

Guide to being a temporary substitute decision maker

Authorized by the Public Guardian and Trustee

Information for anyone authorized by the PGT to make health care decisions for adults

If you are authorized by the Public Guardian and Trustee (PGT) to be a temporary substitute decision maker (TSDM) for an adult who is incapable, it's important to understand your role and responsibilities. This information will help you act in the best interests of the adult when it comes to making health care decisions on their behalf.

This guide will help you fulfil your role as TSDM by describing:

- Your main responsibilities
- The records you need to keep
- What health care decisions you can or cannot make

The importance of substitute health care consent

In B.C., every adult has the right to:

- Accept or refuse health care
- Take part in decision making about their own health care

An adult who is incapable still has these rights.

As a TSDM authorized by the PGT under the Health Care (Consent) and Care Facility (Admission) Act, you have the responsibility to exercise and protect these rights. We have authorized you to be a TSDM

because there is no qualified near relative or close friend available and no appointed legal substitute decision maker. We are also satisfied that you:

- Are able and willing to be an informed and responsible decision maker
- Have a relationship with the adult that makes you an appropriate choice

Your responsibilities under the Act

As a TSDM, your legal responsibility is to represent the instructions or wishes expressed by the adult when they were capable. If these wishes are not known, your duty is to act in the best interests of the adult for whom you are giving or refusing informed consent.

Your major responsibilities are set out in detail in section 19 of the Health Care (Consent) and Care Facility (Admission) Act. As it is your duty to know and carry out these responsibilities yourself, we have reprinted section 19 for you.

- (1)** A person chosen [as a TSDM] to give or refuse substitute consent to health care for an adult must
 - (a)** before giving or refusing substitute consent, consult, to the greatest extent possible, with the adult, and
 - (i)** with the adult, and
 - (ii)** if the person chosen [as the TSDM] is a person authorized by the Public Guardian and Trustee, with any near relative or close friend of the adult who asks to assist, and
 - (b)** comply with any instructions or wishes

the adult expressed while he or she was capable

- (2) If the adult's instructions or wishes are not known, the person chosen [as the TSDM] must decide to give or refuse consent in the adult's best interests
- (3) When deciding whether it is in the adult's best interests to give, refuse or revoke substitute consent, the person chosen [as the TSDM] must consider
 - (a) the adult's current wishes, and known beliefs and values
 - (b) whether the adult's condition or well-being is likely to be improved by the proposed health care
 - (c) whether the adult's condition or well-being is likely to improve without the proposed health care
 - (d) whether the benefit the adult is expected to obtain from the proposed health care is greater than the risk of harm, and
 - (e) whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care

Important note: If an adult in B.C. has made a legally valid advance directive giving or refusing consent to the treatment or health care proposed at a later date when the adult is not capable of consenting or refusing it, and there is no committee of person or representative with authority to make the decision, a TSDM is not needed. In this case, the health care provider must follow the adult's direction as set out in the advance directive. For more information, see the [Advance Care Planning](#) page on the B.C. government website.

Required record-keeping for TSDMs

As a condition of authorizing you as a TSDM, you are required to keep a record of your health care decisions. You must be able to produce this record when requested by the adult, the PGT or a subsequent TSDM. Your record keeping must include:

- The dates you talked to a health care provider about the proposed health care treatment
- The nature of the treatment
- The decisions you have made
- The names of the key health care providers involved as well as other people you consulted with prior to deciding
- The reasons for your decision, e.g., your understanding of the risks and benefits, or your understanding of the prior instruction or wishes of the adult, if known

As a TSDM authorized by the PGT, the Act requires you to consult, as much as you can, with the adult and any near relative or close friend of the adult who asks to assist. You must also comply with any instructions or wishes the adult expressed while they were capable. Your records should include the date of your discussions and the information you received.

The PGT Notice of Authorization for you to act as a TSDM is an important record since the adult's health care providers can change. When you need to act in your role as a TSDM, you should be prepared to produce this notice to the health care provider to confirm your authority.

Restrictions on health care decisions you can make as a temporary substitute decision maker

Because you are in a decision making role, you will likely be consulted on a wide range of subjects related to the adult. Your knowledge of the adult's wishes, beliefs and values may be helpful to good decision making among the adult's support network. However, your role as a TSDM is limited to making the health care decisions specified in your Notice of Authorization and by the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#) and the [Health Care Consent Regulation](#).

