

Decision Making and the Adult Guardianship and Trusteeship Act

The *Adult Guardianship and Trusteeship Act (AGTA)* comes into effect on October 30, 2009, replacing the 30-year old *Dependent Adults Act (DAA)*. The Act provides a range of decision-making options for when an adult needs assistance or requires a substitute decision-maker for health care decisions.

Although it is new legislation, it does not change the fundamental physician-patient relationship or change the informal role of families in health care decision-making. In fact, it provides more options for supported and substitute health care decision making for patients and family members. The new range of options allows adults to receive assistance according to their needs and to maintain as much autonomy as possible. It also provides clearer guidelines for physicians when assessing patient capacity to make health care decisions and obtaining informed consent in situations of temporary incapacity.

Obtaining Consent for Health Care Decisions

– Continuum of Options

The AGTA clarifies and standardizes issues surrounding capacity assessment and allows for a range of supportive and substitute decision-making options. These options address the reality that adults have different levels of decision-making ability and that an adult's capacity to make decisions may change over time.

The continuum includes the following options:

Supported Decision-Making is a new option that allows a capable adult to authorize someone they trust to help them access and understand information, to make a personal/health decision and/or to communicate that personal/health care decision. This option may benefit people with disabilities or language barriers and could be especially useful for individuals during doctor visits or other health care appointments. The **supported** adult can give their supporter legal permission to access relevant personal information that might otherwise be protected under privacy laws about personal matters like health care. For a supported *decision-making toolkit*, please visit www.seniors.alberta.ca/opg.

Specific Decision-making allows health care providers to select a relative to make a one-time decision on behalf of an adult patient who requires a time sensitive decision related to health care or temporary admission to or discharge from a residential facility. Health care providers will select from the following list in this order:

- spouse or adult interdependent partner;
- adult son or daughter;
- father or mother;
- adult brother or sister;
- grandfather or grandmother;
- adult uncle or aunt; or
- adult nephew or niece.

Co-Decision-Making court orders are for adults assessed as having a significant impairment, but who can still make personal/health care decisions with assistance. A co-decision-maker and the **assisted adult** must make decisions together. The assisted adult must consent to the co-decision-making order. This option will work well for people with long standing, trusting relationships.

Guardianship is the process by which the Court appoints the Public Guardian or an adult as Guardian in a Court Order. Consent shall be obtained from the Guardian named in the Order.

Disclaimer

This summary is not a comprehensive document and does not replace legal advice. This is a high level summary document with key points. For further information about substitute decision makers in the Adult Guardianship and Trusteeship Act, please refer to <http://www.albertahealthservices.ca/771.asp> or www.seniors.alberta.ca/opg

For more information

Call the Office of the Public Guardian toll-free information line:

1-877-427-4525

Monday to Friday
8:15a.m. – 4:30p.m.

Or online at

www.seniors.alberta.ca/opg



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Protective Measures

The *Adult Guardianship and Trusteeship Act* (AGTA) strengthens the protection of vulnerable people by incorporating new protective measures. These include enhanced screening of new private guardian and trustee suitability; allowing the Public Guardian or Public Trustee to investigate complaints that a private guardian or trustee may be causing harm to the adult they represent; and emergency protection provisions if a represented adult needs to be removed to a place of safety.

The AGTA will also establish a central registry with the Office of the Public Guardian of co-decision-making, guardianship and trusteeship orders, certificates of incapacity and temporary protection orders to enable tracking and monitoring of orders; their renewal status; and their content.

Accessing personal information

- Health care providers can access, collect or obtain any necessary personal information about an adult, except financial information, in order to assess the adult's capacity or to select a **specific decision-maker**.
- Health care providers may disclose personal information in order to elect a **specific decision-maker** or to inform the specific decision-maker.

Emergency Health Care

Emergency health care decision-making is designed to allow physicians to make treatment decision to preserve life, to alleviate severe pain or prevent serious physical or mental harm when no one, including the adult in question can provide consent. The physician shall, if practicable, obtain the written opinion of a second physician or registered nurse before providing the emergency health care to the adult.

Health Care includes

- any examination, diagnosis, procedure, or treatment undertaken to prevent or manage any disease, illness, ailment or health condition;
- any procedure undertaken for the purpose of an examination or diagnosis;
- any medical, surgical, obstetrical or dental treatment;
- anything done that is additional to any examination, diagnosis, procedure or treatment;
- any procedure undertaken to prevent pregnancy, except sterilization that is not medically necessary;
- palliative care; and
- a treatment plan.

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