

# Medical Decision Making

## ADDITIONAL RESOURCES

### *The Guardianship handbook: Second Edition*

To receive this guide published by the Law and Health Care Program, University of Maryland School of Law, contact your local Service Coordination office. It is also available online at The Maryland's People Law Library, <http://www.peoples-law.info> and search for "Guardianship Handbook."

Information on medical decision making, including surrogate decision making, is available from the Maryland Attorney General's website, <http://www.oag.state.md.us/> and click on Health Policy.

For more information on topics discussed in this fact sheet, contact

The Arc of Frederick County  
Phone: 301-663-0909  
[www.arcfc.org](http://www.arcfc.org)



For an adult with a developmental disability to provide **informed consent**— to legally make decisions authorizing his or her own medical care— s/he must have the legal ability to understand the situation, have information about the basic risks and benefits of the potential alternatives, and have the ability to evaluate this information and make and communicate a voluntary decision. A person certainly may receive assistance in understanding information and coming to a decision.

If a person is not able to provide informed consent to a medical procedure, there are other ways to obtain the necessary informed consent.

- An adult with a developmental disability may authorize someone else to make his or her healthcare decisions through an **advance directive for healthcare purposes**. In this directive, the adult identifies the person s/he wants to make health care decisions ("agent") and describes the extent of the agent's authority over the individual's healthcare decisions. The advance directive may be created to be effective immediately or at some point in the future. An advance directive requires no court involvement, but the individual must have legal competency to understand that s/he is authorizing someone else to make the decision, understand the basic risks and benefits of doing so, and voluntarily delegate the authority. The document must be properly written and properly witnessed.
- If no agent has been designated and doctors properly certify that a person is unable to make a medical decision, a relative or close friend of the person with a disability may act as a

**surrogate decision-maker** and make health care decisions on behalf of the person. A list of people who can serve as surrogates, in priority order, is provided in the Maryland law. Surrogate decision making may not be used if the patient refuses treatment, if treatment is for a mental disorder, if sterilization is proposed, or if another surrogate of equal authority disagrees with the decision.

- If the other options can't be used, a Maryland **court** may appoint a **guardian of the person** to make medical decisions. Before appointing a guardian, a court must determine that an individual lacks sufficient capacity to make or communicate responsible personal decisions about his or her healthcare or safety, that this inability is due to a mental disability or related disease, and that there is no less restrictive form of intervention available that is consistent with the person's welfare and safety. To initiate a guardianship a person or agency must file a legal Petition to the court, along with medical certificates documenting a person's disability and the effect on his/her decision making ability. The Court will appoint a lawyer for the person with a disability, schedule a hearing, and provide the individual with an opportunity to be present and to call and question witnesses.

If, after reviewing all of the information, the Judge determines that a guardian of the person is warranted, the Judge will appoint the person he or she deems to be most appropriate to serve as the guardian. The Judge will also delegate certain powers to the guardian. These powers may include the ability to make decisions about healthcare, safety, shelter, and sometimes financial matters. Even with full guardianship, a guardian may not commit an individual to an institution involuntarily, and may not change an individual's type of residence or make decisions involving life threatening procedures or end-of-life decisions without prior court authorization unless specific authority is granted. Guardians of the person are not paid and must file annual reports with the court. If there is no relative or close friend who is available and appropriate to serve as guardian, the local Department of Social Services or local Area Agency on Aging can be appointed to act as guardian of the person.