

## DEFAULT SURROGATE CONSENT STATUTES

July 2017

**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
<b>1. ALABAMA</b>  Ala. Code 1975 §§22-8A-1 to -14 (2016). Specifically, see §22-8A-11	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>▪ Spouse (unless legally separated/divorcing)</li> <li>▪ Adult child</li> <li>▪ Parent</li> <li>▪ Adult sibling</li> <li>▪ Nearest adult relative</li> <li>▪ <b>Att. physician &amp; ethics committee</b></li> </ul>	Patient must be in terminal condition or permanently unconscious. Certification requirements.	Yes §22-8A-11(c)	Judicial recourse, §22-8A-11
<b>2. ALASKA</b>  Alaska Stat. §§13.52.010 to .395 (West 2016), 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"> <li>▪ Individual orally designated by patient</li> <li>▪ Spouse</li> <li>▪ Adult child</li> <li>▪ Parent</li> <li>▪ Adult Sibling</li> <li>▪ Close friend</li> </ul>	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
<b>3. ARIZONA</b>  Ariz. Rev. Stat. Ann. §§36-3201 to -3231 (West 2016), amended 2008. Specifically, see §36-3231	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>▪ Spouse (unless legally separated)</li> <li>▪ Adult child (if multiple, health care provider will seek a majority opinion from those available)</li> <li>▪ Parent</li> <li>▪ Domestic partner, if unmarried</li> <li>▪ Sibling</li> <li>▪ Close friend</li> <li>▪ <b>Att. physician in consult with ethics committee or, if none, 2<sup>nd</sup> physician</b></li> </ul>	Mental health treatment limitations	Yes §36-3203(C)	Majority rule for adult children  Judicial recourse for all others, §36-3206

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<p><b>4. ARKANSAS</b></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"> <li>▪ An adult designated orally or in writing</li> <li>▪ Spouse (unless legally separated)</li> <li>▪ Adult child</li> <li>▪ Parent</li> <li>▪ Adult sibling</li> <li>▪ Adult relative</li> <li>▪ Close friend</li> <li>▪ <b>Att. Physician in consult with ethics committee or 2<sup>nd</sup> physician</b></li> </ul>	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><b>5. CALIFORNIA</b></p> <p>Cal. Probate Code §§4711 – 4727 (West 2016) 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 2016)	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> <li>▪ Spouse</li> <li>▪ Domestic partner</li> <li>▪ Adult child</li> <li>▪ Custodial parent</li> <li>▪ Adult sibling</li> <li>▪ Adult grandchild</li> <li>▪ Adult relative with the closest degree of kinship</li> </ul> <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 &amp; Institutions Code</p>	Yes §24178(g)	Consensus needed
Cal. Health & Safety Code §1418.8 (West 2016)	Specialized provision applicable only to nursing homes		<ul style="list-style-type: none"> <li>▪ Next of kin:”</li> <li>▪ <b>The attending physician and surgeon in accordance with an interdisciplinary team review</b></li> </ul>	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	

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<b>6. COLORADO</b>  Colo. Rev. Stat. Ann. §§15-18-101 to 15-18.7-110(West 2016) 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"> <li>• Spouse</li> <li>• Parent</li> <li>• Adult child</li> <li>• Sibling</li> <li>• Adult Grandchild</li> <li>• Close friend</li> </ul>	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
<b>7. CONNECTICUT</b>  Conn. Gen. Stat. Ann. §§19a-570 to -580g (West 2016) Specifically, see §19a-570 and -571	Part of Public health chapter on "Removal of Life Support Systems"		<b>Physician</b> , 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
<b>8. DELAWARE</b>  Del. Code Ann. 16 Del. Code §§2501 to 2518 (2016).  Specifically, see 16 Del. Code §2507	Comprehensive Health Care Decisions Act	Yes § 2507	<ul style="list-style-type: none"> <li>• An individual orally designated as surrogate</li> <li>• Spouse, unless petition for divorce</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Adult niece or nephew</li> <li>• Adult aunt or uncle</li> <li>• Close friend</li> </ul> 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
<b>9. DISTRICT OF COLUMBIA</b>  DC Code §§21-2201 to -2213 (2016). Specifically, see §21-2210	Durable Power of Attorney for Health Care Act		<ul style="list-style-type: none"> <li>• Spouse or domestic partner</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult Sibling</li> <li>• Religious superior if in religious order or a diocesan priest</li> <li>• Close friend*</li> <li>• Nearest living relative</li> </ul> * 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

