

Health Care Decision-Making Authority: What is the Decision-Making Standard?

Health care agents are empowered by an individual’s advance directive and act as an extension of that individual’s voice. On the other hand, guardians are appointed by courts to make health care decisions for an individual after that individual’s ability to do so has diminished. This chart notes the decision-making standards of all fifty-states as it relates to the appointments of guardians, health care agents, and surrogates in order to demonstrate exactly how decisions must be made.

WHO?	STATES WITH A STATUTORY STANDARD	TOTAL
Guardians	UGPPA, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MN, MO, NE, NV, NJ, NM, NY, ND, OH, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI	38
Health Care Agents	UHCDA, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY	47
Surrogates	UHCDA, AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, ME, MD, MS, MT, NV, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY	38

WHO?	STATES WITHOUT A STATUTORY STANDARD	TOTAL
Guardians	AL, AK, AR, MI, MS, MT, NH, NC, OK, TN, TX, WY	12
Health Care Agents	AL, CT, LA, MT	4
Surrogates	KS, LA, MA, MI, MN, MO, NE, NH, NJ, NC, RI, VT, WI	13

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
UHCDA	Not Applicable	“An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.” Unif. Health Care Decisions Act § 2(e) (1994).	“A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.” Unif. Health Care Decisions Act § 5(f) (1994).
UGPPA	“A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward’s best interest and exercise reasonable care, diligence, and prudence.” Unif. Guardianship Protective Proc. Act § 314(a) (1997).	Not Applicable	Not Applicable
AL	Not Identified	Not Identified	“The surrogate shall consult with the attending physician and make decisions permitted herein that conform as closely as possible to what the patient would have done or intended under the circumstances, taking into account any evidence of the patient's religious, spiritual, personal, philosophical, and moral beliefs and ethics, to the extent these are known to the surrogate.” Ala. Code § 22-8A-11(c) (1997).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
AK	Not Identified	<p>“An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.” Alaska Stat. Ann. § 13.52.010(h) (West 2004).</p>	<p>“A surrogate shall make a health care decision in accordance with the patient's individual instructions or other advance health care directives, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.” Alaska Stat. Ann. § 13.52.030(g) (West 2008).</p>
AZ	<p>“In making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes.” Ariz. Rev. Stat. Ann. § 14-5312 (2014).</p>	<p>“The surrogate shall make health care decisions for the patient in accordance with the patient's wishes as expressed in the health care directive. If the health care directive does not provide sufficient information to know what the patient would want in a particular circumstance, the surrogate shall base these decisions on the surrogate's knowledge of the patient's values if those are known or can be determined to the surrogate's satisfaction.” Ariz. Rev. Stat. Ann. § 36-3203(C) (2009).</p>	Same as Agent
AR	Not Identified	<p>“An agent shall make a healthcare decision in accordance with the principal's individual instructions and other wishes to the extent known to the agent.” Ark. Code Ann. § 20-6-103(e)(1) (West 2013).</p>	<p>“A surrogate shall make a healthcare decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the principal's best interest.” Ark. Code Ann. § 20-6-106(A)(1)-(2)(A) (West 2013).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
CA	<p>“The conservator shall make health care decisions for the conservatee in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator shall make the decision in accordance with the conservator's determination of the conservatee's best interest.” Cal. Prob. Code § 2355(a) (West 1999).</p>	<p>“An agent shall make a health care decision in accordance with the principal's individual health care instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest.” Cal. Prob. Code § 4684 (West 1999).</p>	<p>“A surrogate, including a person acting as a surrogate, shall make a health care decision in accordance with the patient's individual health care instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest.” Cal. Prob. Code § 4714 (West 1999).</p>
CO	<p>“A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence” Colo. Rev. Stat. Ann. § 15-14-314 (West 2001).</p>	<p>“The agent shall act in accordance with the terms . . . in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent. If the medical durable power of attorney contains no directives . . . or if the principal's wishes are not otherwise known to the agent, the agent shall act in accordance with the best interests of the principal as determined by the agent.” Colo. Rev. Stat. Ann. § 15-14-506(2) (West 1992).</p>	<p>“The person selected to act as the patient's proxy decision-maker should be the person who has a close relationship with the patient and who is most likely to be currently informed of the patient's wishes regarding medical treatment decisions.” Colo. Rev. Stat. Ann. § 15-18.5-103(4)(a) (West 2010).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
