

DEFAULT SURROGATE CONSENT STATUTES

January 1, 2018

Explanation: The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning. The default surrogacy statute language varies from state to state and the listed descriptors generally hold the following meanings:

- Adult includes any person who is 18 years of age or older, is the parent of the child, or has married;
- Close friend (Adult friend) is one who has maintained regular contact with the patient as to be familiar with the patient’s activities, health, and religious or moral beliefs.
- **Provisions in red** are those addressing patients with no available qualified surrogate.

CAUTION: The descriptions and limitations listed in this chart are broad characterizations for comparison purposes and are not precise quotations from legislative language.

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
1. ALABAMA Ala. Code 1975 §§22-8A-1 to -14 (2017). Specifically, see §22-8A-11	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> ▪ Spouse (unless legally separated/divorcing) ▪ Adult child ▪ Parent ▪ Adult sibling ▪ Nearest adult relative ▪ Att. physician & ethics committee 	Patient must be in terminal condition or permanently unconscious. Certification requirements.	Yes §22-8A-11(c)	Judicial recourse, §22-8A-11
2. ALASKA Alaska Stat. §§13.52.010 to .395 (West 2017), amended 2008. Specifically, see §13.52.030	Comprehensive Health Care Decisions Act	Yes §13.52.010(a) and §13.52.030(c)	<ul style="list-style-type: none"> ▪ Individual orally designated by patient ▪ Spouse ▪ Adult child ▪ Parent ▪ Adult Sibling ▪ Close friend 	Patient has to be an adult N/A to withholding or withdrawing life-sustaining procedures UNLESS patient is in “terminal condition” or “permanent unconsciousness.” Certification requirements. Mental health treatment limitations and anatomical gift limitations, see A.S. §13.52.173 and §13.52.193 Exceptional procedures (abortion, sterilization, psychosurgery, and/or removal of organs) limitations under A.S. §13.52.050.	Yes §13.52.030(g)	Majority rule for adult children, parents, or siblings; and if deadlock, then primary physician decides
3. ARIZONA Ariz. Rev. Stat. Ann. §§36-3201 to -3231 (West 2017), amended 2008. Specifically, see §36-3231	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> ▪ Spouse (unless legally separated) ▪ Adult child (if multiple, health care provider will seek a majority opinion from those available) ▪ Parent ▪ Domestic partner, if unmarried ▪ Sibling ▪ Close friend ▪ Att. physician in consult with ethics committee or, if none, 2nd physician 	Mental health treatment limitations	Yes §36-3203(C)	Majority rule for adult children Judicial recourse for all others, §36-3206

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
<p>4. ARKANSAS</p> <p>Ark. Code Ann. §§20-6-101 to -118 (2017) Specifically, see §20-6-105 as amended in 2017.</p>	Comprehensive Health Care Decisions Act	Yes §20-6-105	<p>A surrogate is designated <i>by the health care provider</i> in the following order of preference conditional on the surrogate being an adult who: (i) has exhibited special care and concern for the principal; (ii) is familiar with the principal's personal values; (iii) is reasonably available; and (iv) is willing to serve.</p> <p>Consideration <i>may</i> be given to the following order of preference:</p> <ul style="list-style-type: none"> ▪ An adult designated orally or in writing ▪ Spouse (unless legally separated) ▪ Adult child ▪ Parent ▪ Adult sibling ▪ Adult relative ▪ Close friend ▪ Att. Physician in consult with ethics officer or committee or 2nd physician 	Certification requirements for withdrawing or withholding of artificial nutrition or hydration A.C.A. §20-6-106	Yes, §20-6-106	Judicial recourse, §20-6-115
<p>5. CALIFORNIA</p> <p>Cal. Probate Code §§4711 – 4727 (West 2017) Specifically, see §4711</p>	Comprehensive Health Care Decisions Act	Yes §4623 and §4711	Only orally designated surrogate	<p>For orally designated surrogate: Effective “only during the course of treatment or illness or during the stay in the health care institution when the designation is made, or for 60 days, whichever period is shorter.”</p> <p>N/A to civil commitment, electro-convulsive therapy, psychosurgery, sterilization, and abortion.</p>	Yes §4714	N/A since designated surrogate is presumably one person
Cal. Health & Safety Code §24178 (West 2017)	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> ▪ Spouse ▪ Domestic partner ▪ Adult child ▪ Custodial parent ▪ Adult sibling ▪ Adult grandchild ▪ Adult relative with the closest degree of kinship <p>Note: Different rules apply to emergency room experimental consent</p>	<p>Consent restricted to medical experiments that relate to the cognitive impairment, lack of capacity, or serious, or life threatening diseases and conditions of research participants.</p> <p>This provision N/A to persons involuntarily committed or voluntarily committed by a conservator under the Welfare & Institutions Code</p>	Yes §24178(g)	Consensus needed
Cal. Health & Safety Code §1418.8 (West 2017)	Specialized provision applicable only to nursing homes		<ul style="list-style-type: none"> ▪ Next of kin:” ▪ The attending physician and surgeon in accordance with an interdisciplinary team review 	Applies when “the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires informed consent”	Not addressed	