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<b>10. FLORIDA</b>  Fla. Stat Ann. §§765.101 to .113 (West 2016) 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"> <li>Spouse</li> <li>Adult child or majority of adult children if more than one</li> <li>Parent</li> <li>Adult Sibling or majority of adult siblings if more than one</li> <li>Close adult relative</li> <li>Close friend</li> <li>Licensed clinical social worker selected by bioethics committee, and if decision is to forgo life-prolonging procedures, must be reviewed by bioethics committee.</li> <li>For person in persistent vegetative state, guardian is required.</li> </ul>	N/A to abortion, sterilization, electroshock therapy, psychosurgery, experimental treatment not approved by IRB, or voluntary admission to a mental health facility.  Pregnancy limitation, §765.113	Yes §765.401(2) and (3)	Majority rule for adult children or siblings.  Judicial recourse not addressed.
<b>11. GEORGIA</b>  Ga. Code Ann. §§31-9-1 to -7 (West 2016), amended 2010. Specifically, see § 31-9-2.	Informed Consent Statute	No	<ul style="list-style-type: none"> <li>Spouse; or any parent, adult or minor of minor child</li> <li>Person standing in loco parentis for minor child or ward</li> <li>Adult child</li> <li>Parent</li> <li>Adult sibling</li> <li>Grandparent</li> <li>Adult first degree relation (niece, nephew, aunt, or uncle)</li> <li>Close friend</li> </ul>	Can consent to any surgical or medical treatment procedures not prohibited by law upon physician advice  Not explicitly applicable to <i>refusals</i> of treatment, but nevertheless should be applicable.	Yes §31-9-2(b)	None provided
Ga. Code Ann. §§31-39-1 to -9 (West 2016) Specifically, see §31-39-2 and -4	DNR Statute		<ul style="list-style-type: none"> <li>Spouse</li> <li>Guardian (comes after spouse)</li> <li>Adult Child</li> <li>Parent</li> <li>Sibling (31-39-2)</li> <li>Physician w/ concurrence of 2<sup>nd</sup> physician and ethics committee (31-39-4(e)) unless individual is a hospice or home health agency patient.</li> </ul>	Applies only to consent to DNR orders	Yes §31-39-4(c)	None provided
Ga. Code Ann. §§31-36A-1 to -7 (West 2016) Specifically, see §31-36A-6	Specialized provision applicable to Temporary Health Care Placement		<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult Child</li> <li>Parent</li> <li>Sibling</li> <li>Grandparent</li> <li>Adult grandchild</li> <li>Aunt or Uncle</li> <li>Nephew or Niece</li> </ul>	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.  Excludes involuntary placement for mental illness (governed by Title 37)	Yes 31-36A-6(b)	None provided

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<b>12. HAWAII</b> <a href="#">Hawaii Rev. Stat. §§327E-1 to -16 (West 2014)</a> Specifically, see §§327E-2 and E-5	Comprehensive Health Care Decisions Act	Yes §327E-3 and §327E-5	<ul style="list-style-type: none"> <li>An individual orally designated as surrogate</li> </ul> If none, the following "interested persons" must decide who among them shall be surrogate decision-maker: <ul style="list-style-type: none"> <li>Spouse (unless separated or estranged)</li> <li>Reciprocal beneficiary</li> <li>Adult child</li> <li>Parent</li> <li>Adult Sibling</li> <li>Adult Grandchild</li> <li>Close friend</li> </ul>	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)
<b>13. IDAHO</b> Idaho Code §§ 39-4501 to -4515 (West 2016), amended 2012. Specifically, see § 39-4504	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult child</li> <li>Parent</li> <li>Person named in a delegation of parental authority executed pursuant to § 15-5-104</li> <li>A relative representing self as appropriate, responsible person</li> <li>Other individual representing self to be responsible for the person's health care</li> <li>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.</li> </ul>	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
<b>14. ILLINOIS</b> 755 ILCS §§ 40/1 to 40/65, Specifically, see 40/25 (West 2016)	Health Care Surrogate Act		<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult child</li> <li>Parent</li> <li>Adult Sibling</li> <li>Adult grandchild</li> <li>Close friend</li> </ul>	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)

