



Justice Center for the
Protection of People
with Special Needs

Surrogate Decision-Making Committee

An Overview

March 28, 2024

Presentation for Nursing Home Industry

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Overview



SDMC Objective

- Decision-making for non-emergency major medical and end-of-life care
- On behalf of qualifying people who:
 - Lack the capacity to make their own medical decisions, and
 - Have no legally authorized decision-maker
- Alternative to the court system

Benefits of SDMC

Free

Timely

Inclusive

Respects
Legal
Rights

Protects
Autonomy

Major Medical Requests (MHL Article 80)

Medical, surgical, dental, or diagnostic interventions/procedures

- Use of general anesthesia
- Significant invasion of bodily integrity
- Significant risk
- Chemotherapy
- Hospice
- Any other treatment/procedure for which informed consent required by law

Exclusions to SDMC Services

- Routine diagnostics / treatment / medication administration
- Dental care performed under a local anesthetic
- Emergency medical treatment
- Electroconvulsive Treatment (ECT)
- Sterilization or termination of pregnancy
- Withdrawal or discontinuation of life-sustaining treatment except as provided in the Health Care Decisions Act

End of Life Care Requests

(SCPL Article 17-A § 1750-b)

Withdrawal or withholding of life sustaining treatment for persons with an intellectual or developmental disability

- Do Not Resuscitate (DNR) / Do Not Intubate (DNI) Order
- Restrictions on Artificial nutrition and hydration
- Use of antibiotics, vasopressors, chemotherapy, blood transfusions
- Comfort care with Hospice services
- Any other treatment the physician deems life-sustaining



Lack of Ability to Consent to, or Refuse, Treatment

A person lacks the ability to consent or refuse major medical treatment if they cannot:

- Understand the proposed medical treatment
- Understand the risks, benefits and alternatives
- Make an informed decision about the proposed treatment in a knowing and voluntary manner

Legally Authorized Surrogate

Person who is legally-authorized to make the decision
and is available and willing to do so

Authorized Surrogates in MHL Article 80:

- ✓ Parent
- ✓ Spouse
- ✓ Adult child
- ✓ Court of Competent Jurisdiction

OPWDD Legally Authorized Surrogates

1. Lawfully empowered Guardian/ Health Care Proxy
2. Actively Involved Spouse
3. Actively Involved Parent
4. Actively Involved Adult Child
5. Actively Involved Adult Sibling
6. Actively Involved Adult Family Member
7. Consumer Advisory Board for Willowbrook Class Individuals or SDMC

Eligibility for SDMC Decisions

Major Medical Care	End of Life Care
<p>Any current or former service recipient at a program licensed, funded or operated by:</p> <ul style="list-style-type: none">• Office for People with Developmental Disabilities (OPWDD)• Office of Mental Health (OMH)• Office of Addiction Services & Supports (OASAS)	<p>A diagnosis of Intellectual/ Developmental Disability and</p> <ul style="list-style-type: none">• An illness or injury from which there is no recovery and which reasonably will cause death within 1 year;• permanent unconsciousness; or• ongoing medical condition with a requirement of life-sustaining care that will cause an extraordinary burden.

SDMC Continuing Jurisdiction

SDMC Form 275 (Rev. 06/19)

John Doe

2024030000

Declaration No.
(SDMC Use Only)

IMPORTANT NOTIFICATION

SDMC CONTINUING JURISDICTION

Please be advised that Mental Hygiene Law Section 80.03(b) provides that **the Surrogate Decision-Making Committee may continue to provide surrogate decision-making to the patient, if needed, pursuant to Mental Hygiene Law Article 80 regardless of a discharge or change in residential status.**

You may wish to make a copy of this notice available to any other receiving facility should this patient be discharged to such an alternate facility or the community in the future. If you have any questions concerning this notice or future applications on behalf of this patient, please contact the Surrogate Decision-Making Committee Program at (518) 549-0328.

DO NOT PURGE -- -- -- DO NOT PURGE



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Application Process



Surrogate Decision-Making Committee Services

SECTIONS

What Is SDMC?

Who Is Eligible?

SDMC Panels and Hearings

Apply for a Major Medical Care Determination

What is SDMC?

The Surrogate Decision-Making Committee (SDMC) program is an alternative to the court system and is authorized to provide consent for non-emergency major medical treatment and end-of-life care decisions for people who qualify. Our program consists of volunteer panels that make the decision, providing for quicker, more accessible, cost-free, and personalized decision on behalf of individuals receiving services.

If you would like to learn more about the medical decisions that are covered under SDMC, eligibility criteria, and which forms to complete when requesting a decision, please review [the SDMC Services Video](#).

What decisions can be made?

