

## Choosing Among Surrogates of the Same Priority

When a patient lacks decision-making capacity, VA practitioners must obtain informed consent for treatment from an authorized surrogate. At times, surrogates of the same priority level may disagree over a proposed treatment. What should clinicians do when surrogates of the same priority level disagree?

### Priority of Surrogates Under VA Policy

VA policy on informed consent lists potential surrogates in the following order of priority: health care agent, legal guardian or special guardian, next-of-kin, and close friend.<sup>1</sup> *Next-of-kin* (age 18 or older) are also prioritized: spouse, child, parent, sibling, grandparent, grandchild. The appropriate person to make decisions on the patient's behalf is the one highest in the order of priority. However, there may be times when more than one person of the same priority is available to act as surrogate, for example, when the patient has several adult children.

### Building Consensus When There Is More Than One Surrogate

Adult children of a veteran may have differing views about what the patient would want or whether the recommended treatment is in the patient's best interest. Often disagreements occur when the treatment being considered involves significant risks or emotionally charged considerations, such as major surgery or decisions to withhold or withdraw life-sustaining treatments. When practicable, all surrogates of the same priority level who wish to be involved should be included in the informed consent discussion. If someone in the group objects to the proposed treatment, those concerns must be addressed. The practitioner should attempt to resolve the conflict before proceeding and seek assistance from the facility's ethics program if the decision is particularly contentious.

### Identifying the Most Appropriate Surrogate

When it is not possible to reach consensus, the practitioner must choose from among surrogates of the same priority the one he or she believes is best able to speak for the patient. The rationale for choosing that individual over others must be documented in the health record. For example, when a patient's adult children disagree, the treating practitioner might select the child with whom the veteran lived prior to hospitalization, or the one who routinely accompanied the patient on clinic visits, or the one in whom the patient has expressed trust. If the choice is not clear, the practitioner must consult with the local ethics program and/or Regional Counsel.

Practitioners should strive for consensus when dealing with surrogates of the same priority level. If all cannot agree, the practitioner should choose a surrogate whom the practitioner has reason to believe will make decisions consistent with the patient's known wishes and best interests.

### Notes

1. See VHA Handbook 1004.1, [Informed Consent for Clinical Treatments and Procedures](#).

If you have questions or comments, please contact the Ethics Center at [vhaethics@va.gov](mailto:vhaethics@va.gov)