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<b>15. INDIANA</b> Ind. Code Ann. §§16-36-1-1 to -14 (West 2016) 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"> <li>• Spouse</li> <li>• Parent</li> <li>• Adult child</li> <li>• Adult Sibling</li> <li>• Religious superior if the individual is a member of a religious order</li> </ul>	None listed	Yes § 16-36-1-5(d)	A health care provider or any interested person (as defined in <a href="#">IC 30-5-2-6</a> ) 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: <ol style="list-style-type: none"> <li>(1) make a health care decision or order health care for an individual incapable of consenting; or</li> <li>(2) appoint a representative to act for the individual.</li> </ol> §§16-36-1-8(a)
<b>16. IOWA</b> Iowa Code Ann. §§144A.1 to .12 (West 2016) Specifically, see §144A.7	Living Will Statute		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parent or parents</li> <li>• Adult sibling</li> </ul>	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
<b>17. KANSAS</b> K.S.A. § 65-4974 2014	Specialized provision, applicable only to consent to medical research		<ul style="list-style-type: none"> <li>• Spouse, unless legally separated</li> <li>• Adult child</li> <li>• Parent</li> <li>• A relative</li> </ul> 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
<b>18. KENTUCKY</b> Ky. Rev. Stat. §§311.621 to .644(Baldwin 2016) Specifically, see §311.631	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parents</li> <li>• Nearest adult relative</li> </ul>	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

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<b>19. LOUISIANA</b>  La. Rev. Stat. Ann. §40:1151 - 1155 (West 2016) Specifically, see §40:1151.4	Living Will Statute		<ul style="list-style-type: none"> <li>• Spouse, if not judicially separated</li> <li>• Adult child</li> <li>• Parents</li> <li>• Sibling</li> <li>• Other ascendants or descendants (direct blood line relatives)</li> <li>• “Adult friend”</li> </ul>	Limited to executing a LW (“Declaration”) for patient in terminal and irreversible condition or comatose  Two witnesses required for the surrogate to make a declaration on behalf of the patient §40:1151.4(B)	No	Majority rule if more than one member of any class assumes authority  Judicial recourse not addressed
La. Rev. Stat. Ann. §40:1159.4	Medical Consent Law		<ul style="list-style-type: none"> <li>• Spouse, if not judicially separated</li> <li>• Adult child</li> <li>• Parents</li> <li>• Sibling</li> <li>• Other ascendants or descendants (direct blood line relatives)</li> <li>• “Adult friend”</li> <li>• Any person temporarily standing in loco parentis for a minor</li> <li>• A person chosen by an interdisciplinary team (for person w/ developmental disability)</li> <li>• Attending Physician, with confirmation by a 2<sup>nd</sup> physician who personally examines pt. §40:1159.4</li> </ul>	<ul style="list-style-type: none"> <li>• Abortion</li> <li>• Sterilization</li> <li>• Treatment of mental illness §1159.2 and .3</li> </ul>	No	None provided  Judicial recourse not addressed
<b>20. MAINE</b>  Me. Rev. Stat. Ann. tit. 18-A, §5-801 to -817 (West 2016) Specifically, see §5-805.	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>• Spouse, unless legally separated</li> <li>• Adult in spouse-like relationship</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Adult niece or nephew</li> <li>• Adult aunt or uncle</li> <li>• Adult relative familiar with patient's values</li> <li>• Close friend</li> </ul>	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)  N/A to denial of surgery, procedures, or other interventions that are deemed medically necessary  Admission to mental health institution	Yes §5-805(f)	Majority rule if more than one member of any class assumes authority  Provider may refer them “to a neutral 3 <sup>rd</sup> party for assistance in resolving the dispute”
<b>21. MARYLAND</b>  Md. Health-Gen. Code Ann., §§5-601 to -626 (2016) Specifically, see §5-605	Comprehensive Health Care Decisions Act	Yes §5-602(d)	<ul style="list-style-type: none"> <li>• Spouse or Domestic Partner</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Close friend or relative who has maintained regular contact with the patient</li> </ul>	N/A to sterilization or treatment for mental disorder 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	Yes §5-605(c)	If in hospital or nursing home, refer to ethics committee  If elsewhere, consensus needed
<b>22. MASSACHUSETTS</b>	None					