The Act and Regulation specifically prohibit you from consenting to the following health care decisions:

- Abortion unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the adult for whom it is proposed
- Electroconvulsive therapy unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the adult for whom it is proposed
- Psychosurgery
- Removal of tissue from a living human body for implantation in another human body or for medical education or research
- 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
- Participation in a health care or medical research program that has not been approved by a prescribed medical research committee
- Any treatment, procedure or therapy that involves using aversive stimuli to induce a change in behaviour
- Whether to sign an instruction refusing future Cardiopulmonary Resuscitation (CPR) or consenting to a Do Not Resuscitate (DNR) order (only the adult can give instructions about future health care and only a doctor can make a DNR order)

Refusing health care that preserves life

As a TSDM, you can only refuse consent to health care that is necessary to preserve life if there is substantial agreement among the health care providers caring for the adult that the decision to refuse substitute consent is medically appropriate, and you have made the decision in accordance with your responsibilities under the Act. If you are uncomfortable making this decision, you may notify the PGT.

Consent for sterilization for non-therapeutic reasons

As a TSDM, you do not have authority to give consent to sterilization for non-therapeutic reasons. Section 2(d) of the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#) states: “this Act does not apply to the provision of professional services, care or treatment to a person for the purposes of sterilization for non-therapeutic reasons.”

Major and minor health care decisions

Your Notice of Authorization will specify type of health care decisions you are authorized to make. If you have been restricted to minor health care decisions, it is important to let the involved health care providers know that they should contact the PGT if consent for major health care is required.

Major health care includes:

- Major surgery
- Any treatment involving a general anaesthetic
- Major diagnostic or investigative procedures
- Any health care designated by regulation as major health care
- Radiation therapy
- Intravenous chemotherapy
- Kidney dialysis
- Electroconvulsive therapy
- Laser surgery

Minor health care means health care that is not major health care. This includes:

- Routine tests to determine if health care is necessary
- Routine dental treatment that prevents or treats a condition or injury caused by disease or trauma such as cavity fillings and extractions done with or without a local anesthetic, and oral hygiene inspections

Important note: You may want to consult with the health care team to see if you have the authority to make a particular health decision.

Non-health care decisions

You may be consulted about a range of non-health care matters. The following are examples of non-health care decisions that you do not have authority to make as a TSDM under the Act:

- Where the adult will live
- Whether to admit or discharge the adult from a care facility
- Who can visit the adult
- What financial decisions need to be made on behalf of the adult
- What personal information about the adult can be disclosed to a third party unless disclosure is necessary to be able to consult with others about the proposed health care decision
- Whether to restrain the adult for a reason not related to a specific health care treatment

Important note: In some cases, the PGT may authorize an adult to be a TSDM and/or a Substitute Decision Maker (SDM) for making care facility decisions. This requires a separate authorization. For more information, see the **Care Facility Admission and the Role of the Public Guardian and Trustee** publication on our website's [Reports and Publications](#) page.

Duration of your authorization as TSDM

The Notice of Authorization from the PGT sets out how long you are authorized to be a TSDM. It can be for a single health care treatment, such as a surgery, or to cover a series of health care treatments or plan of minor health care for up to one year.

When your responsibility as TSDM ends

Your responsibility ends if the person you are acting for becomes capable of making their own treatment decisions. You should advise the involved health care provider and notify the PGT if you believe the person you are acting for is capable of giving or refusing consent.

If a qualified near relative or close friend becomes available or a legal substitute decision maker is appointed, your role as TSDM ends. A legal substitute decision maker, near relative or close friend can begin making substitute health care decisions on behalf of an incapable adult without being authorized by the PGT.

What to do if you cannot continue to act as a TSDM

If you are unable to continue to act as a TSDM for any reason, notify the involved health care provider and the PGT. A TSDM authorization is not transferable. The PGT must be notified to determine whether a new TSDM can be authorized or if we will act as TSDM.

Process for reauthorizing you as a TSDM

The process for reauthorizing a TSDM is similar to the process for the first authorization. We may ask to see the record of decisions you have kept. We will consider any expressed wishes made by the adult as well as the recommendations of involved health care providers or other persons with knowledge of the adult's circumstances.

Contact the Public Guardian and Trustee

Personal Decision Services

700-808 West Hastings Street
Vancouver, B.C. V6C 3L3

Local phone	604-660-4507
Toll free phone	1-877-511-4111
Local fax	604-660-9479
Toll free fax	1-855-660-9479
Email	AIS-PDS@trustee.bc.ca
Website	www.trustee.bc.ca

PGT hours of operation

Monday to Friday 8:00am to 5:00pm
Weekends and holidays 8:00 am to 12:00pm