Declarant

- The person who submits the declaration
- May be any health services provider, the director of the person's residential facility, a relative, etc.
- Someone who is familiar with the person's
 - ✓ Abilities
 - ✓ Family status
 - ✓ Medical needs

Declaration Forms for Major Medical Treatment

Declaration for Surrogate Decision-Making (SDMC Form 200)

Completed by the Declarant*

Certification on Capacity (SDMC Form 210)

Completed by the Licensed Psychologist or Psychiatrist

Certification of Medical Need (SDMC Form 220-A)

Completed by the Physician

Related Medical Information (SDMC Form 220-B)

Declaration Forms for End of Life Care

Declaration for End of Life Care (SDMC Form 300)

Completed by the Declarant*

Certification on Capacity for EOL Care (SDMC Form 310)

Completed by the Attending Physician and the Consulting Physician, or a NYS Licensed Psychologist

Attending and Concurring Certification - EOL Care (SDMC Form 320-AB)

Completed by the Attending and Concurring Physician

Related Medical Information for EOL Care (SDMC Form 330)

Capacity Certification for End of Life Care

Attending Physician and a Consulting Physician or NYS-licensed psychologist must certify that the person does not have the capacity to make this decision.

One of these practitioners must be

- Employed by a Developmental Disability Services Office; or
- Have been employed for a minimum of 2 years to render care and services in a program run by OPWDD; or
- Been approved by the Commissioner of OPWDD

SCPA 1750-b(4)(b)



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Attending and Concurring Physician Certification for End of Life Care

Two physicians must certify that the person has:

- A terminal condition; or
- Permanent unconsciousness; or
- Requires life-sustaining treatment, is irreversible, and will continue indefinitely.

SCPA 1750-b(4)(b)



Physicians Certify the Extraordinary Burden of Continued Life Sustaining Treatment

By considering:

- The person's medical condition other than ID/DD
- The impact of the LST on the person's quality of life
- The degree of pain the person may experience with or without treatment; and
- The person's chance of recovery as well as the risks and benefits associated with continued treatment

Artificial Nutrition and Hydration are Considered Separately

To withdraw or withhold artificially provided nutrition or hydration, two physicians must also agree there is:

- No reasonable hope of maintaining life

OR

- The artificially provided nutrition and/or hydration poses an extraordinary burden

SCPA 1750-b(4)(b)(iii)



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Comfort Care

- Medical care and treatment provided to relieve pain and reduce suffering
- Does not include further withholding or withdrawal of life sustaining treatment beyond what is explicitly written in the SDMC consent

Case Processing

- SDMC Nurse reviews the Declaration and requests clarification and/or additional information
- Responsiveness to this process ensures a hearing is scheduled as soon as possible



SDMC Process



SDMC Hearing Process



Hearing

- Person needing consent must attend
- Held by video conference or in a convenient location for the person
- Requires private location
- Testimony is provided by care providers
- Hearing is recorded
- Decision issued at hearing

Hearing Participants

Declarant,
Nurse,
Providers

Person

Four Panel
Members

Mental Hygiene
Legal Services
(MHLS)

Local SDMC
Representative

Any Surrogates
and
Correspondents

Three Decisions

1. Capacity

- Does this person have the capacity to understand the risks, benefits, and alternatives to this medical procedure?

2. Legally Authorized Surrogate

- Is there a legally authorized, willing, and available surrogate who can make this decision?

3. Best Interests

- Is this procedure in the best interests of this person?

The SDMC Panel

Panel relies on the Declaration, as well as hearing testimony on each consideration. Panel members

- Will interview the person in need of a decision
- Will ask for
 - Information about any potential surrogates
 - a description of the requested procedure/treatment,
 - risks/benefits
 - potential impact on person's quality of life



Major Medical Consent

- Valid for 60 - 365 days
- Not issued to a specific health care provider
- Additional consents are not required
- Not specific to the type of anesthesia
- Clause allowing a physician to move forward with related procedures

Issued on Form 280-A



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SDMC Decision for End of Life Care

- Decision is issued in writing
- The decision-maker is identified as SDMC
- No expiration date
- Consent remains in effect as long as the person continues to meet the criteria for capacity and qualifying medical condition

Issued on Form 380-A



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Medical Orders for Life Sustaining Treatment (MOLST) Checklist

- MOLST Checklist for People with IDD must be completed when any decision is made to withdraw or withhold Life-Sustaining Treatment
- MOLST Checklist ensures that the HCDA process was followed and notifications are complete
- SDMC Decision should be attached to the MOLST Checklist

MOLST Form

- Recommended, not required
- Completed after SDMC process
- Must match SDMC consent
- Some decisions on the MOLST may be deferred (ex: artificial nutrition and hydration)
- No option to implement a trial period

Summary

- Call SDMC if you have any questions about eligibility, the forms, consent, or related procedures
- Participation in the preparation of the SDMC Declaration and Case Processing are essential
- Providers should be prepared to offer convincing testimony at the hearing

Questions?



Contact Information

SDMC Phone	1-518-549-0328
SDMC Fax	1-518-549-0460
Provider Questions	SDMC@justicecenter.ny.gov
Volunteer Questions	SDMCVolunteers@justicecenter.ny.gov
Report Abuse or Neglect	1-855-373-2122

<http://www.justicecenter.ny.gov/sdmc>



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