CT	<p>“[T]he conservator of the person shall . . . make decisions in conformance with the conserved person's reasonable and informed expressed preferences.” Conn. Gen. Stat. Ann. § 45a-656(b)(4) (West 2014).</p>	Not Identified	<p>“If the wishes of the patient have not been expressed in a living will the attending physician shall determine the wishes of the patient by consulting any statement made by the patient directly to the attending physician and, if available, the patient's health care representative, the patient's next of kin, the patient's legal guardian or conservator, if any, any person designated by the patient in accordance with section 1-56r and any other person to whom the patient has communicated his wishes, if the attending physician has knowledge of such person.” Conn. Gen. Stat. Ann. § 19a-571(a) (West 2006) (pointing to the physician, in agreement with the next of kin, as the surrogate decision-maker).</p>
DE	<p>A guardian “shall take such action as the guardian objectively believes to be in the best interest of the person with a disability.” Del. Code Ann. tit. 12, § 3922(b)(3) (West 1993).</p>	<p>“[I]n accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. If the patient's instructions or wishes are not known or clearly applicable, the agent's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances.” Del. Code Ann. tit. 16, § 2503(f) (West 1996).</p>	<p>“The surrogate shall make a health-care decision to treat, withdraw or withhold treatment in accordance with the patient's individual instructions, if any, and other wishes to the extent known by the surrogate. If the patient's instructions or wishes are not known or clearly applicable, the surrogate's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances . . . If the surrogate is unable to determine what the patient would have done or intended under the circumstances, the surrogate's decision shall be made in the best interest of the patient.” Del. Code Ann. tit. 16, § 2507(b)(1)-(3) (West 2013).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
DC	<p>“[A] general guardian or limited guardian shall . . . make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward’s wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward’s best interests.” D.C. Code § 21-2047(a)(6) (2008).</p>	<p>An attorney in fact must follow “(1) The wishes of the principal as expressed in the durable power of attorney for health care; or (2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.” D.C. Code § 21-2206(c)(1)-(2) (1994).</p>	<p>“A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.” D.C. Code § 21-2210(b) (2012).</p>
FL	<p>A guardian must “consider the expressed desires of the ward as known by the guardian when making decisions that affect the ward.” Fla. Stat. Ann. § 744.361(13)(a) (West 2015).</p>	<p>A surrogate shall “make only health care decisions for the principal which he or she believes the principal would have made under the circumstances if the principal were capable of making such decisions.” Fla. Stat. Ann. § 765.205(1)(b) (West 2006).</p>	<p>“Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn . . . a proxy's decision to withhold or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.” Fla. Stat. Ann. § 765.401(2)-(3) (West 2003).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
GA	<p>“To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward. A guardian shall at all times act as a fiduciary in the ward's best interest and exercise reasonable care, diligence, and prudence” Ga. Code Ann. § 29-4-22(a) (West 2004).</p>	<p>“A health care agent shall exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant.” Ga. Code Ann. § 31-32-7(b) (West 2008).</p>	<p>“Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided.” Ga. Code Ann. § 31-9-2(b) (West 2010).</p>
HI	<p>“A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.” Haw. Rev. Stat. § 560:5-314(a) (West 2004).</p>	<p>“An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.” Haw. Rev. Stat. § 327E-3(g) (West 1999).</p>	<p>“The surrogate who has not been designated by the patient shall make health-care decisions for the patient based on the wishes of the patient, or, if the wishes of the patient are unknown or unclear, on the patient's best interest.” Haw. Rev. Stat. § 327E-5(g) (West 1999).</p>
ID	<p>“[T]he surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives, POST or wishes expressed by such person while the person was capable of consenting to his or her own health care.” Idaho Code Ann. § 39-4504(1) (West 2012) (applying substitute decision-making to guardians, health care agents, and surrogates).</p>	Same as Guardian	Same as Guardian and Agent

