



Oifig an Stiúrthóra Náisiúnta
Folláine, Comhionannas, Aeráide & Sláinte Dhomhanda
Feidhmeannacht na Seirbhíse Sláinte
Seomra 1.51

Urlár 1

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30th May 2025

Réada Cronin
Dáil Éireann
Leinster House
Dublin 2

E: reada.cronin@oireachtas.ie/ CC: PQuestions@hse.ie

Dear Deputy Cronin,

Re: PQ 24215/25

Question: To ask the Minister for Health the rights parents or guardians have to be consulted and involved in medical decisions during the decision-making representative application process; if supports are available to families struggling with legal costs regarding same; and if she will make a statement on the matter.

I refer you to the above representation you submitted in relation to the Assisted Decision-Making (Capacity) Act 2015.

I have examined the matter and the following outlines the position.

The Assisted Decision-Making (Capacity) Act 2015 (herein referred to as the 2015 Act) establishes a new legal framework for supported decision-making in Ireland. It allows people to make legal arrangements on how they can be supported to make decisions about their personal welfare, property and affairs. One of the new arrangements under the 2015 Act is a decision-making

representative appointed under a decision-making representation order. The 2015 Act applies to those who are 18 years or older.

Decision-making representative

A decision-making representative is appointed by the Circuit Court to act on a person's behalf or to make certain decisions for them. This may include healthcare decisions, but can also include property and affairs decisions.

There are a number of people who can make an application directly to court for a declaration about a person's capacity. This list does not include parents or guardians, unless they are an existing decision supporter for the person. Therefore parents and guardians must seek permission of the Court first before making an application.

As part of the process of applying for a decision-making representation order, a number of notice parties must be informed of the application. Notice parties for the application are:

- the spouse or civil partner of the Relevant Person,
- the cohabitant of the Relevant Person,
- a child of the Relevant Person who is aged of 18 years or more, and
- Any of the below current decision-supporters for the Relevant Person:
 - Decision-Making Assistant,
 - Co-Decision-Maker,
 - Decision-Making Representative,
 - An Attorney appointed under an Enduring Power of Attorney,
 - Designated Healthcare Representative.

The applicant specifies the types of decisions which need to be made on a person's behalf. The court will make an order which sets out the specific decisions that the decision-making representative can make. This may or may not include medical decisions. A decision-making representative cannot make decisions in relation to the withdrawal of life sustaining treatment, restraint or detention.

If a specific medical decision needed to be made while an application was being made for a decision-making representation order, the [HSE National Consent Policy \(2022\)](#) should be followed. Add the relevant section here.

If the person lacks capacity, and the will and preference of the person is not ascertainable, or is unclear, the following guiding principles of the 2015 Act should be considered:

- That an intervener when making an intervention: "shall act at all times in good faith and for the benefit of" the person; and
- That the intervener when making an intervention: unless it is not appropriate or practicable to do so, consider the views of anyone the person has named to be consulted, or any decision supporter appointed under the 2015 Act (those who should be consulted).

Under the 2015 Act, healthcare professionals may also consider the views of:

- Any person engaged in caring for the relevant person,
- Any person who has a bona fide interest in the welfare of the person, or
- Healthcare workers.

The views of those with a close ongoing personal relationship with the person should, unless it is not appropriate or practicable to do so, be sought and considered in those situations where it is not

possible to ascertain the person's will and preference. When consulting others you should give them the relevant information about the decision to be made (HSE National Consent Policy, pg 44).

The HSE National Consent Policy (pg 37) states that:

No other person such as a family member, "next of kin", friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult person who lacks capacity to consent unless they have specific legal authority to do so (This has always been the case). The person may have a formally appointed decision supporter under the Assisted Decision-Making (Capacity) Act 2015 with this legal authority.

Legal costs

With respect to the question on legal costs for DMRs the Legal Aid Board can provide support to families who are applying for a decision-making representation order. If a family member is applying for legal advice or legal aid for representation in instituting or appearing in a Capacity Application, the following is taken into consideration:

- They must satisfy the means test for legal services. If the person does not satisfy the means test the Legal Aid Board can not provide advice or representation in the proceedings.
- Their annual disposable income must be €18,000 or less and their capital assets must not exceed €100,000 (excluding the house they live in).
- A contribution will be payable by persons in this category towards legal aid. This can range from €130.00 up to €5,000. The amount of contribution will depend on their annual disposable income and the value of their capital assets (excluding the house they live in).

Further information on Legal Aid for both families and the person that the application is being made for can be found on the [Legal Aid Board website](#).

If you require any further information or clarification please do contact us.

Yours sincerely,

Caoimhe Gleeson
General Manager
HSE National Office for Human Rights and Equality Policy
Office of the National Director
Wellbeing, Equality, Climate and Global Health