

Often due to Alzheimer's or other forms of dementia, some residents of Residential Care Facilities for the Elderly (RCFEs) are no longer competent to make informed decisions, including health care decisions. In these instances, it's important for the resident to be represented by a health care surrogate decision maker—someone who participates in health care decision making on behalf of an incapacitated resident.



Three Types of HEALTH CARE SURROGATE DECISION MAKERS

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There are three general methods by which someone can become a health care surrogate decision maker for a resident:

- ▶ An appointment by a court
- ▶ A formal appointment made by a resident when he or she is competent for when he or she becomes incompetent
- ▶ An informal appointment established by a familial or other relationship with a resident

According to section 87101(h)(4) of Title 22, a staff member of an RCFE cannot be appointed as the health care surrogate decision maker of a resident.

Conservatorship

A conservatorship is an appointment by a court for a conservator to take over the personal and/or financial matters of a resident. Conservatorship is a complex process that begins with the filing of a petition regarding the proposed conservator, the resident, the resident's relatives, and the reasons why the conservatorship is necessary. A court may not grant a conservatorship if it determines that there are alternatives. For example, if a resident has the capacity and willingness to formally appoint someone to help with his or her health care decisions, a court may not appoint a conservator to make health care decisions.

Unlike the lengthy process for a conservatorship, the appointment of an agent under an advance health care directive or power of attorney is effective once signed by all appropriate parties. Although it does not take effect unless and until a resident becomes incompetent, the actual completion of the documents is a relatively quick process. A competent resident has the right to revoke or replace an advance health care directive or power of attorney for health care at any time. The designation of the agent may be revoked by a signed writing or by personally informing the resident's supervising health care provider. Any other part of the advance health care directive may be revoked in any manner that communicates the resident's intent to revoke.

Informal Health Care Surrogate Decision Maker

If there is no court-ordered or formally appointed health care surrogate decision maker, a resident's next of kin may informally fill that role. In California, there is no hierarchy or authority about which relatives may make decisions on behalf of the resident. In some cases, it may be obvious or natural; for example, if a resident's spouse is deceased and he or she has a good relationship with his or her only child. In other situations where there are multiple relatives who have strong and different opinions, it may be problematic or confusing.

The RCFE regulations are replete with references to "Responsible Person." Section 87101 defines "Responsible Person" as "that individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being."

"Health Care Surrogate Decision Maker" is defined by Section 87101 to mean "an individual who participates in healthcare decision making on behalf of an incapacitated resident." The regulation states that, in the absence of a formal appointment, the surrogate decision maker "may be recognized by virtue of a relationship with the resident" (e.g. the resident's next of kin). Unfortunately, this regulation is not particularly helpful as it provides minimal guidance when an RCFE is confronted with a potential resident who has been determined by his or her physician to be incompetent and lacks a formally appointed surrogate decision maker. The RCFE must simply do the best it can to determine who may be an appropriate "Responsible Person" if it wishes to admit the resident. »

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