

B.C.'s Adult Guardianship Laws: Supporting Self-Determination for Adults in British Columbia

CONSENT TO HEALTH CARE

What Adults, Families and Health Care Providers Need to Know About the Law

This brochure explains key provisions of Part 2 of the **Health Care (Consent) and Care Facility (Admission) Act** - Consent to Health Care.

If you are an adult needing health care, a family member or a health care provider, B.C.'s *Health Care (Consent) and Care Facility (Admission) Act* will affect you.

It confirms the right of adults (persons 19 years of age or older) to make their own health care decisions, either independently or with support from family and friends. The law formally recognizes the role of family and friends who support adults needing assistance with health care decision-making.

THE GENERAL RULE STILL IS: **adults can be given health care only with their consent.**

But in the event that an adult is unconscious, mentally incapable, or otherwise unable to give consent, the law sets out procedures to follow.

When is an adult's consent NOT required?

The main exceptions to the general rule are:

- when urgent or emergency health care is required and the adult is incapable of making a consent decision
- when involuntary psychiatric treatment is needed
- for preliminary examinations such as triage or assessment, and
- when communicable diseases are involved

Health care providers covered by the act include physicians, dentists, nurses, physiotherapists, psychologists, occupational therapists, optometrists, chiropractors and others. For a full list see the Health Care Consent Regulation.

What if an adult is unable to give or refuse consent?

Given some time, and the necessary information and support, most adults can make their own decisions. An adult must be approached first for a decision. If the health care provider believes an adult is capable, then they have the right to give, refuse or revoke consent.

In deciding whether an adult is incapable of making a health care decision, the health care provider must determine whether the adult demonstrates an understanding of the information that the health care provider has given about the health care, and that this information applies to the situation of the adult. If a person is incapable of making a decision someone else makes the decision on behalf of the adult.

Who can make health care decisions for an adult who is unable to make their own decision?

The Act sets out a ranked list of decision-makers:

A court-appointed committee of person: Under the *Patients Property Act*, the court may have appointed a committee for an adult who is incapable of making health care decisions.

A representative: An adult may, when able to do so, have planned for their future by making a Representation Agreement authorizing a representative to make health

care decisions on their behalf if they were unable to make their own decisions. If there is no committee of person, a representative may be able to make the health care decision.

A temporary substitute decision-maker: If there is no representative or court-appointed committee of person, a health care provider must choose the nearest relative, namely, the adult's spouse, adult child, parent, sibling or other relative who qualifies to make a health care decision.

The Act requires that the nearest relative meet certain criteria in order to be entitled to make decisions. The Act specifies that the family member must:

- be at least 19 years of age
- have been in contact with the adult in the preceding 12 months
- have no dispute with the adult
- be capable, and
- be willing to comply with the duties of a temporary substitute decision maker.

What if there is no one to make the decision or there is a dispute among equally ranked decision makers?

When no one from the ranked list of substitute decision makers is available or qualified, or there is a dispute between two equally ranked substitutes about who is to be chosen that cannot be resolved by the health care provider, the health care provider must contact a *Health Care Decisions Consultant at the Public Guardian and Trustee*. That office can authorize another person such as a friend of the adult to make substitute decisions. If there is no such person to authorize, the Public Guardian and Trustee will make the health care decision.

What is the role of the Health Care Decisions Consultant?

The Public Guardian and Trustee's Health Care Decisions Consultant has two roles:

- to authorize persons other than relatives by birth or adoption, such as a relative by marriage or a friend of the adult who wishes to make the health care decision as a temporary substitute decision maker, or
- to make the health care decision when there is no other suitable person available who is willing to make the health care decision.

When contacted by a health care provider, a Health Care Decisions Consultant will confirm that, in the opinion of the health care provider, the adult is not capable of making the health care decision and explore the efforts of the health care provider to locate a ranked substitute decision maker. Once the Consultant has confirmed the jurisdiction of the Public Guardian and Trustee, the Consultant will gather any information the health care provider has about any potential temporary substitute decision makers that could be appointed for the Public Guardian and Trustee and information about the adult, the health care needs of the adult and the proposed health care. The Consultant will also discuss these items with the adult, where possible, and gather information about the adult's instructions or wishes expressed when capable and their known values and beliefs.

How will the Health Care Decisions Consultant authorize others to make decisions?

When the Health Care Decision Consultant identifies someone, such as a friend or relative by marriage, who is qualified, suitable and willing to act as a decision maker for the adult, the Consultant will authorize that person as a

temporary substitute decision maker. The Consultant will inform the person of their duties and responsibilities and forward any information to them gathered from the health care provider and other sources about the health care needs of the adult. The person will be provided with a letter that confirms their role which can be shown to the health care providers.

How will a substitute decision maker make substitute health care decisions?

Decisions on behalf of the adult to consent or refuse treatment will be made in accordance with the duties of all temporary substitute decision makers:

1. known applicable instructions or wishes made by the adult when capable are to be followed;
2. if there are no known prior capable instructions or wishes, the decision is to be made in accordance with known applicable values and beliefs;
3. if there are no such known values and beliefs then a decision is to be made in the adult's best interests.

When making a decision in the best interests of the adult, a decision-maker must consider:

- the adult's current wishes
- the likely effect of receiving or not receiving the proposed health care
- the expected benefits, weighed against the risk of harm, and
- whether there are less restrictive or less intrusive alternatives that would be as beneficial.

How will the substitute decision be communicated?

When the Public Guardian and Trustee makes a decision to authorize a temporary substitute decision maker or makes the health care decision on behalf of the adult, the PGT staff will verbally advise the health care provider and then confirm the decision in writing.

How long will it take to obtain a decision?

The service standard for PGT Health Care Decisions is that minor health care decisions will be made within 24 hours of receiving all the information required to make the decision. Major health care decisions will be made within 3 working days, taking into consideration the complexity and urgency of the adult's health care, and once all the relevant information necessary to make the decision has been received from the health care provider.

What if someone disagrees with the substitute's decision?

The Health Care and Care Facility Review Board is no longer operating.

Dispute resolution processes are being developed by health authorities. If you disagree with a decision by a substitute decision maker, please contact the Risk Manager of your region's Health Authority for the dispute resolution process in your health authority.

Fraser - www.fraserhealth.ca
Interior - www.interiorhealth.ca
Northern - www.northernhealth.ca
Vancouver Coastal - www.vch.ca
Vancouver Island - www.viha.ca

If this fails to resolve the dispute you may wish to obtain legal advice.

Are there any restrictions on treatments?

There are certain types of health care specified by regulation (section 5) that a temporary substitute decision maker cannot consent to. See the Health Care Consent Regulation for more information (a link to the Act and Regulations is on the Public Guardian and Trustee website).

The act does not apply to certain decisions such as those related to psychiatric treatment of involuntary patients under the *Mental Health Act* or to non-therapeutic sterilization.

For more information, write, call or fax our office nearest you:

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Interior and Northern BC, east and north of Hope

Hours of Service for Health Care Decisions

8:00 am-5:00 pm (Monday-Friday)

8:00-noon (Weekends & Holidays)

Toll-Free: 1-877-511-4111

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AND TRUSTEE OF
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