RANCHO LOS AMIGOS
NATIONAL REHABILITATION CENTER

ADMINISTRATIVE POLICY AND PROCEDURE

Subject: DESIGNATION OF SURROGATE DECISION-MAKER **Policy No.:** B504.1

Supersedes:	July 23, 2020	Review Date:	June 22, 2023
Origin Date:	March 1, 1994	Revision Date:	June 22, 2023

PURPOSE:
To define the procedure of designating a surrogate decision-maker to provide consent and to make healthcare decisions on behalf of patients without mental or medical capacity.

NOTE: This policy may not apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, experimental drugs, abortion, and in cases of medical emergency.

POLICY:
An adult patient with capacity has the right to make his or her own health care decisions. This includes consenting to medical treatment and refusing medical treatment, including life-sustaining treatment. In some cases, a patient's physical or mental condition may render him or her unable to consent to medical treatment. When a patient lacks "capacity," a surrogate decision-maker shall be identified.

A surrogate may make health care decisions on behalf of a patient if the patient has no available, previously appointed conservator or designated agent with authority to make such decisions, and the primary physician or designee determines and documents in the medical record that the patient lacks capacity for making health care decision.

DEFINITIONS:
ADULT—A person who has reached the age of 18. A minor who has entered into a valid marriage, who is on active duty with the armed forces of the United States of America, or has been declared emancipated, is also considered an "adult."

CAPACITY—A person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and the ability to understand the significant benefits, risks, and alternatives of proposed healthcare. **The primary physician has responsibility to determine whether a patient has the capacity to make health care decisions.**

SURROGATE DECISION MAKER—An adult person designated to make health care decisions on behalf of the patient. Such person must be guided first by the patient's own desires and feelings, to the extent they were expressed before the patient became incapacitated. If the patient's desires were not expressed or cannot be ascertained, surrogate decision-makers must be guided by the patient's best interests.

PROCEDURE:
If a conservator with medical decision-making authority has already been appointed then that conservator is the appropriate surrogate decision-maker. If a patient has Advance Health Care Directive (AHCD) that names an agent for health care decision-making, then the agent designated by the patient is the appropriate surrogate decision-maker.

If the patient does not have a conservator or an AHCD agent, then other written directives, such as a living will, that expresses the patient's wishes or desires, should be followed.

In the absence of a conservator, agent, or other oral or written individual health care instruction, the "closest available relative" of a patient without capacity can serve as the surrogate decision-maker. Social Work should be consulted to assist in finding the patient's "closest available relative."

A patient with capacity may orally designate an adult as a surrogate decision-maker for his/her healthcare. This surrogate has priority over an agent previously appointed by the patient through AHCD. The designation of the surrogate must be promptly recorded in the medical record.
The oral designation of a surrogate is effective only during the stay in the health care institution when the surrogate designation is made or for 60 days, whichever period is shorter. However, the patient may specify a shorter period of time.

I. SELECTION OF A SURROGATE FOR PATIENTS WITHOUT CAPACITY AND WHO LACK AN APPOINTED SURROGATE:

There is no specific hierarchy/order given for "closest available relative" for the purposes of selecting a surrogate decision maker. The identified "closest relative" must agree to assume the role of patient's surrogate decision-maker. Agree with the doctor's recommendations is not a proper criterion for selection.

There should only be **one** designated surrogate decision-maker for the patient. In the event that more than one person is presenting to be the surrogate decision maker, the primary physician shall determine which individual is acting in the best interest of the patient.

Closest Available Relative: No Statutory Hierarchy

- Spouse/domestic partner
- Adult child
- Either parent
- Adult sibling
- Grandparent
- Adult aunt/uncle
- Adult niece/nephew
- Others (may include other relatives or persons most knowledgeable about the patient's wishes).

Factors That May Be Considered In Selecting The Surrogate

In determining the individual best able to serve as the surrogate, all relevant factors may be considered:

- Familiarity with the patient's personal values
- Demonstrated care and concern for the patient
- Degree of regular contact with the patient before and during the patient's illness
- Availability to visit the patient
- Availability to engage in meaningful contact with healthcare professionals for the purpose of fully participating in the decision-making process
- Ability to understand the medical condition and treatment options as explained by physicians or other health care professionals

II. PATIENTS WITH UNKNOWN "CLOSEST AVAILABLE RELATIVE"

Due diligence must be performed to find the patient's "closest relative." If there is no identified "closest relative" or if there is no person willing to serve as the patient's surrogate decision maker, contact

Social Work or Bioethics Committee to initiate a multi-disciplinary committee to act as the patient's surrogate decision maker.

SURROGATE DECISION MAKER COMMITTEE

According to California Probate Code Section 4650(c), "In the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life-sustaining treatment." Rancho will use a multi-disciplinary approach to serve as a surrogate decision maker for certain medical decisions for patients who lack capacity and have no surrogate decision maker available.

The multi-disciplinary committee may only make decisions if extensive efforts have been made over time to identify a surrogate decision-maker, without success. Such efforts must be documented in the medical record. The voting members of the committee will be comprised of:

a) The patient's primary care attending physician and any consulting attending physician or psychologist who has made recommendations relevant to the decision at hand, who should be identified by name by the primary team

b) A nurse from the patient's care team

c) A member of the Ethics Committee

d) A social worker who is familiar with the patient and has participated in the care team

e) A non-medical community member such as a patient advocate or Know Barriers representative, or member of volunteer services or pastoral staff.

f) Additional members may be identified as needed, including but not limited to representatives from Therapy Department, Case Management, Hospital Administrator, and Risk Management.