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
IL	<p>“Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances . . . Where possible, the guardian shall determine how the ward would have made a decision based on the ward’s previously expressed preferences, and make decisions in accordance with the preferences of the ward. If the ward’s wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward’s best interests as determined by the guardian.” 755 Ill. Comp. Stat. Ann. 5/11a-17 (2014).</p>	<p>“An agent that has accepted appointment must act in accordance with the principal's expectations to the extent actually known to the agent and otherwise in the principal's best interests.” 755 Ill. Comp. Stat. Ann. 45/2-7(b) (2014).</p>	<p>“A surrogate decision maker shall make decisions for the patient conforming as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient's personal, philosophical, religious, and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death. In the event an unrevoked advance directive . . . that document may be used as evidence of a patient's wishes . . . If the adult patient's wishes are unknown and remain unknown after reasonable efforts to discern . . . the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker.” 755 Ill. Comp. Stat. Ann. 40/2(b)(1) (2012).</p>
IN	<p>“An individual authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.” Ind. Code Ann. § 16-36-1-5(d) (West 2015).</p>	<p>“In making all decisions regarding the appointor's health care, a representative appointed under this section shall act as follows: (1) In the best interest of the appointor consistent with the purpose expressed in the appointment. [And] (2) In good faith.” Ind. Code Ann. § 16-36-1-7(h)(1)-(2) (West 1993) (amended by PROBATE—PERSONS—TRANSFERS, 2015 Ind. Legis. Serv. P.L. 81-2015 (S.E.A. 355) (WEST).</p>	Same as Guardian
IA	<p>“When a decision is made pursuant to this section to withhold or withdraw life-sustaining procedures, there shall be a witness present at the time of the consultation when that decision is made.” Iowa Code Ann. § 144A.7(2) (West 2014) (limiting the standard to life sustaining treatment).</p>	<p>“If the principal's desires are unknown, the attorney in fact has a duty to act in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.” Iowa Code Ann. § 144B.6(1) (West 1991).</p>	Same as Guardian

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
KS	“In making decisions on behalf of the ward, a guardian shall consider the expressed desires and personal values of the ward to the extent known to the guardian . . . A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence.” Kan. Stat. Ann. § 59-3075(a)(2) (West 2002).	“In exercising the authority under the durable power of attorney for health care decisions, the agent has a duty to act consistent with the expressed desires of the principal.” Kan. Stat. Ann. § 58-629(c) (West 2002).	Not Identified
KY	Not Identified	“When making any health care decision for the grantor, the surrogate shall consider the recommendation of the attending physician and honor the decision made by the grantor as expressed in the advance directive.” Ky. Rev. Stat. Ann. § 311.629(1) (West 1994).	“An individual authorized to consent for another under this section shall act in good faith, in accordance with any advance directive executed by the individual who lacks decisional capacity, and in the best interest of the individual who does not have decisional capacity.” Ky. Rev. Stat. Ann. § 311.631 (West 1994).
LA	“In discharging his duties, a curator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the interdict.” La. Civ. Code Ann. art. 392 (2000).	Not Identified	Not Identified
ME	“[A] guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest.” Me. Rev. Stat. tit. 18-A, § 5-312(3) (1995).	“An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent.” Me. Rev. Stat. tit. 18-A, § 5-802(e) (1995).	“A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith.” Me. Rev. Stat. tit. 18-A, § 5-805(f) (1995).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
MD	<p>A guardian may make health care decisions without court order when it is “determined by the court to be familiar with the personal beliefs, values, and medical situation of the disabled person.” Md. Code Ann., Est. & Trusts § 13-708(2)(ii)(2) (West 2014).</p> <p>&</p> <p>“Any person authorized to make health care decisions for another under this section shall base those decisions on the wishes of the patient and, if the wishes of the patient are unknown or unclear, on the patient's best interest.” Md. Code Ann., Health-Gen. § 5-605(c)(1)-(2)(vi) (West 2008).</p>	<p>An agent must “[a]ct in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.” Md. Code Ann., Est. & Trusts § 17-113(a)(1) (West 2010).</p>	<p>Same as Guardian See Md. Code Ann., Health-Gen. § 5-605(c)(1)-(2)(vi) (West 2008) (containing the decision-making standard that is applicable to both guardians and surrogates).</p>
MA	<p>“A guardian, to the extent known, shall consider the expressed desires and personal values of the incapacitated person when making decisions, and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.” Mass. Gen. Laws Ann. ch. 190B, § 5-309(a) (West 2012).</p>	<p>“[T]he agent shall make health care decisions: (i) in accordance with the agent's assessment of the principal's wishes, including the principal's religious and moral beliefs, or (ii) if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests.” Mass. Gen. Laws Ann. ch. 201D, § 5 (West 1990).</p>	<p>Not identified</p>
MI	<p>Not Identified</p>	<p>“A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.” Mich. Comp. Laws Ann. § 700.5509(b) (West 1998).</p>	<p>Not Identified</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
MN	“The guardian shall not consent to any medical care for the ward which violates the known conscientious, religious, or moral belief of the ward.” Minn. Stat. Ann. § 524.5-313(4)(i) (West 2005).	“In exercising authority under a health care directive, a health care agent has a duty to act in good faith. A health care agent or any alternate health care agent has a personal obligation to the principal to make health care decisions authorized by the health care power of attorney, but this obligation does not constitute a legal duty to act.” Minn. Stat. Ann. § 145C.07, Subd. 3 (West 2007).	Not Identified
MS	Not Identified	“An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.” Miss. Code. Ann. § 41-41-205(7) (West 1998).	“A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.” Miss. Code. Ann. § 41-41-211(6) (West 1999).
MO	“A guardian or limited guardian of an incapacitated person shall act in the best interest of the ward.” Mo. Ann. Stat. § 475.120(2) (West 2014).	“[A]n attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal.” Mo. Ann. Stat. § 404.714(1) (West 2006).	Not Identified

