no one else, a representative of the Adult Services Division of the Department of Health and Human Resources is often appointed as healthcare surrogate.

I'm a widow with three adult children, how will my doctor decide which child will be my healthcare surrogate?

When there is more than one person at the same priority level, like your three adult children, your attending physician or advance practice nurse must determine who is the best qualified. Your doctor will consider the following qualities in making this decision:

1. The potential surrogate's ability to make decisions in keeping with your known wishes or your best interests;
2. The potential surrogate's regular contact with you prior to and during your incapacitating illness;
3. The potential surrogate's demonstrated care and concern;
4. The potential surrogate's availability to visit with you;
5. The potential surrogate's availability to meet face to face with your health care providers in order to fully participate in the decision-making process.

Will my adult daughter, who is irresponsible, automatically be my healthcare surrogate just because she's higher on the list than my brother?

Not necessarily. Your attending physician or advanced practice nurse can appoint a surrogate for you who is ranked lower on the priority list, if the doctor or nurse determines that the lower ranked individual is better qualified using the criteria discussed above. The attending physician or advanced practice nurse must document in your medical records why they appointed this person instead of the person with higher priority.

Can my doctor be appointed as my healthcare surrogate if I do not have any family?

No. The law states that **THESE PEOPLE CANNOT BE A HEALTHCARE SURROGATE:**

1. Your treating healthcare provider cannot be your healthcare surrogate;
2. An employee of a treating healthcare provider cannot be your healthcare surrogate, UNLESS you are related to that employee;
3. An owner, operator or administrator of a healthcare facility serving you cannot be your healthcare surrogate;
4. An employee of an owner, operator or administrator of a healthcare facility cannot be your healthcare surrogate, UNLESS you are related to that employee.

Are there any rules or guidelines that my Healthcare Surrogate must follow when making healthcare decisions for me?

Yes. The law requires that your healthcare surrogate make healthcare decisions for you that are:

1. In accordance with your wishes, including your religious and moral beliefs; or
2. If your healthcare surrogate does not know your wishes and could not find out about them using reasonable efforts, then he or she should make decisions that are in accordance with your best interests; and
3. A reflection of your values, including your religious and moral beliefs, to the extent that your healthcare surrogate knows about these values or could find out about them with reasonable effort.

How is my healthcare surrogate supposed to know what is in my best interest?

There is no easy way for your healthcare surrogate to know what is in your best interests. The law requires that a healthcare surrogate consider the following things in order to determine what would be in your best interests:

1. Your medical condition and prognosis;
2. The dignity and uniqueness of every person;
3. The possibility and extent of preserving your life;
4. The possibility of preserving, improving or restoring your functioning;
5. The possibility of relieving your suffering;
6. The balance of the benefits of the proposed treatment against the concerns and values that a reasonable person in your circumstances would want to consider.

As you can tell, some of these concepts are very murky and there is no straightforward answer one way or the other.

From the way it sounds, I don't have much say in this process. Is there anything I can do to have some input into this selection?

Yes, but you must think about these issues ahead of time. If you wait until it is time to appoint a healthcare surrogate to think about them -- it is too late. A determination must be made that

you no longer have the capacity to make healthcare decisions before a healthcare surrogate will be appointed. Once it is determined that you no longer have capacity, you no longer have control over your decisions. To keep this from happening, it is important that you think about these issues ahead of time and execute a medical power of attorney and a living will. These instruments will allow you to have the most input into healthcare decisions after you lose the capacity to make them for yourself.

For more information about medical powers of attorney and living will refer to *MEDICAL POWERS OF ATTORNEY: What Do I Need to Know* and *LIVING WILLS: What Do I Need to Know*.

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