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<b>23. MICHIGAN</b> Mich. Comp. Laws Ann. §§333.5651 to .5661 (West 2016) Specifically, see §333.5653(g) and .5655(b)	Health Care disclosure and consent act.		<ul style="list-style-type: none"> <li>▪ “a member of the immediate family, the next of kin, or the guardian” (priority not specified)</li> </ul>	Applies when patient has a “reduced life expectancy due to advanced illness”	No	Judicial recourse not addressed
<b>24. MINNESOTA</b>	None					
<b>25. MISSISSIPPI</b> Miss. Code Ann. §§41-41-201 to -303 (West 2016) 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"> <li>• Individual orally designated by patient</li> <li>• Spouse, unless legally separated</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Close friend</li> <li>• Owner, operator, or employee of residential long-term care institution (but see limitations in next column)</li> </ul>	Admission to mental health institution.  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)	Yes §41-41-211(6)	Majority rule if more than one member of any class assumes authority  Judicial recourse not addressed
<b>26. MISSOURI</b>	None					
<b>27. MONTANA</b> Mont. Code Ann. §§50-9-101 to -111 (2016) Specifically, see §50-9-106	Living Will Statute		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parents</li> <li>• Adult sibling</li> <li>• Nearest adult relative</li> </ul>	Limited to withholding or withdrawal of life-sustaining treatment , and patient is in terminal condition  Pregnancy limitation, §50-9-106(7)	Yes §50-9-106(4)	Majority rule for adult children and siblings  Judicial recourse not addressed
<b>28. NEBRASKA</b>	None					
<b>29. NEVADA</b> Nev. Rev. Stat. §§449.535 to -.690(2016) Specifically, see §449.626	Living Will Statute		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Nearest adult relative</li> </ul>	Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition  Pregnancy limitation, §449.626(6)	Yes §§449.626(4)	Majority rule for adult children and sibling  Judicial recourse not addressed



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<b>30. NEW HAMPSHIRE</b>  2014 N.H. Laws Ch. 239 (H.B. 1434), eff. 1/1/15	Amendment to the advance directive statute, N.H. Rev. Stat. Ann. § 137-J:1 to -J:37		<ul style="list-style-type: none"> <li>• Spouse or civil union partner</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Grandparent</li> <li>• Aunt/Uncle or niece/nephew</li> <li>• Close friend</li> <li>• Financial agent under POA or Conservator</li> <li>• Guardian of the estate</li> </ul>	N/A to withholding or withdrawal artificial nutrition and hydration unless patient is “near death or permanently unconscious.” § 137-J:10  Authority effective for only 90 days.	Yes, § 137-J:6  “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.”	Majority rule. § 137-J:36
<b>31. NEW JERSEY</b>  NJ St. § 26:14-1 – 5 (West 2016) Specifically, see §25:14-5	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> <li>• Spouse or civil union partner</li> <li>• Adult child</li> <li>• Custodial parent</li> <li>• Adult sibling</li> <li>• Adult grandchild (§26-14-5)</li> <li>• Nearest adult relative</li> </ul>	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	Consensus needed  Judicial recourse not addressed
<b>32. NEW MEXICO</b>  N.M. Stat. Ann. 1978 §§24-7A-1 to -18 (West 2007) Specifically, see §24-7A-5	Comprehensive Health Care Decisions Act	Yes §24-7A-5	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Individual in long-term spouse-like relationship</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Grandparent</li> <li>• Close friend</li> </ul>	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