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
MT	Not Identified	Not Identified	“A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.” Mont. Code Ann. § 50-9-106(5) (2003) (dealing with life sustaining treatment).
NE	“When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law.” Neb. Rev. Stat. § 30-2628(a)(3) (2013).	“An agent has a duty “to make health care decisions (a) in accordance with the principal's wishes as expressed in the power of attorney for health care or as otherwise made known to the attorney in fact or (b) if the principal's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal's best interests, with due regard for the principal's religious and moral beliefs if known.” Neb. Rev. Stat. § 30-3418(1) (1992).	Not Identified
NV	“The guardian shall follow any provisions contained in the power of attorney for health care delineating the principal's wishes for medical and end-of-life care.” Nev. Rev. Stat. Ann. § 162A.800(2) (West 2009).	An agent must “act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest.” Nev. Rev. Stat. Ann. § 162A.310 (West 2009).	“A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the patient.” Nev. Rev. Stat. Ann. § 449.626(4) (West 1991) (limiting the standard to life sustaining treatment).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
NH	Not Identified	An agent “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.” N.H. Rev. Stat. Ann. § 137-J:6 (2015).	Not Identified
NJ	“The guardian of the ward shall exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the wishes of the ward are not ascertainable with reasonable efforts, the guardian of the ward shall exercise the ward's rights in a manner consistent with the best interests of the ward.” N.J. Stat. Ann. § 3B:12-56(d) (West 2005).	“[T]he health care representative shall seek to make the health care decision the patient would have made had he possessed decision making capacity under the circumstances, or, when the patient's wishes cannot adequately be determined, shall make a health care decision in the best interests of the patient.” N.J. Stat. Ann. § 26:2H-61(f) (West 1991).	Not Identified
NM	“A guardian shall make decisions “in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known.” N.M. Stat. Ann. § 45-5-312(3) (West 2009).	“An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest.” N.M. Stat. Ann. § 24-7A-2(E) (West 1995).	“A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.” N.M. Stat. Ann. § 24-7A-5(F) (West 1997).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
NY	“The surrogate shall make health care decisions: (i) in accordance with the patient's wishes, including the patient's religious and moral beliefs; or (ii) if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests.” N.Y. Pub. Health Law § 2994-d(4)(a)(i)-(ii) (McKinney 2011).	“[T]he agent shall make health care decisions: (a) in accordance with the principal's wishes, including the principal's religious and moral beliefs; or (b) if the principal's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the principal's best interests.” N.Y. Pub. Health Law § 2982(2) (McKinney 2004).	Same as Guardian
NC	Not Identified	“A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack capacity to make or communicate health care decisions.” N.C. Gen. Stat. Ann. § 32A-19(a1) (West) (dealing with mental health treatment).	Not Identified
ND	“Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.” N.D. Cent. Code Ann. § 23-12-13(3) (West 1995).	<p style="text-align: center;">Same as Guardian</p> <p style="text-align: center;">&</p> <p>“In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive.” N.D. Cent. Code Ann. § 23-06.5-03(2)(a) (West 2007).</p>	Same as Guardian