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
6. COLORADO Colo. Rev. Stat. Ann. §§15-18-101 to 15-18.7-110(West 2017) Specifically, see §§15-18.5-101 to -103	Comprehensive Health Care Decisions Act		The following "interested persons" must decide who among them shall be surrogate decision-maker: <ul style="list-style-type: none"> • Spouse • Parent • Adult child • Sibling • Adult Grandchild • Close friend • Physician designated by attending physician after obtaining consensus on the designation with ethics committee. Certain decisions are subject to other criteria and procedures, including ethics committee concurrence and/or 2nd consulting physician concurrence. 	Certification requirements for withholding or withdrawing artificial nutrition and hydration, §15-18.5-103	Yes, §15-18.5-103(4)(a) Consensus or judicial action in the form of a guardianship	Consensus needed on selection of the surrogate. If lack of consensus, judicial recourse (guardianship) §15-18.5-103
7. CONNECTICUT Conn. Gen. Stat. Ann. §§19a-570 to -580g (West 2017) Specifically, see §19a-570 and -571	Part of Public health chapter on "Removal of Life Support Systems"		Physician , in consultation with next of kin in the following priority: (A) The spouse of the patient; (B) an adult son or daughter of the patient; (C) either parent of the patient; (D) an adult brother or sister of the patient; and (E) a grandparent of the patient (§19a-570) Oral communications re: withholding life support by patient made part of medical record per §19a-570	Limited to the removal or withholding of life support systems, and patient is in terminal condition or permanently unconscious Pregnancy limitation under §19a-574	Yes §19a-571(a)	judicial recourse, §19a-580c
8. DELAWARE Del. Code Ann. 16 Del. Code §§2501 to 2518 (2017). Specifically, see 16 Del. Code §2507	Comprehensive Health Care Decisions Act	Yes § 2507	<ul style="list-style-type: none"> • An individual orally designated as surrogate • Spouse, unless petition for divorce • Adult child • Parent • Adult sibling • Adult grandchild • Adult niece or nephew • Adult aunt or uncle • Close friend NOTE: Surrogate is disqualified if protective order against the individual is filed or in existence.	Adult patient must be in terminal condition or permanently unconscious, documented in writing with its nature and cause 2507(b)(7) Pregnancy limitation, §2503(j)	Yes §2507(b)(8)	If in a health care institution, refer to "appropriate committee" for a recommendation. §2507(b)(9) Judicial recourse, §2511
9. DISTRICT OF COLUMBIA DC Code §§21-2201 to -2213 (2017). Specifically, see §21-2210	Durable Power of Attorney for Health Care Act		<ul style="list-style-type: none"> • Spouse or domestic partner • Adult child • Parent • Adult Sibling • Religious superior if in religious order or a diocesan priest • Close friend* • Nearest living relative * Close friend may not be an individual or facility provider	Incapacity certified in accordance with DC Code §21-2204 N/A to abortion, sterilization, or psycho-surgery, convulsive therapy or behavior modification programs involving aversive stimuli are excluded At least 1 witness must be present whenever surrogate grants, refuses or withdraws consent on behalf of the patient.	Yes 21-2210(b)	Yes DC Code §21-2210 (e)-(f), legal standing to challenge higher priority standard and rebuttable presumption established

