

Frequently Asked Questions: Provider Identification of a Surrogate Form

1. Should facilities develop a form to use when identifying a surrogate?

On May 3, 2005 the Board for Licensing Health Care Facilities approved a model form to use to document the identification of a surrogate decision maker. This form was revised in June 2017 and is now called Provider Identification of a Surrogate (Surrogate Form). The law requires physicians to promptly record the identification of a surrogate in the patient's medical record and communicate it to the patient, if possible, and to any person then authorized to make health care decisions for the patient. When documenting the decision, the physician should also document how he/she arrived at the decision. The Surrogate Form is not required but is recommended for facilities to use to document the identification of a surrogate by the designated physician. Forms are available in English or Spanish.

2. Who documents that the patient lacks decision making capacity and the reason for identification of a surrogate in the medical record?

The designated physician or another appropriate provider (if the patient's designated physician is not reasonably available) documents a patient's ability to make decisions. The Surrogate Form covers points that must be documented for identification of a surrogate.

3. How does a facility identify a decision maker if the patient is unable to make decisions?

If the patient has a guardian/conservator, power of attorney, or advance directive that includes the designation of a health care decision maker or agent, or if the patient has designated a surrogate, then that person is the decision maker. If the patient lacks a guardian/conservator, power of attorney, or advance directive and the patient has not designated a surrogate, then the designated physician reviews the relationships of the patient's family and friends to identify the person most likely to know the patient's current health care preferences, the person closest to the patient, and someone who has shown special care and concern for the patient. Consideration may be given to any of the following (in the order shown):

1. Spouse
2. Adult Children
3. Parents
4. Siblings
5. Other adult relatives
6. An unrelated adult.

If no surrogate can be identified, the designated physician may make decisions for the patient. To do so, he/she must get another attending level physician who agrees with the treatment plan, who will not be involved in the patient's care, and who is not in a position of supervision or partnership with the treating physician. The treating physician can also seek assistance from the facility's ethics representative as an alternative.

4. What if the guardian/conservator, power of attorney, agent, or surrogate designated by the patient is not available or is unable to make decisions for the patient, who then makes decisions?

The designated physician reviews the relationships of the patient's other family and friends to identify the person who is most likely to know the patient's current health care preferences, is closest to the patient, and has shown special care and concern for the patient (see response to question 3 above) *and* who is both reasonably available and able to make decisions for the patient.

5. When should the Provider Identification of a Surrogate Form be used?

The Surrogate Form should be used to document identification of a health care decision maker when the patient lacks decision making capacity and lacks a written medical directive, or when the patient has designated a decision maker but does not want to complete a medical directive. The designated physician identifies a person to act as health care decision maker. A Surrogate Form will also be needed if the patient has an advance directive but it has not been signed or properly witnessed, then the physician would have to identify a surrogate.

6. How long is the Surrogate Form good for?

Generally the form is good for that admission at that facility. However, a copy of the Surrogate Form along with copies of the POST form should accompany the patient if transferred to another facility so the receiving facility is aware of how a surrogate was determined. When a physician is acting in lieu of a surrogate, they are the decision maker only in their own facility.

7. Can a surrogate not designated by the patient make decisions about withholding artificial nutrition and hydration?

A surrogate who has not been designated by the patient, in other words, one who is identified by the physician, may make all health care decisions that the patient could make, except that decisions to withhold or withdraw artificial nutrition or hydration may only be made when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.