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<b>33. NEW YORK</b>  N.Y. Family Health Care Decisions Act §§2994-A to -U (McKinney 2016) Specifically, see § 2994- D	Specialized Surrogate Consent Statute (applicable to <b>health care provided in a hospital and nursing homes</b> )  [		<ul style="list-style-type: none"> <li>Spouse or Domestic Partner</li> <li>Adult child</li> <li>Parent</li> <li>Adult sibling</li> <li>Close friend</li> <li>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</li> </ul>	<p>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.</p> <p>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.</p>	Yes 2994-d(4) and §2994-d(5)	Judicial recourse (guardianship), § 2994-R
N.Y. Pub. Health Law §§2960 to 2979 (McKinney 2016) Specifically, see §§2965 & 2966	Specialized Surrogate Consent Statute (applicable only to DNR orders)		<ul style="list-style-type: none"> <li>Spouse or domestic partner</li> <li>Adult child</li> <li>Parent</li> <li>Adult sibling</li> <li>Close friend</li> <li>Physician, with concurrence by a qualified second physician who personally examines patient that resuscitation is medically futile.</li> </ul>	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
<b>34. NORTH CAROLINA</b>  N.C. Gen. Stat. §90-320 to -328 (2016) Specifically, see §90-322	Living Will Statute		<ul style="list-style-type: none"> <li>Spouse</li> <li>Parents</li> <li>Adult Child</li> <li>Siblings</li> <li>Close friend</li> <li>Att. physician</li> </ul>	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
<b>35. NORTH DAKOTA</b>  N.D. Cent. Code §23-12-01 to -19 (2016) Specifically, see §23-12-13	Informed Consent Statute		<ul style="list-style-type: none"> <li>Spouse who has maintained significant contacts with incapacitated person</li> <li>Adult children who have maintained significant contacts with incapacitated person</li> <li>Parents, including stepparent who has maintained significant contacts with incapacitated person</li> <li>Adult siblings who have maintained significant contacts with incapacitated person</li> <li>Grandparents who have maintained significant contacts with incapacitated person</li> <li>Adult grandchildren who have maintained significant contacts with incapacitated person</li> <li>Close adult relative or friend who have maintained significant contacts with incapacitated person</li> </ul>	<p>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.</p> <p>N/A to sterilization, abortion, psychosurgery, and admission to a state mental facility for &gt; 45 days</p>	Yes §23-12-13(3)	None provided

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<b>36. OHIO</b>  Ohio Rev. Code Ann. §2133.01 to .16 (West 2016) Specifically, see §2133.08	Living Will Statute		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parents</li> <li>• Adult sibling</li> <li>• Nearest adult relative</li> </ul>	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
<b>37. OKLAHOMA</b>  Okla. Stat. Ann. tit. 63 §3101 to 3102.3A (West 2016) Specifically, see §3102A	Specialized provision applicable only to medical research		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Relative by blood or marriage</li> </ul>	Limited to experimental treatment, test or drug approved by a local institutional review board.	Yes §3101.16	Judicial recourse not addressed
<b>38. OREGON</b>  Or. Rev. Stat. §127.505 to .660 (2016) Specifically, see §127.635, §127.505(13) and 127.535(4)	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult designated by others on this list, without objection by anyone on list</li> <li>• Adult child</li> <li>• Parent</li> <li>• Sibling</li> <li>• Adult relative or close friend</li> <li>• Att. Physician, includes naturopathic physicians, per 2017 Oregon laws Ch. 135 (H.B. 2393)</li> </ul>	Limited to withdrawal or withholding of life-sustaining procedures for a patient in a terminal condition or permanently unconscious, or with advanced progressive illness, or treatment will cause permanent and severe pain.  The priority status of one's parent or former guardian to act as 's priority status to withhold or withdraw life-sustaining procedures may be withheld if a court has taken the principal out of their custody permanently or terminated the parental rights.	Yes §127.535(4) & 127.535(6)	Majority rule for adult children and siblings  Judicial recourse not addressed
<b>39. PENNSYLVANIA</b>  Pa. Stat. Ann. tit. 20, §§5451 to 5461 (West 2007) (eff. January 29, 2007) Specifically, see §5456 and §5461	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult designated by others on this list, without objection by anyone on list</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Close friend</li> </ul> <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
<b>40. RHODE ISLAND</b>	None					