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
10. FLORIDA Fla. Stat Ann. §§765.101 to .113 (West 2017) Specifically, see §765.401 and .113	Comprehensive Health Care Decisions Act	Yes §765.101(1) and §765.101(11)	<ul style="list-style-type: none"> Spouse Adult child or majority of adult children if more than one Parent Adult Sibling or majority of adult siblings if more than one Close adult relative Close friend Licensed clinical social worker selected by bioethics committee, and if decision is to forgo life-prolonging procedures, must be reviewed by bioethics committee. For person in persistent vegetative state, guardian is required. 	<p>N/A to abortion, sterilization, electroshock therapy, psychosurgery, experimental treatment not approved by IRB, or voluntary admission to a mental health facility.</p> <p>Pregnancy limitation, §765.113</p>	Yes §765.401(2) and (3)	<p>Majority rule for adult children or siblings.</p> <p>Judicial recourse not addressed.</p>
11. GEORGIA Ga. Code Ann. §§31-9-1 to -7 (West 2017), amended 2010. Specifically, see § 31-9-2.	Informed Consent Statute	No	<ul style="list-style-type: none"> Spouse; or any parent, adult or minor of minor child Person standing in loco parentis for minor child or ward Adult child Parent Adult sibling Grandparent Adult first degree relation (niece, nephew, aunt, or uncle) Close friend 	<p>Can consent to any surgical or medical treatment procedures not prohibited by law upon physician advice</p> <p>Not explicitly applicable to <i>refusals</i> of treatment, but nevertheless should be applicable.</p>	Yes §31-9-2(b)	None provided
Ga. Code Ann. §§31-39-1 to -9 (West 2017) Specifically, see §31-39-2 and -4	DNR Statute		<ul style="list-style-type: none"> Spouse Guardian (comes after spouse) Adult Child Parent Sibling (31-39-2) Physician w/ concurrence of 2nd physician and ethics committee (31-39-4(e)) unless individual is a hospice or home health agency patient. 	Applies only to consent to DNR orders	Yes §31-39-4(c)	None provided
Ga. Code Ann. §§31-36A-1 to -7 (West 2017) Specifically, see §31-36A-6	Specialized provision applicable to Temporary Health Care Placement		<ul style="list-style-type: none"> Spouse Adult Child Parent Sibling Grandparent Adult grandchild Aunt or Uncle Nephew or Niece 	<p>Applies only to decisions regarding admission to or discharge from one health care facility or placement, or transfer to another health care facility or placement.</p> <p>Excludes involuntary placement for mental illness (governed by Title 37)</p>	Yes 31-36A-6(b)	None provided

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
12. HAWAII Hawaii Rev. Stat. §§327E-1 to -16 (West 2014) Specifically, see §§327E-2 and E-5	Comprehensive Health Care Decisions Act	Yes §327E-3 and §327E-5	<ul style="list-style-type: none"> An individual orally designated as surrogate If none, the following "interested persons" must decide who among them shall be surrogate decision-maker: <ul style="list-style-type: none"> Spouse (unless separated or estranged) Reciprocal beneficiary Adult child Parent Adult Sibling Adult Grandchild Close friend 	None for orally designated surrogate, but an "interested person" may make a decision to withhold or withdraw nutrition and hydration only if two physicians certify that providing it will merely prolong the act of dying and the patient is highly unlikely to have any neurological response in the future.	Yes §327E-5(g)	Consensus needed on the selection of the surrogate. If lack of consensus, judicial recourse (guardianship), §327E-5(d)
13. IDAHO Idaho Code §§ 39-4501 to -4515 (West 2017), amended 2012. Specifically, see § 39-4504	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> Spouse Adult child Parent Person named in a delegation of parental authority executed pursuant to § 15-5-104 A relative representing self as appropriate, responsible person Other individual representing self to be responsible for the person's health care In a medical emergency, attending physician or dentist may authorize and/or provide such care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such physician or dentist, may proceed as if informed, valid consent therefor had been otherwise duly given. 	None listed	Indirect in statement of policy: "Any authentic expression of a person's wishes with respect to health care should be honored." ICS 39-4509(3)	None provided
14. ILLINOIS 755 ILCS §§ 40/1 to 40/65, Specifically, see 40/25 (West 2017)	Health Care Surrogate Act		<ul style="list-style-type: none"> Spouse Adult child Parent Adult Sibling Adult grandchild Close friend 	N/A to admission to mental health facility, psychotropic medication or electro-convulsive therapy (see 5/2-102; 5/3-601.2, amended 1997) If decision concerns forgoing life-sustaining treatment, patient must be in terminal condition, permanently unconscious, or incurable or irreversible condition.	Yes §40/20(b)	Majority rule for children, siblings and grandchildren. Judicial recourse (guardianship), § 40/25(d)

