

Alternatives to Guardianship (Part 3): Surrogate Decision-Making

Hi, I'm here to explain surrogate decision-making. This process allows your health care provider to turn to another person to make medical decisions for you, if you become incapacitated and do not have an advance directive. This is important to understand. The person your provider turns to might not be the person you want making decisions on your behalf. Watch Part 2 of this series to learn how an advance directive can help ensure your wishes are followed.

Let's start with the basics: Who are surrogate decision-makers?

CHAPTER HEADING: WHO ARE SURROGATE DECISION-MAKERS?

Maryland law defines who surrogates are and their order of priority. First on the surrogate decision-maker list is:

- A court-appointed guardian.
- Second, Your spouse or domestic partner-
- Next in line are any adult children,
- followed by your parents,
- then
- Adult siblings.

If one level of surrogate decision-maker is not available, only then can your health care provider consult with someone on the next level.

If none of the options are available, a close friend or other relative who meets certain requirements can serve as your surrogate. That friend or relative would need to be competent and sign an affidavit, or statement under oath. The affidavit must state that they are a close friend or relative and include facts that demonstrate they have had regular contact with you and are familiar with your activities, health, and personal beliefs. They should give the statement to your physician.

Multiple people can share decision-making priority.

CHAPTER HEADING: MULTIPLE PEOPLE CAN SHARE DECISION-MAKING PRIORITY

Let's say you are not married but have three adult children. If you are not able to make health care decisions, your physician will turn to your three children. Which child decides for you? They all do. They need to work together. If they can't agree on a decision about your care and you are in a hospital or other facility, your attending physician can ask a patient care advisory committee to review your case and make a recommendation. What happens if you are not in a hospital or facility? Your physician cannot withhold or withdraw life-sustaining procedures unless all three children agree. This is not an easy situation, so it is important to be aware of what it means to be a surrogate decision-maker.

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CHAPTER HEADING: WHAT IT MEANS TO BE A SURROGATE DECISION-MAKER

For you to step in as a surrogate decision-maker a health care provider must certify that the person you are a surrogate for is incapable of making informed decisions about their care. When making a decision, you must base it on *their* wishes, not your own. How do you do that? You consider their current diagnosis and prognosis. Have they ever expressed a preference about the proposed treatment or the withholding or withdrawal of that or similar treatments? Did they express an opinion towards similar treatment for another person? What is their outlook toward medical treatment in general? Have they expressed concerns about the impact of their illness or treatment on family or friends? Finally, consider their religious, cultural, and moral beliefs or personal values.

What if the person's wishes are unclear?

CHAPTER HEADING: WHAT IF THE PERSON'S WISHES ARE UNCLEAR?

In that situation, base your decision on their best interest. This means weighing the benefits against the burdens of treatment. It means considering all possibilities and choosing the option that will have the greatest benefit and result in the least harm. You may need to seek independent opinions from experts such as doctors or social workers.

You should know there are limits on a surrogate's power.

CHAPTER HEADING: LIMITS ON A SURROGATE'S POWER

No surrogate can authorize sterilization or treatment for a mental disorder. Also, when making a decision about life-sustaining treatment, a surrogate cannot base that decision on a person's pre-existing, long-term mental or physical disability, or their economic situation. To the extent possible, a surrogate needs to talk to the patient about the proposed procedure and let them know that someone else is being authorized to make decisions on their behalf.

What if you don't have a surrogate decision maker?

CHAPTER HEADING: WHAT IF YOU DON'T HAVE A SURROGATE DECISION-MAKER?

You may need a court-appointed guardian. This is not ideal. Guardianship is a lengthy and expensive process. To avoid this situation, create an advance directive which is discussed-in part 2 of this series. An advance directive will help ensure your wishes are followed.

I hope this video has been helpful. Thanks for watching.