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<b>41. SOUTH CAROLINA</b>  S.C. Code Ann. §44-66-10 to -80 (2016) Specifically, see § 44-66-30	Separate Surrogate Consent Act		<ul style="list-style-type: none"> <li>Person given priority to make health-care decisions for the patient by another statute</li> <li>Spouse, unless separated or divorced</li> <li>Parent or adult child</li> <li>Adult sibling, grandparent, or adult grandchild</li> <li>Other close relative</li> <li>Person given authority to make health-care decisions for the patient by another statutory provision</li> <li>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</li> </ul>	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)
<b>42. SOUTH DAKOTA</b>  S.D. Codified Laws §34-12C-1 to -8 (2016) Specifically, see §34-12C-3	Separate Surrogate Consent Act		<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult child</li> <li>Parent</li> <li>Adult sibling</li> <li>Grandparent or adult grandchild</li> <li>Aunt or uncle or adult niece or nephew</li> <li>Adult cousin</li> <li>Close friend</li> </ul> (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
<b>43. TENNESSEE</b>  Tenn. Code Ann §68-11-1801 to -1815 (2016) Specifically, see §68-11-1806	Comprehensive Health Care Decisions Act  <a href="#">[NOTE: New law for minors enacted 2014]</a>	Yes §68-11-1806.	Supervising health care provider selects from the following order of preference under criteria provided: <ul style="list-style-type: none"> <li>Individual designated by patient</li> <li>Spouse</li> <li>Adult child</li> <li>Parent</li> <li>Adult sibling</li> <li>Other adult relative</li> <li>Close friend</li> <li>Primary Physician, in consultation with ethics committee or independent 2<sup>nd</sup> physician</li> </ul> Disqualified surrogates: <ul style="list-style-type: none"> <li>Indiv. Provider</li> <li>Facility Provider</li> </ul> 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)

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<b>44. TEXAS</b> Tex. [Health & Safety] Code Ann. §166.031 to .053 (Vernon 2016) Specifically, see §166.039	Comprehensive Health Care Decisions Act		Physician and: <ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult children</li> <li>• Parents</li> <li>• Nearest relative</li> <li>• <b>Att. Physician, with concurrence of independent 2<sup>nd</sup> physician or physician member of ethics committee</b></li> </ul>	Pregnancy limitation, §166.049	Yes §166.039(c)	Judicial recourse (guardianship), §166.039(g)
Tex. [Health & Safety] Code Ann. §166.081 to .101 (Vernon 2016) Specifically, see §166.088(b)	Specialized provision (applicable to <b>DNR</b> orders)		(Same as above. Incorporates the terms of §166.039)	Pregnancy limitation, §166.098	Yes §166.088(c)	Judicial recourse (guardianship), §166.039(g)
Tex. [Health & Safety] Code Ann. §313.001 to .008 (Vernon 2016) 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"> <li>• Spouse</li> <li>• Adult child (who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker)</li> <li>• Majority of the patient's reasonably available adult children</li> <li>• Parents</li> <li>• the individual clearly identified to act for the patient by the patient before the patient became incapacitated</li> <li>• Nearest living relative</li> <li>• <b>Member of the clergy</b></li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary inpatient mental health services;</li> <li>• Electro-convulsive treatment; or</li> <li>• Appointment of another surrogate decision-maker.</li> </ul>	Yes §313.004(c)	<p>Consensus, in the case of adult children surrogates</p> <p>Judicial recourse, §313.004(b)</p>
<b>45. UTAH</b> Utah Code Ann. §75-2a-101 to -125 (2016) Specifically, see §75-2a-108	Comprehensive Health Care Decisions Act	Yes §75-2a-103 & §75-2a-107	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult Child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Grandparent</li> <li>• Close friend</li> </ul>	<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>
<b>46. VERMONT</b> Vt. Stat. Ann. tit. 18, § 9731 (WEST)  Added by: 2015, Adj. Sess., No. 136, § 1, Effective. Jan. 1, 2018.	DNR/POLST provision	Yes §9731(c)(1)	The following "interested persons" must decide who among them shall be designated as surrogate decision-maker: <ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult Child</li> <li>• Parent</li> <li>• Sibling</li> <li>• Grandchild</li> <li>• Clergy person</li> <li>• Close friend</li> </ul>	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)