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
15. INDIANA Ind. Code Ann. §§16-36-1-1 to -14 (West 2017) Specifically, see §16-36-1-5	Health Care Agency (durable power) and Surrogate Consent Act		Any of the following: <ul style="list-style-type: none"> • Spouse • Parent • Adult child • Adult Sibling • Religious superior if the individual is a member of a religious order 	None listed	Yes § 16-36-1-5(d)	A health care provider or any interested person (as defined in IC 30-5-2-6) may petition the probate court in the county where the individual who is the subject of the petition is present for purposes of receiving health care to: (1) make a health care decision or order health care for an individual incapable of consenting; or (2) appoint a representative to act for the individual. §§16-36-1-8(a)
16. IOWA Iowa Code Ann. §§144A.1 to .12 (West 2017) Specifically, see §144A.7	Living Will Statute		<ul style="list-style-type: none"> • Spouse • Adult child • Parent or parents • Adult sibling 	Limited to the withholding or withdrawal of life-sustaining procedures, and patient is in terminal condition or comatose A witness must “be present at the time of the consultation when that decision is made.” Pregnancy limitation, §144A.7(3)	Yes §144A.7(1)	Majority rule for adult children Judicial recourse not addressed
17. KANSAS K.S.A. § 65-4974 (2017)	Specialized provision, applicable only to consent to medical research		<ul style="list-style-type: none"> • Spouse, unless legally separated • Adult child • Parent • A relative Note: Authority of guardian or agent with authority to make health care decisions is specifically acknowledged.	Consent is restricted to research protocols that have been approved by an institutional review board. Cannot consent if contrary to the incapacitated person's permission, expressed orally or in writing	No	None provided
18. KENTUCKY Ky. Rev. Stat. §§311.621 to .644(Baldwin 2017) Specifically, see §311.631	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> • Spouse • Adult child • Parents • Nearest adult relative 	N/A to withholding or withdrawal artificial nutrition and hydration unless specified conditions are met	Yes §311.631(3)	Majority rule for adult children and nearest relative Judicial recourse not addressed

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
19. LOUISIANA La. Rev. Stat. Ann. §40:1151 - 1155 (West 2017) Specifically, see §40:1151.4	Living Will Statute		<ul style="list-style-type: none"> • Spouse, if not judicially separated • Adult child • Parents • Sibling • Other ascendants or descendants (direct blood line relatives) • “Adult friend” 	<p>Limited to executing a LW (“Declaration”) for patient in terminal and irreversible condition or comatose</p> <p>Two witnesses required for the surrogate to make a declaration on behalf of the patient §40:1151.4(B)</p>	No	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse not addressed</p>
La. Rev. Stat. Ann. §40:1159.4 (2017)	Medical Consent Law		<ul style="list-style-type: none"> • Spouse, if not judicially separated • Adult child • Parents • Sibling • Other ascendants or descendants (direct blood line relatives) • “Adult friend” • Any person temporarily standing in loco parentis for a minor • A person chosen by an interdisciplinary team (for person w/ developmental disability) • Attending Physician, with confirmation by a 2nd physician who personally examines pt. §40:1159.4 	<ul style="list-style-type: none"> • Abortion • Sterilization • Treatment of mental illness §1159.2 and .3 	No	<p>None provided</p> <p>Judicial recourse not addressed</p>
20. MAINE Me. Rev. Stat. Ann tit. 18-A, §5-801 to -817 (West 2017) Specifically, see §5-805.	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> • Spouse, unless legally separated • Adult in spouse-like relationship • Adult child • Parent • Adult sibling • Adult grandchild • Adult niece or nephew • Adult aunt or uncle • Adult relative familiar with patient's values • Close friend 	<p>If decision pertains to withdrawal or withholding of life-sustaining treatment , patient must be in terminal condition or persistent vegetative state under §5-805(a)</p> <p>N/A to denial of surgery, procedures, or other interventions that are deemed medically necessary</p> <p>Admission to mental health institution</p>	Yes §5-805(f)	<p>Majority rule if more than one member of any class assumes authority</p> <p>Provider may refer them “to a neutral 3rd party for assistance in resolving the dispute”</p>
21. MARYLAND Md. Health-Gen. Code Ann., §§5-601 to -626 (2017) Specifically, see §5-605	Comprehensive Health Care Decisions Act	Yes §5-602(d)	<ul style="list-style-type: none"> • Spouse or Domestic Partner • Adult child • Parent • Adult sibling • Close friend or relative who has maintained regular contact with the patient 	<p>N/A to sterilization or treatment for mental disorder</p> <p>Applicable to life-sustaining procedure only if the patient has been certified to be in a terminal condition, persistent vegetative state, or end-stage condition</p>	Yes §5-605(c)	<p>If in hospital or nursing home, refer to ethics committee</p> <p>If elsewhere, consensus needed</p>
22. MASSACHUSETTS	None					

