

Community Alert - Update

More about Health Care Consent

Nidus sent out a [Community Alert on April 27, 2020](#). This update is to provide more specifics on the law in British Columbia for health care consent, for adults. (The age of adulthood in BC, sometimes called the age of majority, is 19 years.)

As stated in our Alert, having access to personal supports while in hospital, and other care settings, is critical to everyday quality-of-life for many people including people with disabilities and people with dementia. We hope the Provincial Health Officer, with backing from the BC government, will make this an order during Covid-19. However, this support is not sufficient if there is no Representation Agreement in place that gives someone legal authority for health care matters.

Although BC legislation on health care consent came into effect in February 2000, it is not well known or understood.

Education on health care consent is made more difficult and confusing by the practice of health authorities to promote the MOST form (Medical Orders for Scope of Treatment), often through family physicians, and to enable hospitals and first responders to use MOST as an advance consent, which it is not. The MOST form, like the DNR form, is not in the BC law.

This lack of knowledge and confusing practice raise questions and concerns about whether BC law for health care consent is being followed, especially in emergencies and in hospital.

Many British Columbians are asking how they can best be prepared for a health crisis – for Covid-19 and non-Covid-19 situations.

Nidus' analysis and advice is to **make a Representation Agreement**. A Representation Agreement is a legal document under the BC Representation Agreement Act. A Representation Agreement is a way to plan in case of incapacity, for end-of-life, and other support needs. A Representation Agreement is for anyone 19 years of age or older. Nidus has free forms with instructions – see last sentence on page 2.

Many people believe that family (next-of-kin) will be able to make health care decisions for them if they are unable to do so – maybe you are unconscious, in a coma, have delusions or hallucinations, in extreme pain, confused, or have another condition that affects your ability for informed consent. A next-of-kin may be able to act for you in some situations, but not all.

BC law for health care consent says that if a health care provider has determined the adult patient is incapable of informed consent for minor or major health care that is offered (and there is no Representation Agreement), the health care provider must select someone to be a Temporary Substitute Decision Maker (TSDM) from a list in the law. The list starts with the adult's spouse, then a next-of-kin according to a specific order, then a close friend, then an in-law by marriage, and then staff of the Public Guardian and Trustee as a last resort. The health care provider also decides if a person on the TSDM list is qualified.

If the situation is an **emergency**, a TSDM is NOT selected. The law says the health care provider (preferably two) would make the health care decision on the adult patient's behalf.

If there is no emergency, a TSDM is selected.

If the decision concerns major health care (such as surgery or any treatment involving a general anesthetic), the health care provider must complete extra documentation (*Notice of Incapability and Substitute Consent*), that states who they selected to be the TSDM.

A **Representation Agreement** is for both emergency and non-emergency situations. A representative has more legal authority than a TSDM and the role is not temporary.

If you want to be sure your spouse or next-of-kin or a friend can help you with health care decisions, make a Representation Agreement that names them as your representative. It is a good idea to also name an alternate so you have a back-up. Planning is about being pro-active.

A representative can help an adult patient make their own decisions and also make decisions on the adult patient's behalf, if necessary. The adult patient does not have to be labelled incapable by a health care provider to get help with decision making from their representative.

What can YOU do?

You can **make a Representation Agreement** section 9 (you may also be helping someone to make a Representation Agreement under section 7). Register the Representation Agreement and be sure to review it, at least annually, so it will be ready-to-go even if not needed until years later.

Nidus provides free Representation Agreement forms with instructions. You do not need a legal professional in order to make a Representation Agreement.

Nidus has lots of information about all aspects of the planning process – making, registering, changing/revoking, and using. To find out more, click [Actions You can Take Before Hospitalization](#).