

Kennedy Krieger Institute

Determination of Adult Consent

Adult Consent

Adults (i.e., people 18 years of age or older) can usually make decisions about their medical care. But before they can consent to receive care, they must understand what the care will be and the risks and benefits of options available. Once they understand the proposed care, they must provide written consent before that care can begin. An adult who can make informed decisions and consent to their care may ask a trusted adult for guidance or support in communicating about their care—this is known as supported decision-making.

Sometimes, however, adults need more than support or guidance to help make decisions about their medical care. If an adult cannot make healthcare decisions on their own, there are a few ways they can get help:

- An advance directive (which must have been established by the adult before becoming incapacitated) can be executed.
- A surrogate decision-maker can be assigned.
- A guardian of the person may be appointed by a judge.

Advance Directive

In an advance directive for healthcare and/or mental health treatment, the adult may name a trusted person, known as a **healthcare agent**, who can have immediate power to make medical decisions when the adult is no longer able to make decisions on their own. A doctor will help determine when the adult is no longer able to make decisions and the adult's previously named healthcare agent should be used; this can be done without going to court.

Surrogate Decision-Making

Surrogate decision-making applies when an adult is unable to make their own healthcare decisions. Before a surrogate decision-maker can be named, one or two physicians (determined by the adult's level of consciousness and ability to communicate), or a physician and a nurse practitioner, must agree that the adult cannot make their own decisions. For patients treated at Kennedy Krieger Institute, it is our policy that at least one of those providers be employed by the Institute. Then, a trusted adult will be selected to help make healthcare and mental health treatment decisions on the adult's behalf. This helper is called a **surrogate**.

The surrogate makes decisions that are in the adult's best interest. An arrangement made at Kennedy Krieger can only be used at Kennedy Krieger.

One of the following people (listed in order of legal preference, according to the Maryland Health Care Decisions Act) may be assigned as surrogate:

- A legal guardian of the patient, if one has been appointed by the courts
- The patient's spouse or domestic partner
- An adult child of the patient
- A parent of the patient
- An adult brother or sister of the patient
- A person who can show that they are a relative or close friend of the patient, has regular contact with the patient, and is familiar with the patient's activities, health and personal beliefs, if 18 years of age or older

Adult Guardianship

Adult guardianship applies when a patient cannot make healthcare decisions, and other, less restrictive options are not available. There are different types of guardianship, and they all involve going to court.

We Are Here to Help

For questions or assistance, contact the Office of Patient and Community Engagement at **443-923-2640**.

Visit marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx for information about the **Health Care Decisions Act in Maryland**.

If you need help with guardianship, contact Kennedy Krieger's Project HEAL (Health, Education, Advocacy, and Law) at **443-923-4414**. Please note that Project HEAL attorneys do not currently provide representation in guardianship cases but can provide brief advice, information, resources and referrals in your community related to adult guardianship and less restrictive alternatives.