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
23. MICHIGAN Mich. Comp. Laws Ann. §§333.5651 to .5661 (West 2017) Specifically, see §333.5653(g) and .5655(b)	Health Care disclosure and consent act.		<ul style="list-style-type: none"> ▪ “a member of the immediate family, the next of kin, or the guardian” (priority not specified) 	Applies when patient has a “reduced life expectancy due to advanced illness”	No	Judicial recourse not addressed
24. MINNESOTA	None					
25. MISSISSIPPI Miss. Code Ann. §§41-41-201 to -303 (West 2017) Specifically, see §§41-41-203(s), -211, and -215(9)	Comprehensive Health Care Decisions Act	Yes §41-41-211	<ul style="list-style-type: none"> • Individual orally designated by patient • Spouse, unless legally separated • Adult child • Parent • Adult sibling • Close friend • Owner, operator, or employee of residential long-term care institution (but see limitations in next column) 	<p>Admission to mental health institution.</p> <p>If surrogate is owner, operator, or employee of residential long-term care institution, then the authority does not extend to decisions to withhold or discontinue life support, nutrition, hydration, or other treatment, care, or support. §41-41-215(9)</p>	Yes §41-41-211(6)	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse not addressed</p>
26. MISSOURI	None					
27. MONTANA Mont. Code Ann. §§50-5-1301 to -1308 (enacted 2017)	Separate proxy decision-making part within state hospital and related facilities code		<p>The following "interested persons" must decide who among them shall be surrogate decision-maker (§50-5-1303):</p> <ul style="list-style-type: none"> • Spouse • Parent • Adult child • Sibling • Adult Grandchild • Close friend • Another physician or APN designated by the attending health care provider if conditions are met, including certification of lack of decisional capacity and medical ethics committee approval of designation. §50-5-1304 	Specifies decision-making criteria and procedures, including ethics committee concurrence and second consulting physician concurrence for end-of-life treatment decisions. §50-5-1305	Partly §50-5-1305	Judicial recourse §50-5-1305 (petition for temporary guardian)
Mont. Code Ann. §§50-9-101 to -111 (2017) Specifically, see §50-9-106	Living Will Statute		<ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Nearest adult relative 	<p>Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition</p> <p>Pregnancy limitation, §50-9-106(7)</p>	Yes §50-9-106(4)	<p>Majority rule for adult children and siblings</p> <p>Judicial recourse not addressed</p>
28. NEBRASKA	None					

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
<p>29. NEVADA</p> <p>Nev. Rev. Stat. §§449.535 to -.690(2017) Specifically, see §449.626 See also: POLST Statute Nev. Rev. Stat. §449.6942</p>	Living Will Statute and POLST Statute		<p>§449.626:</p> <ul style="list-style-type: none"> • Spouse • Adult child • Parent • Adult sibling • Nearest adult relative • Close friend (but in POLST statute only) §449.6942 	<p>Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition</p> <p>Pregnancy limitation, §449.626(6)</p>	Yes §§449.626(4)	<p>Majority rule for adult children and sibling</p> <p>Judicial recourse not addressed</p>
<p>30. NEW HAMPSHIRE</p> <p>2014 N.H. Laws Ch. 239 (H.B. 1434), eff. 1/1/15</p>	Amendment to the advance directive statute, N.H. Rev. Stat. Ann. § 137-J:1 to -J:37		<ul style="list-style-type: none"> • Spouse or civil union partner • Adult child • Parent • Adult sibling • Adult grandchild • Grandparent • Aunt/Uncle or niece/nephew • Close friend • Financial agent under POA or Conservator • Guardian of the estate 	<p>N/A to withholding or withdrawal artificial nutrition and hydration unless patient is “near death or permanently unconscious.” § 137-J:10</p> <p>Authority effective for only 90 days.</p>	<p>Yes, § 137-J:6</p> <p>“shall make health care decisions in accordance with the agent's or surrogate's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's or surrogate's assessment of the principal's best interests and in accordance with accepted medical practice.”</p>	Majority rule. § 137-J:36
<p>31. NEW JERSEY</p> <p>NJ St. § 26:14-1 – 5 (West 2017) Specifically, see §25:14-5</p>	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> • Spouse or civil union partner • Adult child • Custodial parent • Adult sibling • Adult grandchild (§26-14-5) • Nearest adult relative 	Limited to medical research approved and monitored by an institutional review board, plus certain benefit/risk criteria must be met.	Yes NJ St. § 26:14-5(d) plus procedural requirements for informed consent	<p>Consensus needed</p> <p>Judicial recourse not addressed</p>

