



GUIDE



What is a Substitute Decision-Maker (SDM)?



The Ottawa Hospital | L'Hôpital
d'Ottawa



Disclaimer

The Ottawa Hospital wrote this booklet to give you general information. It does not replace advice from your doctor or other qualified health-care provider. Please talk to your doctor to see if this information applies to you.

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Why do I need this information?

The patient is not now able to make decisions about some or all of his or her treatment. You have been named a Substitute Decision-Maker (also called an SDM). In Ontario, health-care providers such as doctors and nurses must get “informed consent” before they can give treatment. Because the patient is not able to give that consent, you are being asked to make decisions and give consent for the patient. Being an SDM can be stressful. This information is meant to support and guide you during this stressful time.

What is a Substitute Decision-Maker (SDM)?

An SDM is a person who has the legal power to make decisions and give consent for medical treatment for a patient who cannot make those decisions for himself or herself. The patient lacks what we call “decision-making capacity.”

What is decision-making capacity?

A person with decision-making capacity is able to:

1. Understand the decision they have to make (such as, the treatment choices they have) and all the information about it.
2. Understand what could happen after they make that decision, including the risks and benefits to themselves.

Decision-making capacity can change based on the decision that needs to be made and the patient’s condition. A patient may be able to make one decision and not able to make another at

the same time. Doctors and nurses assume that patients are capable unless there are reasons to think they are not. If the patient becomes able to make decisions again, you will not need to act as the SDM.

Do I have to be the SDM?

No, you do not have to be an SDM. To be an SDM, you must:

1. Be at least 16 years old, unless you are the patient's parent
2. Have decision-making capacity yourself (see above)
3. Be legally able to be with the patient and make decisions for him or her (that is, there is no court order or separation agreement that stops you)
4. Be available to take on this responsibility;
5. Be willing to take on this responsibility

What types of decisions will I have to make?

SDMs can decide only about treatment, placement in a hospital or other health-care facility, and personal assistance services. Some examples of personal assistance services would be washing, dressing, eating, or drinking

What is a power of attorney for personal care? Is it the same as an SDM?

A power of attorney for personal care is a legal form that allows someone to choose one person who they want to act as their SDM. A power of attorney for personal care is not the same as a power of attorney for property and finances. If the patient has

signed a power of attorney for personal care, the person named will be asked to be the SDM.

If there is no power of attorney for personal care, how do you figure out who the SDM is?

The *Health Care Consent Act* has a list of people who could be the SDM. The person who ranks highest on the list will be the SDM. In some cases, more than one person might be the SDM (such as two or more children, or two parents).

The patient's guardian (a person named by the court to care for the patient)
The patient's power of attorney for personal care
Someone named by the Consent and Capacity Board
The patient's spouse or partner
The patient's child or parent
The patient's parent with access rights
The patient's sibling
Any other relative
The Public Guardian and Trustee

What happens when more than one person can be an SDM?

When more than one person can be an SDM, they all have equal standing to take part in making decisions. This often happens when a patient's children are the SDMs. In these cases, it is key that all people in the group work together to reach an agreement quickly. If they all agree, the group could decide that one person will be the main contact. If a group is not able to make a decision, the hospital will have to contact the Office of the Public Guardian and Trustee, which will make the decision.

How do I make decisions as an SDM?

There are clear legal rules about how you make decisions for the patient. First, you have to think about any wishes that the patient told you about or wrote down when he or she was capable and at least 16 years old. If the patient's wishes apply to this situation, an SDM should follow those wishes.

If there are no wishes, or if they don't apply, the SDM must act in the patient's best interests. To do that, think about the patient's values and beliefs, and what impact the treatment will have on the patient. You should not make decisions based on what you would want for yourself. It's good to ask for help from doctors, nurses, social workers, friends, or family.

Here are some questions that you may want to think about as you make these decisions:

1. Before now, has the patient talked about or written down any wishes about treatment? If so, has anything happened that makes me think he or she would have changed his or her mind?

2. What would the patient say if he or she could talk to us?
3. What are the best interests of the patient? Would this treatment fit in with the patient's values and beliefs?

What happens if the SDMs don't agree?

If the SDMs don't agree, it is vital that they try to solve their conflict quickly so the patient can receive the right care.

What happens if the SDMs don't agree with the doctor about what treatment would be best for the patient?

In these cases, every effort is made to agree on treatment and care that makes sense and is right for the patient. Sometimes, formal conflict-solving tools are needed.

The Consent and Capacity Board can help a doctor or an SDM. Either one of them can apply to the board to solve the conflict or make the final decision.

Resources

Health Care Consent Act, 1996: <http://www.hcca-info.org/>

The Advocacy Centre for the Elderly:
http://www.advocacycentreelderly.org/ace_library.php

Consent and Capacity Board
<http://www.ccboard.on.ca/scripts/english/index.asp>

Notes
