

75-2a-108 Default surrogates.

- (1)
 - (a) Any member of the class described in Subsection (1)(b) may act as an adult's surrogate if:
 - (i)
 - (A) the adult has not appointed an agent;
 - (B) an appointed agent is not reasonably available; or
 - (C) a guardian has not been appointed; and
 - (ii) the member of the class described in Subsection (1)(b) is:
 - (A) over 18 years of age;
 - (B) has health care decision making capacity;
 - (C) is reasonably available; and
 - (D) has not been disqualified by the adult or a court.
 - (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the following classes of the adult's family, in descending order of priority, may act as the adult's surrogate:
 - (i) the adult's spouse, unless the adult is divorced or legally separated; or
 - (ii) the following family members:
 - (A) a child;
 - (B) a parent;
 - (C) a sibling;
 - (D) a grandchild; or
 - (E) a grandparent.
 - (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult.
 - (d) A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed.
- (2) If the family members designated in Subsection (1)(b) are not reasonably available to act as a surrogate, a person who is 18 years of age or older, other than those designated in Subsection (1) may act as a surrogate if the person:
 - (a) has health care decision making capacity;
 - (b) has exhibited special care and concern for the patient;
 - (c) knows the patient and the patient's personal values; and
 - (d) is reasonably available to act as a surrogate.
- (3) The surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of a class who:
 - (a) have an equal or higher priority and are not acting as surrogate; and
 - (b) can be readily contacted.
- (4) A health care provider shall comply with the decision of a majority of the members of the highest priority class who have communicated their views to the provider if:
 - (a) more than one member of the highest priority class assumes authority to act as default surrogate;
 - (b) the members of the class do not agree on a health care decision; and
 - (c) the health care provider is informed of the disagreement among the members of the class.
- (5)
 - (a) An adult may at any time disqualify a default surrogate, including a member of the adult's family, from acting as the adult's surrogate by:
 - (i) a signed writing;
 - (ii) personally informing a witness of the disqualification; or

- (iii) informing the surrogate of the disqualification.
- (b) Disqualification of a surrogate is effective even if the adult has been found to lack health care decision making capacity.
- (6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a default surrogate, the health care provider may:
 - (a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or
 - (b) seek a ruling from the court under Section 75-2a-120.
- (7) A health care provider may seek a ruling from a court pursuant to Section 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are inconsistent with an adult patient's wishes or preferences.

Amended by Chapter 107, 2008 General Session