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
32. NEW MEXICO N.M. Stat. Ann. 1978 §§24-7A-1 to -18 (West 2017) Specifically, see §24-7A-5	Comprehensive Health Care Decisions Act	Yes §24-7A-5	<ul style="list-style-type: none"> • Spouse • Individual in long-term spouse-like relationship • Adult child • Parent • Adult sibling • Grandparent • Close friend 	Admission to mental health facility §24-7A-13(E)	Yes §24-7A-5(F)	Majority rule if more than one member of any class assumes authority §24-7A-5 Judicial recourse. §24-7A-14
33. NEW YORK N.Y. Family Health Care Decisions Act §§2994-A to -U (McKinney 2017) Specifically, see § 2994- D	Specialized Surrogate Consent Statute (applicable to health care provided in a hospital and nursing homes) [<ul style="list-style-type: none"> • Spouse or Domestic Partner • Adult child • Parent • Adult sibling • Close friend • Attending Physician for routine medical treatment or, for major medical treatment, the attending physician must make a recommendation to the hospital for the treatment and have at least one other physician designated by the hospital to independently concur 	Even if the patient lacks capacity, a patient's objection to the surrogate's decision will prevail unless a court of competent jurisdiction determines the patient is incompetent for all purposes, not just for health care decisions. Decisions to withhold or withdraw life-sustaining treatment for a patient shall be authorized only if certain conditions are met and the attending physician or hospital concurs with the decision.	Yes 2994-d(4) and §2994-d(5)	Judicial recourse (guardianship), § 2994-R
N.Y. Pub. Health Law §§2960 to 2979 (McKinney 2017) Specifically, see §§2965 & 2966	Specialized Surrogate Consent Statute (applicable only to DNR orders)		<ul style="list-style-type: none"> • Spouse or domestic partner • Adult child • Parent • Adult sibling • Close friend • Physician, with concurrence by a qualified second physician who personally examines patient that resuscitation is medically futile. 	Limited to consent to a DNR order, and patient is in terminal condition, or permanently unconscious, or where resuscitation is futile or extraordinarily burdensome	Yes §2965(3)(a)	Refer to dispute mediation system Judicial recourse. Specifically, see §2973
34. NORTH CAROLINA N.C. Gen. Stat. §90-320 to -328 (2017) Specifically, see §90-322	Living Will Statute		<ul style="list-style-type: none"> • Spouse • Parents • Adult Child • Siblings • Close friend • Att. physician 	Limited to the withholding or withdrawal of life-prolonging measures where the patient is terminal or permanently unconscious.	No	Majority rule for parents, adult children & siblings Judicial recourse not addressed

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
35. NORTH DAKOTA N.D. Cent. Code §23-12-01 to -19 (2017) Specifically, see §23-12-13	Informed Consent Statute		<ul style="list-style-type: none"> Spouse who has maintained significant contacts with incapacitated person Adult children who have maintained significant contacts with incapacitated person Parents, including stepparent who has maintained significant contacts with incapacitated person Adult siblings who have maintained significant contacts with incapacitated person Grandparents who have maintained significant contacts with incapacitated person Adult grandchildren who have maintained significant contacts with incapacitated person Close adult relative or friend who have maintained significant contacts with incapacitated person 	Not explicitly applicable to refusals of treatment, but nevertheless should be applicable. A determination of incapacity, over the patient's objections, can be determined in a court hearing pursuant to chapter 30.1-28. N/A to sterilization, abortion, psychosurgery, and admission to a state mental facility for > 45 days	Yes §23-12-13(3)	None provided
36. OHIO Ohio Rev. Code Ann. §2133.01 to .16 (West 2017) Specifically, see §2133.08	Living Will Statute		<ul style="list-style-type: none"> Spouse Adult child Parents Adult sibling Nearest adult relative 	Limited to consent for withdrawal or withholding of life-sustaining treatment, and patient has been in terminal condition or permanently unconscious for at least 12 months. Nutrition and hydration may be withheld <i>only</i> upon the issuance of an order of the probate court, §2133.09 Pregnancy limitation, §2133.08(G)	Yes §2133.08(D)(3)	Majority rule for adult children and siblings Judicial recourse not addressed
37. OKLAHOMA Okla. Stat. Ann. tit. 63 §3101 to 3102.3A (West 2017) Specifically, see §3102A	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> Spouse Adult child Parent Adult sibling Relative by blood or marriage 	Limited to experimental treatment, test or drug approved by a local institutional review board.	Yes §3101.16	Judicial recourse not addressed

