HEALTH CARE
AUTHORITY

THE NEW MEXICO UNIFORM HEALTHCARE DECISIONS ACT:

GENERAL INFORMATION REGARDING CAPACITY AND THE DESIGNATION OF A SURROGATE HEALTHCARE DECISION MAKER

INTRODUCTION:

This document is an informational resource that summarizes portions of the New Mexico Uniform Healthcare Decisions Act (UHCDA) pertaining to Surrogate Healthcare Decision Makers for constituents receiving services and supports through the Developmental Disabilities Supports Division. It also provides optional forms for the assessment and verification that an individual lacks capacity to make their own healthcare decisions, as well as a form for designation of a surrogate decision maker. This may be appropriate to use in the event that a guardian becomes incapacitated or passes away, or an individual who may need a guardian does not yet have one. The role of a surrogate healthcare decision maker is generally intended to be short term, to address a current medical issue and the law provides for no long-term oversight of such an arrangement. Therefore, it is suggested guardianship supports be sought in the event the lack of capacity is clinically determined to be long term.

An individual age eighteen (18) years or older is presumed to have capacity and have the right to make their own healthcare decisions unless the individual has a court appointed guardian who has been given the right to make such decisions after judicial proceedings or the individual has been legally determined to lack capacity after giving such decisional rights to another individual through an Advance Directive (e.g., Power of Attorney) while having capacity. New Mexico law also recognizes the rights of individuals fourteen (14) and older to make certain health care decisions.
In New Mexico it is possible for an adult or emancipated minor to be assessed to lack capacity to make healthcare decisions through the provisions of the NM Uniform Healthcare Decisions Act (§24-7A- 1 et seq). For these individuals, a surrogate healthcare decision maker is identified to act in their stead.

Pursuant to the NM Uniform Healthcare Decisions Act, two qualified healthcare professionals must make an assessment that an adult or emancipated minor lacks capacity to make their own healthcare decisions. One of these professionals shall be the primary care physician. For individuals with intellectual and developmental disabilities, the second professional shall be a person whose training and expertise aid

in the assessment of functional impairment (e.g., physician, physician assistant, psychologist, practitioner). In the event an individual is assessed to lack capacity to make healthcare decisions, a surrogate healthcare decision maker may be required if there is no agent (e.g., Power of Attorney) or court appointed guardian in place or if the agent or guardian is not reasonably available. The NM Uniform Health Care Decisions Act contains specific provisions identifying who may and may not serve as a surrogate.

At any time, an individual may challenge the determination of the need for a surrogate or disqualify the “designation” of a specific person to act as surrogate by a signed writing or personally informing their healthcare professional. A challenge regarding an individual’s capacity will prevail unless otherwise ordered by court proceedings.

The role of a surrogate healthcare decision maker is generally intended to be short term, to address a current medical issue and the law provides for no long-term oversight of such an arrangement. Therefore, it is suggested guardianship supports be sought in the event the lack of capacity is clinically determined to be long term.

By law, surrogates can make decisions regarding the selection and discharge of health-care providers and institutions, approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate, directions related to authorizing life-sustaining treatment and/or withholding or withdrawing life-sustaining treatment.

Attached are optional forms developed and taken from the statutes that may be utilized to put a surrogate healthcare decision maker in place or to name an agent. If the forms are used it is recommended that all team members have a copy of these forms upon completion. This information and the forms are not intended as legal advice and if agencies or families have any legal questions regarding healthcare surrogates, guardianships or advance directives, they should seek independent legal counsel. Please feel free to contact the Office of Constituent Support, Developmental Disabilities Supports Division at: ddsdsupportservices@doh.nm.gov if you have any other questions or for additional information.

Qualified Healthcare Professional #1

I, _____, a physician, licensed psychologist, certified nurse practitioner (Qualified Healthcare Professional/ QHCP), have examined _____, and found the patient to be:

CHECK ONE:

A. ☐ CAPABLE of giving informed consent and able to understand and appreciate the nature and consequences of their health care, including significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision.

B. ☐ To be without capacity and NOT CAPABLE of giving informed consent and further not able to understand and appreciate the nature and consequences of their health care, including significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision. I recommend the assignment of a responsible party as indicated by New Mexico Law.

My opinion of the patient's/client's capacity is based on the following:
(Please provide specific facts that support your opinion.)