The Surrogate Decision Maker Committee will review the patient's diagnoses and prognosis and determine goals of care by considering:

- Any known prior patient wishes
- Cultural or religious beliefs, to the extent known
- Relief of suffering or pain
- Preservation or improvement of function
- Recovery of cognitive functions
- Quality and extent of life sustained
- Degree of intrusiveness/invasiveness and discomfort with the procedure and future care needs

Decisions regarding end-of-life will be limited to patients who are comatose or in a persistent vegetative state, or who are terminally ill with a life expectancy of less than 6 months.

Decisions about treatment should be based on sound medical advice and should be made without the influence of material conflicts of interest. These decisions must be made with a focus on the patient's interests, and not the interests of providers, the institutions, or other affected parties. In this regard, appropriate health care decisions include both the provision of needed medical treatment and the avoidance of non-beneficial or excessively burdensome treatment, or treatment that is medically ineffective or contrary to generally-accepted health care standards.

All treatment decisions by the committee must be <u>unanimous</u> to take effect. If there is disagreement, effort should be made to resolve the disagreement through dialogue or further fact finding. If unanimous agreement cannot be reached, the action requested should not be undertaken.

Except to the extent that such a factor is medically relevant, any medical treatment decision made pursuant to this policy shall not be biased based on the patient's age, sex, race, color, religion, ancestry, national origin, disability, marital status, sexual orientation, gender identity (or any other category prohibited by law), the ability to pay for health care services, or avoidance of burden to family/others or society. The multi-disciplinary team must assure itself that the medical decision is made based on sound medical advice, is in the patient's best interest, and takes into account the patient's values, to the extent known. In determining the best interest of the patient, it is not required that life support be continued in all circumstances, where treatment is otherwise non-beneficial or is medically ineffective or contrary to generally-accepted health care standards, when the patient is terminally ill and suffering, or where there is no reasonable expectation of the recovery of cognitive functions.

Agreement on Treatment:

a) One of the team members of the Surrogate Decision Maker Committee shall be designated to document the results of the discussion into the patient's medical record. The medical record documentation of committee's recommendation to proceed with treatment or procedure should suffice for procedures or treatments requiring consent to be performed.

b) If a unanimous decision is made to proceed with the proposed intervention/treatment, patients who are not comatose must be notified in writing (see attachment) that they have been determined to be incapacitated, lack a surrogate decision maker, a medical intervention has been recommended, and they have an opportunity to seek judicial review of these determinations if they would like.

c) This process should not be used for making decisions regarding administration of antipsychotic drugs, disposition of remains, autopsies, or anatomical gifts, mental health commitment, electro-convulsive therapy, psychosurgery, sterilization, experimental drugs, abortion, and **in** cases of medical emergency.

Disagreement on Treatment:

a) If the team members of the Surrogate Decision Maker Committee disagree about the care plan, the Ethics Committee or other resource experts will meet with the team to explore their disagreement and facilitate resolution.

b) If agreement is reached either to provide or to forgo treatment, the decision of the Surrogate Decision Maker Committee then becomes final.

c) If agreement still is not reached, current treatments will be continued, and any other medically necessary treatments provided, until such time that the issue is resolved through referral to public guardian and/or through court intervention such as Probate 3200 petition.

   Consult Social Work for referral to Public Guardian's Office. Referral to Public Guardian's Office may be made prior to or in conjunction with referral to Surrogate Decision Maker Committee. Once a Public Guardian is identified, the Public Guardian will assume surrogate decision-maker role for the patient. Consult Risk Management for Probate 3200 petition.

d) In all cases, appropriate pain relief and other palliative care shall be continued.

REFERENCE:

Probate Code Section 2356, 3200, 4670, 4658, 4711
California Hospital Association Consent Manual 2021, Chapters 1-4

Notification Form of Unrepresented Patient at Rancho Los Amigos National Rehabilitation Center

Patient Name:	**Medical Record Number:**	**Date of Birth**

Your doctor, Dr._____has carefully evaluated your physical and medical condition and concluded that you don't have the ability to make a decision about your medical treatment.

The hospital has tried to find a family member or friend of yours to make healthcare decisions for you. The hospital hasn't been able to find anyone to do that. If you have a family member or friend who you want to make health care decisions for you, please tell us.

Your doctor has recommended the following treatment, believing that this is the best treatment for you under the circumstances:

_____

_____

_____

A team of healthcare professionals, including your doctor and nurses and others, agrees that this is the best treatment for you.

Unless your doctor receives direction otherwise, your doctor intends to proceed with this treatment. You can ask a judge to stop this treatment. You can also ask a judge to let you make your own health care decision. You can contact a judge at:

Los Angeles County Superior Court

Metropolitan Court House
1945 South Hill Street
Los Angeles, CA 90007

Your assigned hospital social worker, or Rancho patient advocate office, may be able to help you contact a judge. If you are interested in this, please notify your nurse or doctor that you want to talk to a social worker or the hospital's patient advocate.

Hospital Employee to Complete:

I gave a copy of this form to the above-named patient on _____ at _____ □ am / □ pm
Date Time

Employee Signature: _____

Print Employee Name: _____

ORIGINAL TO PATIENT
COPY IN THE MEDICAL RECORDS