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
38. OREGON Or. Rev. Stat. §127.505 to .660 (2017) Specifically, see §127.635, §127.505(13) and 127.535(4)	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> Spouse Adult designated by others on this list, without objection by anyone on list Adult child Parent Sibling Adult relative or close friend Att. Physician, includes naturopathic physicians, per 2017 Oregon laws Ch. 135 (H.B. 2393) 	Limited to terminal condition or permanently unconscious, or advanced progressive illness, or treatment that will cause permanent and severe pain. Before withdrawal or withholding, consultation is required with concerned family & close friends, and after notice to case manager, if there is one. Case manager must provide any information the case manager has that is related to the principal's values, beliefs and preferences with respect to the decisions.	Yes §127.535(4) & 127.535(6)	Majority rule for adult children and siblings Judicial recourse not addressed
39. PENNSYLVANIA Pa. Stat. Ann. tit. 20, §§5451 to 5461 (West 2017) Specifically, see §5456 and §5461	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> Spouse Adult designated by others on this list, without objection by anyone on list Adult child Parent Adult sibling Adult grandchild Close friend <p>Note: Individual may provide for a different order of priority. by signed writing.</p>	Pregnancy limitation, Pa. Stat. Ann. tit. 20, §5429 Surrogate health care decision maker may not execute an advance health care directive or name a health care agent on behalf of an incompetent individual.	Yes Tit. 20, §§5456 & 5461	Majority rule if more than one member of any class assumes authority Judicial recourse not addressed
40. RHODE ISLAND	None					
41. SOUTH CAROLINA S.C. Code Ann. §44-66-10 to -80 (2017) Specifically, see § 44-66-30	Separate Surrogate Consent Act		<ul style="list-style-type: none"> Person given priority to make health-care decisions for the patient by another statute Spouse, unless separated or divorced Parent or adult child Adult sibling, grandparent, or adult grandchild Other close relative Person given authority to make health-care decisions for the patient by another statutory provision If none of the above, health care may be provided w/o consent "if necessary for the relief of suffering or restoration of bodily function or to preserve the life, health, or bodily integrity of the patient." §44-66-50 	N/A if patient's inability to consent is temporary and delay of treatment will not result in significant detriment to the patient's health	Yes §44-66-30(F)	Consensus needed Judicial recourse. Specifically, see §44-66-30(D)

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
42. SOUTH DAKOTA S.D. Codified Laws §34-12C-1 to -8 (2017) Specifically, see §34-12C-3	Separate Surrogate Consent Act		<ul style="list-style-type: none"> Spouse Adult child Parent Adult sibling Grandparent or adult grandchild Aunt or uncle or adult niece or nephew Adult cousin Close friend (An authorized surrogate may delegate authority to another person in same or succeeding class)	None listed	Yes §34-12C-3	Consensus needed Judicial recourse not addressed
43. TENNESSEE Tenn. Code Ann §68-11-1801 to -1815 (2017) Specifically, see §68-11-1806	Comprehensive Health Care Decisions Act [NOTE: New law for minors enacted 2014]	Yes §68-11-1806.	Supervising health care provider selects from the following order of preference under criteria provided: <ul style="list-style-type: none"> Individual designated by patient Spouse Adult child Parent Adult sibling Other adult relative Close friend Primary Physician, in consultation with ethics committee or independent 2nd physician Disqualified surrogates: <ul style="list-style-type: none"> Indiv. Provider Facility Provider Person who is the subject of a protective order that directs the person to avoid contact with the patient	Any matter governed by the mental health code. Except for individual designated by the patient, other surrogates cannot make decision to w/h or w/d artificial nutrition & hydration without certification by 2 physicians of medical prerequisites.	Yes §68-11-1806(d)	Provider selects surrogate using criteria provided under §68-11-1806(c)(4)
44. TEXAS Tex. [Health & Safety] Code Ann. §166.031 to .053 (Vernon 2017) Specifically, see §166.039	Comprehensive Health Care Decisions Act		Physician and: <ul style="list-style-type: none"> Spouse Adult children Parents Nearest relative Att. Physician, with concurrence of independent 2nd physician or physician member of ethics committee 	Pregnancy limitation, §166.049	Yes §166.039(c)	Judicial recourse (guardianship), §166.039(g)
Tex. [Health & Safety] Code Ann. §166.081 to .101 (Vernon 2017) Specifically, see §166.088(b)	Specialized provision (applicable to DNR orders)		(Same as above. Incorporates the terms of §166.039)	Pregnancy limitation, §166.098	Yes §166.088(c)	Judicial recourse (guardianship), §166.039(g)