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<b>47. VIRGINIA</b> Va. Code §54.1-2981 to -2993 (West 2016) Specifically, see §54.1-2986 & -2986.1	Comprehensive Health Care Decisions Act	Yes §54.1-2983	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parents</li> <li>• Adult sibling</li> <li>• Other relative in the descending order of blood relationship</li> <li>• Close friend</li> </ul>	<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
<b>48. WASHINGTON</b> Wash. Rev. Code Ann. §7.70.010 to .160 (West 2016) Specifically, see §7.70.065	Informed Consent Statute		<ul style="list-style-type: none"> <li>• Spouse or registered domestic partner</li> <li>• Adult children</li> <li>• Parents</li> <li>• Adult siblings</li> </ul>	Not explicitly applicable to refusals of treatment, but nevertheless should be applicable.	Yes §7.70.065(1)(b) and (c)	Consensus needed
<b>49. WEST VIRGINIA</b> 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"> <li>• Spouse</li> <li>• Adult child</li> <li>• Parents</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Close friend</li> <li>• Any other person or entity according to DHHR rules</li> </ul> <p>Ineligible surrogates:</p> <ul style="list-style-type: none"> <li>▪ Indiv. Provider*</li> <li>▪ Facility Provider*</li> </ul> <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.
<b>50. WISCONSIN</b> Wisc. Stat. Ann. §50.06 (West 2007)	Specialized Surrogate Consent Statute applicable to certain facility admissions		<ul style="list-style-type: none"> <li>• Spouse or domestic partner §50.06.3(a)</li> <li>• Adult child</li> <li>• Parent</li> <li>• Adult sibling</li> <li>• Grandparent</li> <li>• Adult grandchild</li> <li>• Close friend</li> </ul>	<p>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:</p> <ol style="list-style-type: none"> <li>1. The incapacitated person is not diagnosed as developmentally disabled or having a mental illness at time of admission</li> <li>2. Petitions for guardianship and protective placement are filed <b>prior</b> to admission</li> </ol>	No	Consensus needed

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<b>51.WYOMING</b>  Wyo. Stat. §35-22-401 to -416(2016) Specifically, see §35-22-406	Comprehensive Health Care Decisions Act	Yes. §35-22-406(b)	<ul style="list-style-type: none"> <li>• Individual designated by personally informing the supervising health care provider</li> <li>• Spouse, unless legally separated</li> <li>• Adult child</li> <li>• Parent</li> <li>• Grandparent</li> <li>• Adult sibling</li> <li>• Adult grandchild</li> <li>• Close friend</li> </ul>	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>
<i>UNIFORM HEALTH-CARE DECISIONS ACT</i>	Comprehensive Health Care Decisions Act		<ul style="list-style-type: none"> <li>• Individual orally designated by patient</li> <li>• Spouse</li> <li>• Adult child</li> <li>• Parent</li> <li>• Sibling</li> <li>• Close friend</li> </ul>	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.

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