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
OH	<p>“[A] consent given pursuant to this section shall be valid only if it is consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment.” Ohio Rev. Code Ann. § 2133.08(3) (West 2011) (providing limited language for substitute decision making as it relates to life-sustaining treatment).</p>	<p>“[I]n exercising that authority, the attorney in fact shall act consistently with the desires of the principal or, if the desires of the principal are unknown, shall act in the best interest of the principal.” Ohio Rev. Code Ann. § 1337.13(A)(1) (West 2013).</p>	<p>“A decision to consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient shall be made in good faith.” Ohio Rev. Code Ann. § 2133.08(D)(1) (West 2011) (limiting the standard to life sustaining treatment).</p>
OK	Not Identified	<p>“If evidence of the declarant's wishes is sufficient, those wishes shall control. If there is not sufficient evidence of the wishes of the declarant, the decisions shall be based on the reasonable judgment of the individual so deciding about the values of the declarant and what the wishes of the declarant would be based upon those values.” Okla. Stat. Ann. tit. 63, § 3101.16 (West 2006).</p>	<p>“An individual making life-sustaining treatment decisions pursuant to the provisions of the Oklahoma Advance Directive Act for a declarant shall make such decisions based on the known intentions, personal views and best interests of the declarant. If evidence of the declarant's wishes is sufficient, those wishes shall control. If there is not sufficient evidence of the wishes of the declarant, the decisions shall be based on the reasonable judgment of the individual so deciding about the values of the declarant and what the wishes of the declarant would be based upon those values.” Okla. Stat. Ann. tit. 63, § 3101.16 (West 2006).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
OR	<p>“In making health care decisions, the health care representative has a duty to act consistently with the desires of the principal as expressed in the principal's advance directive, or as otherwise made known by the principal to the health care representative at any time. If the principal's desires are unknown, the health care representative has a duty to act in what the health care representative in good faith believes to be the best interests of the principal.” Or. Rev. Stat. Ann. § 127.535 (West 2012).</p>	Same as Guardian	Same as Guardian and Agent
PA	<p>“It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent.” 20 Pa. Cons. Stat. Ann. § 5521(a) (West 1999).</p>	<p>“In the absence of instruction, the health care agent shall make health care decisions that conform to the health care agent's assessment of the principal's preferences and values, including religious and moral beliefs. If the health care agent does not know enough about the principal's instructions, preferences and values to decide accordingly, the health care agent shall take into account what the agent knows of the principal's instructions, preferences and values, including religious and moral beliefs, and the health care agent's assessment of the principal's best interests.” 20 Pa. Cons. Stat. Ann. § 5456(5)(i)-(ii) (West 2006).</p>	<p style="text-align: center;">Same as Agent</p> <p>“[T]he authority and the decision-making process of a health care representative shall be the same as provided for a health care agent in section 5456 (relating to authority of health care agent).” 20 Pa. Cons. Stat. Ann. § 5461(c) (West 2006).</p>
RI	<p>“Every limited guardian or guardian with authority to make decisions with respect to the person of his or her ward shall exercise authority in the best interest of his or her ward.” R.I. Gen. Laws Ann. § 33-15-29 (West 1992).</p>	<p>“Your agent must act consistently with your desires as stated in this document or otherwise made known.” R.I. Gen. Laws Ann. § 23-4.10-2 (West 2006) (referencing an advance directive).</p>	Not Identified

