

Substitute Decision Makers

Capacity to make decisions may fluctuate throughout a person's healthcare journey. Deciding on a substitute decision maker early on is very important.

In Ontario, adults are presumed to be capable, depending on the type of decision being made. Capacity should be measured on a case-by-case basis. People with capacity also have the right to make decisions that others do not agree with, even where a decision made by a capable person with a mental health disability is thought by others not to be in his or her best interest.

Capacity assessors may be:

- doctors
- nurses
- psychologists
- social workers
- occupational therapists

All capacity assessors have training and expertise in conducting assessments, but some may have specific skills and experiences working with people who have certain types of disabilities, such as:

- dementia
- mental illness
- brain injuries
- intellectual disabilities

You can contact the Capacity Assessment Office by:

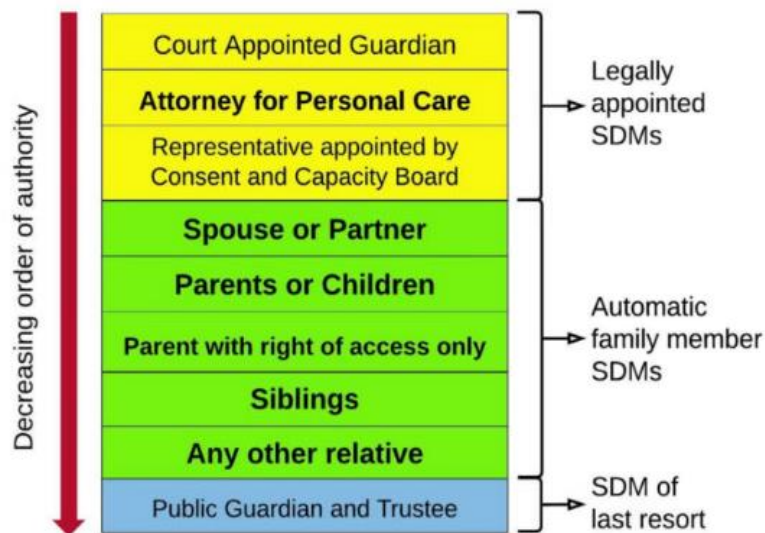
Email: CAO@ontario.ca

Tel: [416-327-6766](tel:416-327-6766) or [Toll-free: 1-800-366-0335](tel:1-800-366-0335)

A person who makes decisions for another person that has been found mentally incapable is called a “Substitute Decision Maker.” In Ontario, everyone has a Substitute Decision Maker, and the Health Care Consent Act tells healthcare providers who this would be (For most people it is your closest living relative unless you have a Court Appointed Guardian, or you have appointed an Attorney for Personal Care).

A person's wishes about their future and healthcare may change. It is important to review your wishes regularly and communicate with your substitute decision maker. Especially if your health changes or there is a major change in your life.

Substitute Decision Maker Hierarchy



Ontario's Health Care Consent Act, 1996

Court Appointed Guardian (of the person): A guardian of the person, is someone appointed by the court to make personal care decisions on behalf of a mentally incapable adult. This usually happens when the person doesn't have a power of attorney for personal care or if their attorney is not able or willing to fulfill their duties. Guardianship | ontario.ca

Attorney for Personal Care: A power of attorney is a legal document that gives someone you trust the right to make health care decisions for you should you be mentally incapable. This trusted person does not have to be a lawyer to be your attorney. You can make a power of attorney document yourself for free or have a lawyer do it. Consider consulting a lawyer as they can provide additional things to consider when appointing an Attorney for Personal Care. Make a power of attorney | Ontario.ca

Office of the Public Guardian and Trustee: The Office of the Public Guardian and Trustee acts as Substitute Decision Maker of last resort to make substitute treatment or long-term care admission decisions for incapable individuals. Office of the Public Guardian and Trustee | ontario.ca

If you suspect that a person may be incapable and at risk of harm, abuse or neglect, call the **OPGT's Investigations line at 416-327-6348 or Toll Free 1-844-640-3615.**

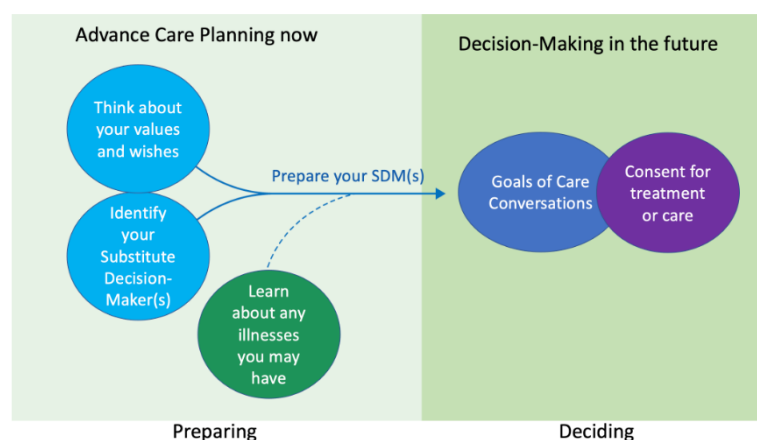
Things to Consider when Choosing a Substitute Decision Maker:

- Can I talk with this person(s) about my wishes, values and beliefs?
- Do I trust this person(s) to make decisions that reflect my wishes even if they disagree with them?
- Can they make decisions under stress?

- Can they communicate clearly with my health team in a stressful manner? It's not always possible to know what kind of future health problems you may have.

Key Responsibilities of your Substitute Decision Maker:

- Willing to be your Substitute Decision Maker and make decisions on your behalf if you are not capable of making the decision yourself
 - Available when decisions need to be made
 - Over 16 years of age
 - Capable of providing consent
 - Not prohibited by court order or a separation agreement
- Healthcare providers will provide information on your current condition and discuss treatment options with your SDM.
 - Your SDM's role is to determine the option that is best for you. They will think about your wishes and values and tell the healthcare team this as part of a goals of care conversation.
 - Since you will be incapable of participating at the time, it is important to share information on your values, and what is important to you during the ACP process.



Remember:

Your Substitute Decision Maker can only make your healthcare decisions when you are **NOT** mentally capable of making healthcare decisions on your own, for example:

- During surgery if you are unconscious
- Cases of advanced dementia
- During a temporary time of incapacity
- Alcohol or drug intoxication
- Medication side effects
- Infection causing confusion

If you recover, and become mentally capable again, you will make your own healthcare decisions.