

Advance Care Planning: Surrogates

Surrogate Definition

A **surrogate** is a substitute health-care decision-maker who consents or refuses to consent to some or all medical treatments for the patient who lacks decision-making capacity. The definition includes:

1. An agent under a health care power of attorney or health care proxy;
2. A guardian or conservator of the person with health care decision-making powers, a court-appointed surrogate;
3. A surrogate recognized under state law;
4. Any other similarly authorized decision-maker, regardless of the terminology used in a particular state; and
5. In the absence of anyone legally appointed, the individual identified by the facility to make decisions on behalf of the incapacitated patient.

Even when the patient appoints the surrogate, questions can still arise as to the extent of the surrogate's authority. For more information about surrogates, please see Issue 7 in our [Legislative Guide](#).

Surrogate Role

Because the POLST form orders direct a patient's medical treatments, the patient must have sufficient decision-making capacity to give consent, meaning that the patient has the mental capacity to understand his or her condition, the benefits and burdens of the proposed course of treatment; and any possible alternative treatments. The preferred outcome is for the patient to consent to the POLST form, but sometimes the patient's lack of capacity results in an inability to engage in the [shared decision-making](#) process.

Once an individual loses decision-making capacity¹, the responsibility for making treatment decisions falls to their surrogate who is expected to consent or refuse consent to medical decisions consistent with the values and wishes of the individual as best they can, based on the patient's advance directive or as otherwise known to the surrogate.² Critical care decisions are highly likely and often imminent for individuals with serious illness or frailty.

In most states, when the patient becomes incapacitated, the surrogate can participate in either initiating a new POLST form or updating previous POLST form orders in a manner consistent with the patient's preferences as the patient's health status changes.³

Some states have limitations on what surrogates are permitted to do relative to a POLST form. For example, in Virginia if a patient has completed a POLST form marked DNR the surrogate cannot change that section of the form to require CPR but the surrogate can change the form from CPR to DNR. The surrogate can also complete and change the rest of the form as appropriate. In contrast, on the West Virginia POLST form the patient must check a box on the POLST form for the surrogate to make changes to the form at all.

¹ Determining capacity yet this is fundamental to respecting the patient's autonomy; many facilities have policies and procedures in place relative to decisional capacity assessment. State statutes determine who can make decisions for incapacitated patients and what decisions they can make. It is recommended to know state law regarding surrogate decision-making.

² An advance directive is a personal tool for exercising one's autonomy in the indeterminate future. It enables the individual to name a surrogate of his/her choice and give some degree of guidance for future medical decisions. If the individual does not have an advance directive, most states provide authorization to a surrogate via statute.

³ A couple of states where surrogates have limited ability to update a POLST Form based on state law.