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
SC	<p>“A person authorized to make health care decisions under subsection (A) of this section must base those decisions on the patient's wishes to the extent that the patient's wishes can be determined. Where the patient's wishes cannot be determined, the person must base the decision on the patient's best interest.” S.C. Code Ann. § 44-66-30(F) (1992).</p>	Same as Guardian	Same as Guardian and Agent
SD	<p>“A guardian shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person's best interests and exercise reasonable care, diligence, and prudence.” S.D. Codified Laws § 29A-5-402 (1995).</p>	<p>An “agent shall consider . . . the decision that the principal would have made if the principal then had decisional capacity, if known, and the decision that would be in the best interest of the principal.” S.D. Codified Laws § 59-7-2.5 (2007).</p>	<p>“Any person authorized to make a health care decision for an incapacitated person shall be guided by the express wishes of the incapacitated person, if known, and shall otherwise act in good faith, in the incapacitated person's best interest, and may not arbitrarily refuse consent. Whenever making any health care decision for the incapacitated person, the person available to consent shall consider the recommendation of the attending physician, the decision the incapacitated person would have made if the incapacitated person then had decisional capacity, if known, and the decision that would be in the best interest of the incapacitated person.” S.D. Codified Laws § 34-12C-3 (2007).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
TN	Not Identified	<p>“An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.” Tenn. Code Ann. § 68-11-1803(e) (West 2014).</p>	<p>“A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.” Tenn. Code Ann. § 68-11-1806(6)(D) (West 2004).</p>
TX	Not Identified	<p>“After consultation with the attending physician and other health care providers, the agent shall make a health care decision: (1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or (2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.” Tex. Health & Safety Code Ann. § 166.152(e)(1)-(2) (West 1999).</p>	<p>“A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.” Tex. Health & Safety Code Ann. § 166.039 (West 2015).</p>
UT	<p>“A surrogate acting under the authority of either Section 75-2a-107 or 75-2a-108 shall make health care decisions in accordance with: (a) the adult's current preferences, to the extent possible; (b) the adult's written or oral health care directions, if any; or (c) the substituted judgment standard.” Utah Code Ann. § 75-2a-110 (West 2008).</p>	Same as Guardian	Same as Guardian and Agent

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
VT	“The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers.” Vt. Stat. Ann. tit. 14, § 3069 (West 2009).	“The agent shall make health care decisions by attempting to determine what the principal would have wanted under the circumstances.” Vt. Stat. Ann. tit. 18, § 9711 (West 2009).	Not Identified
VA	“A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.” Va. Code Ann. § 64.2-2019(E) (West 2012).	An agent has a duty to “[a]ct in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest.” Va. Code Ann. § 64.2-1612(A)(1) (West 2012).	“Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known.” Va. Code Ann. § 54.1-2986(A)(7) (West 2010).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
WA	<p>“Before any person authorized to provide informed consent on behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.” Wash. Rev. Code Ann. § 7.70.065(1)(c) (West 2003).</p>	<p>Same as Guardian</p>	<p>Same as Guardian and Agent</p>
WV	<p>“A guardian shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person's best interests and exercise reasonable care, diligence, and prudence.” W. Va. Code Ann. § 44A-3-1(e) (West 2010).</p>	<p>“The medical power of attorney representative . . . shall make health care decisions: (1) In accordance with the person's wishes, including religious and moral beliefs; or (2) In accordance with the person's best interests if these wishes are not reasonably known and cannot with reasonable diligence be ascertained.” W. Va. Code Ann. § 16-30-9 (West 2000).</p>	<p>“Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person's best interests.” W. Va. Code Ann. § 16-30-8 (West) (noting the criteria necessary to become a surrogate decision-maker).</p>

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.

Health Care Decision-Making Authority: What is the Decision-Making Standard?

STATE	GUARDIANS*	HEALTH CARE AGENTS**	SURROGATES***
WI	A guardian must “[m]ake diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.” Wis. Stat. Ann. § 54.25(3)(b) (West 2008).	“The health care agent shall act in good faith consistently with the desires of the principal as expressed in the power of attorney for health care instrument or as otherwise specifically directed by the principal to the health care agent at any time.” Wis. Stat. Ann. § 155.20(5) (West 2012).	Not Identified
WY	Not Identified	“An agent shall make a health care decision in accordance with the principal's advance health care directive and other wishes to the extent known to the agent.” Wyo. Stat. Ann. § 35-22-403(f) (West 2005).	“A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest.” Wyo. Stat. Ann. § 35-22-406(f) (West 2007).

*A **guardian** is a court-appointed adult who has the duty of making health care decisions for an individual when incapacity occurs.

A **health care agent is an adult who has been appointed by an individual to make health care decisions on his or her behalf when incapacity occurs.

***A **surrogate** is an adult family member who has priority over other family members in making health care decisions for an individual when incapacity occurs.