

(3) If the delegate does not know what the person would have wanted, then the delegate must make a decision they believe

is in the person's best interests. When deciding what is in the person's best interests, the delegate needs to consider whether consenting or refusing consent will improve or deteriorate the person's condition; whether it is the least restrictive option; and what are the risks and benefits of consenting or refusing to consent.

(4) If the person named individuals in the Personal Directive that they want the delegate to talk with before making a final decision, then the delegate must talk with those individuals before making the decision. Sometimes this conversation can help inform the delegate and help them make the decision on the person's behalf. However, only the delegate can make the decision for the person.

Statutory Decision-Maker

If the person becomes incapable of making decisions about health care, home care, or placement in a continuing care home, and does not have a Personal Directive, or has chosen not to name a delegate or set out specific instructions in the Personal Directive, the statutory decision-maker will be asked to make the decision for the person. Statutory decision-makers can only make decisions about health care, home care, or placement in a continuing care home.

The statutory decision-maker must make a decision they believe the person would have wanted based on what they know of the person's values and beliefs and any other written or oral instructions.

If the statutory decision-maker does not know what the person would have wanted, then they must make a decision they believe is in the person's best interests.

When deciding what is in the person's best interests, the statutory decision-maker needs to consider whether consenting or refusing consent will improve or deteriorate the person's condition; whether it is the least restrictive option; and what are the risks and benefits of consenting or refusing to consent.

Can a decision by a substitute decision-maker be challenged?

If someone believes that a delegate or statutory decision-maker has not carried out their duties in making a care decision for someone else, they may ask the Supreme Court of Nova Scotia to review the decision.

***Note:** This information is provided to help you understand the Personal Directives Act. It is not legal advice or medical advice. Consult a professional if you need help to understand your options and the implications of your choices.*

For more information about Personal Directives, including sample forms, visit the Government website: www.gov.ns.ca/just/pda or call 1-800-670-4357

03/10

Making Personal Care Decisions for a Loved One under the Personal Directives Act



Provided by Nova Scotia Government

Everyone has the right to make their own decisions about their personal care, including health care, as long as they are capable of understanding the risks, benefits and consequences of their decisions. Family, friends and care providers must accept the decision even if they do not agree with it.

When is a substitute decision-maker needed?

If a person is not capable of understanding the risks, benefits and consequences of the decision, and there is no Personal Directive that sets out clear, relevant instructions about the decision to be made, then someone else needs to make the decision on the person's behalf.

Why be a substitute decision-maker?

Being a substitute decision-maker is a very important role. You are helping ensure someone else's wishes are followed, or when those wishes are not known, that decisions are made in the person's best interests. It can be stressful—sometimes family members do not agree on the decision that should be made.

Having a clear idea of the role of a substitute decision-maker can help. It is important to focus on the needs of the person at the centre of the situation—the person who needs the decision made on their behalf.

How is a substitute decision-maker chosen?

When a person is not capable of making a personal care decision for themselves, the care provider will look for:

1. a court appointed guardian. For more information, speak with a lawyer.
2. a delegate appointed in a Personal Directive.
3. clear, relevant instructions written in a Personal Directive. If none exist, and the decision relates to health care, placement in a continuing care home or home care services, then the care provider will choose someone from the following list of people. The people in the list below are potential "statutory decisionmakers."

The care provider will start at the top and work their way down the list until they find an adult who has been in contact with the person over the previous year and is willing to make the decision.

1. spouse (married, common-law, and registered domestic partners)
2. child
3. parent
4. person standing in the place of a parent
5. sibling
6. grandparent
7. grandchild
8. aunt or uncle
9. niece or nephew
10. other relative
11. last resort, Public Trustee

Care providers will make reasonable attempts to contact people on the list given the urgency of the matter. In an emergency, a health care provider can treat the person without consent so long as there is no information available that would indicate the person would not want the required treatment.

What are the duties of a substitute decision-maker?

The duties of substitute decision-makers (delegates and statutory decision-makers) are outlined in the Personal Directives Act. The duties of a delegate and a statutory decision maker are similar.

Delegate

There are possibly four steps (depending on the circumstances) that a delegate must consider when making decisions on a person's behalf.

(1) The delegate must follow any instructions written in a Personal Directive unless:

- the person later expresses (in writing or orally) a different wish while they were still mentally capable
- because of changes in technology or medical advances, following the instruction would be contrary to what the person intended
- circumstances exist that, had the person known them, they would have set out different instructions. The delegate would make this decision based on what they know of the person's values and beliefs and any other written or oral instructions.

(2) If the person has not written instructions in a Personal Directive, then the delegate must make a decision they believe the person would have wanted based on what the delegate knows of the person's values and beliefs and any other written or oral instructions.