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
Tex. [Health & Safety] Code Ann. §313.001 to .008 (Vernon 2017) Specifically, see 313.004	Specialized provision applicable to patients in home & community support services or in a hospital or nursing home		<ul style="list-style-type: none"> • Spouse • Adult child (who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker) • Majority of the patient's reasonably available adult children • Parents • the individual clearly identified to act for the patient by the patient before the patient became incapacitated • Nearest living relative • Member of the clergy 	<ul style="list-style-type: none"> • Voluntary inpatient mental health services; • Electro-convulsive treatment; or • Appointment of another surrogate decision-maker. 	Yes §313.004(c)	<p>Consensus, in the case of adult children surrogates</p> <p>Judicial recourse, §313.004(b)</p>
45. UTAH Utah Code Ann. §75-2a-101 to -125 (2017) Specifically, see §75-2a-108	Comprehensive Health Care Decisions Act	Yes §75-2a-103 & §75-2a-107	<ul style="list-style-type: none"> • Spouse • Adult Child • Parent • Adult sibling • Adult grandchild • Grandparent • Close friend 	<p>Surrogate may not admit the adult to a licensed health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over the objection of the adult</p> <p>Pregnancy limitation, §75-2a-123</p>	Yes §75-2a-110(1)	<p>Majority rule inside the highest available priority level.</p> <p>Judicial recourse, §75-2a-120</p>
46. VERMONT Vt. Stat. Ann. tit. 18, § 9731 (2017 WEST) Effective. Jan. 1, 2018.	DNR/POLST provision	Yes §9731(c)(1)	<p>The following "interested persons" must decide who among them shall be designated as surrogate decision-maker:</p> <ul style="list-style-type: none"> • Spouse • Adult Child • Parent • Sibling • Grandchild • Clergy person • Close friend <p>tit. 18, §9701(18)</p>	Limited to making decisions about DNR orders or Clinician Orders for Life-Sustaining Treatment	<p>Yes Tit. 18, §9731(e)</p> <p>For nursing home residents: tit. 33, §7306(c)</p>	Consensus needed on selection of the surrogate or on the specific health decision. If lack of consensus, judicial recourse (guardianship) tit. 18, §9731(d)(2)
47. VIRGINIA Va. Code §54.1-2981 to -2993 (West 2017) Specifically, see §54.1-2986 & -2986.1	Comprehensive Health Care Decisions Act	Yes §54.1-2983	<ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Other relative in the descending order of blood relationship • Close friend 	<p>N/A to non-therapeutic sterilization, abortion, psychosurgery, or admission to a mental retardation facility or psychiatric hospital</p> <p>Close friend cannot consent to the withholding or withdrawal of life-prolonging measures</p>	Yes §54.1-2986.1(B)	Majority rule

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
48. WASHINGTON Wash. Rev. Code Ann. §7.70.010 to .160 (West 2017) Specifically, see §7.70.065	Informed Consent Statute		<ul style="list-style-type: none"> • Spouse or registered domestic partner • Adult children • Parents • Adult siblings 	Not explicitly applicable to refusals of treatment, but nevertheless should be applicable.	Yes §7.70.065(1)(b) and (c)	Consensus needed
49. WEST VIRGINIA W. VA. Code Ann. §16-30-1 to -25 (West 2007) Specifically, see §16-30-8	Comprehensive Health Care Decisions Act		<p>Att. Physician or Advanced Nurse Practitioner selects from the following order of preference under criteria provided:</p> <ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Adult grandchild • Close friend • Any other person or entity according to DHHR rules <p>Ineligible surrogates:</p> <ul style="list-style-type: none"> ▪ Indiv. Provider* ▪ Facility Provider* <p>* Exception for relatives who are employees of</p>	None listed	Yes §16-30-8(b)(1)(A), -9 and -5(d)	Not applicable since provider selects surrogate.
50. WISCONSIN Wisc. Stat. Ann. §50.06 (West 2007)	Specialized Surrogate Consent Statute applicable to certain facility admissions		<ul style="list-style-type: none"> • Spouse or domestic partner §50.06.3(a) • Adult child • Parent • Adult sibling • Grandparent • Adult grandchild • Close friend 	Limited to consent to admission to nursing home and certain community-based residential facilities for up to 60 days, with 30 day extension possible, and only if: <ol style="list-style-type: none"> 1. The incapacitated person is not diagnosed as developmentally disabled or having a mental illness at time of admission 2. Petitions for guardianship and protective placement are filed prior to admission 	No	Consensus needed
51. WYOMING Wyo. Stat. §35-22-401 to -416(2017) Specifically, see §35-22-406	Comprehensive Health Care Decisions Act	Yes. §35-22-406(b)	<ul style="list-style-type: none"> • Individual designated by personally informing the supervising health care provider • Spouse, unless legally separated • Adult child • Parent • Grandparent • Adult sibling • Adult grandchild • Close friend 	None listed	Yes §35-22-406(f)	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse, §35-22-415</p>

State & Citation	General Type of Statute	Can Patient orally name a Surrogate?	Priority of Surrogates (in absence of an appointed agent, surrogate, or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
<i>UNIFORM HEALTH-CARE DECISIONS ACT (1994)</i>	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> • Individual orally designated by patient • Spouse • Adult child • Parent • Sibling • Close friend 	None listed	Yes §5(f)	Majority rule if more than one member of any class assumes authority

CAUTION: The descriptions and limitations listed in this chart are broad characterizations for comparison purposes and are not precise quotations from legislative language.

© ABA Commission on Law and Aging, 2018.

The ABA acknowledges Thomson Reuters Westlaw for providing access to on-line legal research.