

Health Care Consent: Restrictions on the Authority of a Temporary Substitute Decision Maker

A Temporary Substitute Decision Maker (TSDM) is the person selected by a health care provider if an adult is incapable of consenting to a health care decision and the adult did not make their own arrangements.

The way to make your own arrangements is to make a Representation Agreement to appoint the person of your choice to act on your behalf for health care. Some adults may make an Advance Directive to give or refuse consent to specific health care decisions. However, if the health care provider is not able to follow the instruction in the Advance Directive, and there is no Representation Agreement, they will select someone to be your TSDM.

A TSDM has authority for decisions about health care only.

To learn more about who can be selected as a TSDM, see the Nidus fact sheet [Health Care Consent: How decisions are made if you are incapable](#). Go to www.nidus.ca—Information—Health Care Consent—[Fact Sheet](#).

What are the restrictions on a TSDM's authority to refuse life support?

A TSDM cannot make a decision to refuse life support unless there is substantial agreement among the adult's health care providers that:

- the decision is medically appropriate; and
- the TSDM makes the decision in consultation with the adult and follows any instructions or wishes expressed by the adult when capable (these can be expressed verbally or in writing)

If the person selected as a TSDM is a person authorized by the Public Guardian and Trustee, the TSDM must consult with any near relative or close friend of the adult who asks to assist.

If there are no instructions or wishes that apply, then the TSDM will make the decision in the adult's best interest, which means they must consider:

- the adult's current wishes, and known beliefs and values;
- whether the adult's condition or well-being is likely to be improved by receiving the proposed health care or by not receiving it;
- whether the expected benefit to the adult is greater than the risk of harm; and

- whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care.

What other restrictions does a TSDM have?

A TSDM cannot give or refuse consent to any type of health care outlined in the [Health Care Consent Regulation](#). To view the Regulation, go to www.bclaws.ca—View Statutes and Regulations—'H'—Health Care Consent Regulation.

You also cannot give or refuse consent for these types of health care in an Advance Directive. They may be included in a customized Representation Agreement Section 9.

The health care listed in the Regulation may be amended (changed) from time to time. The current list is:

- Electroconvulsive therapy (ECT - 'shock' treatment), unless recommended in writing by the adult's treating physician and at least one other medical practitioner who has examined the adult;
- Abortion, unless recommended in writing by the adult's treating physician and at least one other medical practitioner who has examined the adult;
- Experimental health care involving a foreseeable risk to the adult for whom the health care is proposed that is not outweighed by the expected therapeutic benefit;
- Psychosurgery (surgery to destroy or remove small areas of brain tissue as 'last resort treatment' for some mental disorders);
- Removal of tissue for implantation in another person or for medical education;
- Research participation in a health care or medical research program that has not been approved by a committee referred to in section 2 of the Regulation;
- Any treatment, procedure, or therapy that uses negative stimuli to produce a change in behaviour (i.e. exposing you to your fear).

What health care decisions are outside the health care consent legislation?

The Health Care (Consent) and Care Facility (Admission) Act does not cover some specific health care decisions and these also cannot be made by a TSDM.

The Act does not cover care and treatment related to *involuntary* admission to a psychiatric facility. This is covered by the Mental Health Act. However, if you are an involuntary psychiatric patient, and for example, you break your leg or have pneumonia, consent and treatment of your broken leg or pneumonia is still covered under health care consent legislation.

Sterilization for non-therapeutic purposes is not allowed under health care consent legislation. Actions that are currently against the law, such as euthanasia and assisted suicide, are also excluded.

More information and resources

New to personal planning? Read the [Nidus Personal Planning Guide](#). Go to www.nidus.ca—Self-Help—Planning Guide.

To learn more about [Representation Agreements](#), go to www.nidus.ca—Information—Representation Agreement—Fact Sheets.

To learn more about [Advance Directives](#), go to www.nidus.ca—Information—Advance Directive.