

Decision Makers for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, abortion and experimental treatment)

Person who can consent to treatment

Definition

The following hierarchy must be followed:

1. Adult patient with capacity
 2. Surrogate decision maker
 3. Agent
 4. Conservator
 5. Court-appointed surrogate decision maker
 6. Closest available relative
 7. Interdisciplinary team
- Able to understand the nature and consequences of the decision; adult is a person age 18 or older
- Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days
- Appointed in an Advance Health Care Directive or Power of Attorney for Health Care
- Appointed by a court
- Court appoints a surrogate to make health care decisions
- See "Closest Available Relative" table, below
- See "Adults Lacking Capacity and Not Under a Conservatorship" in CHA's Consent Manual for important information

Emergency Exception When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.

Closest Available Relative

Health Care Decisions

Anatomical Gifts

Disposition of Remains

- No statutory hierarchy**
- Spouse/domestic partner
 - Adult child
 - Either parent
 - Adult sibling
 - Grandparent
 - Adult aunt/uncle
 - Adult niece/nephew

- No statutory hierarchy**
- Spouse/domestic partner
 - Adult child or parent
 - Adult sibling
 - Any other kin or person who has the right to control disposition of remains
 - Public administrator
 - Coroner or other official, such as the California Curator of the Unclaimed Dead

- In the order listed**
1. An agent who could have made an anatomical gift immediately before decedent's death
 2. Spouse/domestic partner
 3. Adult child
 4. Either parent
 5. Adult sibling
 6. Adult grandchildren
 7. Grandparent
 8. An adult who exhibited special care and concern for the decedent during the decedent's lifetime
 9. Guardian or conservator of the decedent at the time of death
 10. Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above

- In the order listed**
1. An agent named in an advance directive
 2. Spouse/domestic partner
 3. Adult child or majority of children
 4. Parent
 5. Adult sibling or majority of siblings
 6. Surviving adults in degree of kinship or a majority of the same degree
 7. Conservator of person
 8. Conservator of estate
 9. Public administrator, if the patient has assets

Reference: Health and Safety Code Section 7113

Reference: Health and Safety Code Section 7150.40

Reference: Health and Safety Code Section 7100

For general medical decisions, case law (not a statute) authorizes decisions by the "closest available relative" and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient's values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor's recommendations is not a proper criterion for selection.

See chapter 3, "Who May Consent for Adults Lacking Capacity," of CHA's Consent Manual for additional information.

See chapter 14, "Deaths, Autopsies and Anatomical Gifts" of CHA's Consent Manual for additional information regarding autopsies, anatomical gifts, and disposition of remains.

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