QHCP Print Name: _____ QHCP

Signature: _____

Date: _____

IMPORTANT:

1. To establish incapacity for the purposes of a surrogate a patient must be evaluated by two health care professionals.
2. One evaluator must be the primary care physician of the patient or someone who has taken on that role.
3. If the patient/client lacks capacity due to mental illness or developmental disability, one of the health care professionals making a determination of incapacity must have training or expertise that will aid in the assessment of functional impairment.
4. A surrogate may be named for an individual even if they have another legal representative IF that previously named representative is NOT reasonably available, and that unavailability is documented. (Surrogates only have the authority granted by the NM Uniform Health Care Decisions Act.)
5. Evaluations must occur and be documented before a surrogate may act.

Qualified Healthcare Professional #2

I, _____ a physician, licensed psychologist, certified nurse practitioner (Qualified Healthcare Professional/ QHCP) have examined _____, and found the patient to be:

CHECK ONE:

A. ☐CAPABLE of giving informed consent and able to understand and appreciate the nature and consequences of their health care, including significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision.

B. ☐To be without capacity and NOT CAPABLE of giving informed consent and further not able to understand and appreciate the nature and consequences of their health care, including significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health care decision. I recommend the assignment of a responsible party as indicated by New Mexico Law.

My opinion of the patient's capacity is based on the following:
(Please provide specific facts that support your opinion.)

QHCP Print Name: _____ QHCP

Signature: _____

Date: _____

IMPORTANT:

1. To establish incapacity for the purposes of a surrogate a patient must be evaluated by two healthcare professionals.
2. One evaluator must be the primary care physician of the patient or someone who has taken on that role.
3. If the patient/client lacks capacity due to mental illness or developmental disability, one of the healthcare professionals making a determination of incapacity must have training or expertise that will aid in the assessment of functional impairment.,
4. A surrogate may be named for a person even if they have another legal representative IF that previously named representative is NOT reasonably available, and that unavailability is documented. (Surrogates only have the authority granted by the Uniform Healthcare Decisions Act.)
5. Evaluations must occur and be documented before a surrogate may act.

Surrogate Acknowledgement

I hereby acknowledge that in accordance with the NM Uniform Health Care Decisions Act, § 24-7A-1 et seq. NMSA 1978, I have assumed authority to make health care decisions on behalf of _____ (person's name). The primary physician and another qualified healthcare professional (QHCP/licensed psychologist, physician or certified nurse practitioner) have determined that this patient/client lacks capacity to make healthcare decisions.

I am eligible to act as a surrogate decision maker pursuant to § 24-7A-5, NMSA 1978, because I have the following relationship with the patient/client:

CHECK ONE:

☐ 1. Spouse
☐ 2. Significant Other
☐ 3. Adult Child
☐ 4. Parent
☐ 5. Adult Sibling
☐ 6. Grandparent
☐ 7. A reasonably available adult who has exhibited special care and concern for the person and is familiar with the person's values.

_____
Print name of Surrogate

_____ Date _____
Signature of Surrogate

_____ Date _____
Witness (may be via telephone)

ACKNOWLEDGEMENT OF ASSUMPTION
OF AUTHORITY FOR
HEALTH CARE DECISIONS

Surrogate Acknowledgement (cont'd)

DUTIES AND RESPONSIBILITIES OF A SURROGATE DECISION MAKER
The following duties and responsibilities are delineated in New Mexico law, specifically within the Uniform Health Care Decisions Act. This document is NOT intended as a substitute for legal advice, if you have any questions seek the assistance of an attorney.

1. I shall communicate my assumption of authority as promptly as practicable to the person, to members of the person's family (including person's spouse, significant others, adult children, parents, siblings, and grandparents) who can be readily contacted and to the supervising healthcare provider.

2. I shall make a healthcare decision in accordance with the person's individual instruction, if any, and other wishes to the extent known to me. Otherwise, I will make the decision in accordance with my determination of the person's best interest. In determining the person's best interest, I shall consider the person's values to the extent I am aware of such values.

3. I shall not make a decision based solely on the patient's pre-existing psychological or medical condition or pre-existing or projected disability.

4. I understand that once I have assumed authority my decision is effective without judicial approval

5. I understand that the person may disqualify me from acting as surrogate at any time or may regain capacity to make their own healthcare decisions.

6. I understand that the person may challenge the finding of their incapacity at any time, it will be up to the court to make that determination regarding capacity.

7. I understand that I do not have the authority to consent to the person's admission to a mental hospital facility.

8. I have read and understand the above recitation of my statutory duties and responsibilities as surrogate decision maker and agree to act in accordance therewith.

_____
Signature of Surrogate

_____
Date