



HEALTH CARE DECISIONS



éducaloi

Information Empowers

About Éducaloi

Éducaloï explains the law to Quebecers in language that is easy to understand.

Important Notice

The law changes. This guide is up to date to September 2021. However, this guide takes into account changes to tutorships, curatorship and protection mandates that will come into force in 2022.

The law is always changing. Visit Éducaloï's website at educaloi.qc.ca/seniors to see if there is a more recent version of this guide.

This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a notary or a lawyer. This guide applies only in Quebec.

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The Right to Accept or Refuse Health Care

The general rule concerning healthcare decisions is that people 14 and over have the right to make their own choices. They're free to accept or refuse any care offered to them. This is called "consent to care." It is based on the principle of respect for people's autonomy, integrity and control over their bodies.

Unfortunately, there could come a time when you're not able to consent to care. However, you can make decisions before this happens so you have a say about your body and well-being. By expressing your wishes in advance, they will be respected.



Important! The information in this guide applies to people **18 years and older**.

To learn more about the rules for those under 18 concerning consent to care, visit the [Health > Health Care](#) section of Éducaloi's website.

What Is “Health Care”?

Health care includes medical and psychological treatments. Here are examples of the types of health care:

- exams
- specimen collection
- treatments
- assessments
- hospitalization
- medication
- placement in a healthcare institution, such as a Centre d’hébergement et de soins de longue durée (CHSLD or long-term care centre)
- cosmetic surgery for a deformity or after a burn or accident
- feeding and hydration
- blood tests

Important! Some types of care are necessary for a person’s health, but others aren’t (such as tattoos and most esthetic treatments).

The information in this guide applies to **care required by a person’s state of health.**



Healthcare Professionals Must Get the Patient's Consent

Healthcare professionals must check whether the patient accepts or refuses the care suggested.

They must check this for every type of care before giving it, and while the care is being given. The patient can withdraw consent at any time. A patient can usually give consent orally. In some cases, consent can be implied. This means it can be assumed from things a patient who is collaborating voluntarily with care says or does. However, for certain types of care, like surgery and anesthesia, consent must be in writing.

Specific Situations

In some situations, the medical team can give treatment without the patient's consent:

- To save a patient's life in an emergency, if the patient can't express consent.
- If the patient's mental state presents a danger to the patient or to other people.

Outside these specific situations, healthcare professionals must make sure the patient gives free and informed consent. They must also make sure the patient has the capacity to consent.

Consent Must Be Free

“Free” consent means patients have complete freedom to accept or refuse the care suggested. For example, families or the medical team can’t put pressure on patients to consent.

Consent Must Be Informed

“Informed” consent means patients must be well informed before accepting or refusing care.



In other words, patients must receive essential information about their state of health and the type of care offered. Healthcare professionals must provide this information in clear language, and they must also answer the patient’s questions.

Patients have a right to this information:

- their state of health (illness, injury or other problem requiring care)
- type of care suggested
- purpose of the care
- most common risks associated with the care
- serious risks associated with the care, even if they’re rare
- possible impact of refusing care
- other available treatments and their risks
- who will be providing the care

The Patient Must Be Able to Consent

Healthcare professionals must ensure patients have the capacity to consent to care. This means patients must be able to

- reason,
- understand the nature of the illness and the care suggested,
- understand the impact of their choices given their situation, and
- express their decisions

However, there are grey zones where the patient's capacity to consent to care isn't obvious. A clinical evaluation can determine whether the patient has this capacity.

“Incapacity” doesn't always mean being unable to consent to care.

People declared incapacitated by a court don't necessarily lose the power to consent.

People can be declared incapacitated by a court if their state of health prevents them from caring for themselves or managing their affairs. In these situations, someone is named to take care of them (for example, a tutor or mandatary).

Even when someone has been named to look out for their interests and take care of their needs, patients can accept or refuse health care if health professionals decide they have the capacity to consent.



Ways to Express Your Wishes in Advance

You might find yourself in a position where you are unable to consent to your own health care.

To make sure your wishes are respected and to guide loved ones in making decisions in your best interest, you can express your choices in advance. This can be done in different ways. They are explained in the following pages.

Documents Expressing Wishes

You can express wishes for health care using one or more of these documents:

- advance medical directives
- protection mandate
- living will

These documents will help your loved ones follow your wishes. If you can't consent to care, the person you authorized will make these decisions for you. That person must try to respect wishes you expressed in advance. If you've prepared more than one of these documents, make sure they don't contradict each other.

You must prepare these documents while you can still understand the impact of your decisions.

If you have questions, talk to your doctor or another healthcare professional before preparing your documents. This will help you better understand

- the situations in which you might be unable to consent to care, and
- the types of health care you can accept or refuse in advance.

Important! You can't request **medical aid in dying** ahead of time in advance medical directives, protection mandates or living wills. To learn more about the special rules for medical aid in dying, see the Health > Health Care > End-of-Life Care section of Éducaloi's website.



Advance Medical Directives

Advance medical directives are a document you can prepare now to accept or refuse certain treatments in the future.



Your directives will apply if you become unable to consent to care and if you're in one of these situations:

- You're suffering from a serious and incurable medical condition, and you're at the end of life.
- You're in a coma or are permanently unconscious, and there's no possibility that you'll regain consciousness and your mental abilities.
- You're in an advanced state of dementia that seriously compromises your intellectual abilities and no improvement is expected.

Directives Speak for You

If you become incapable of consenting to health care and you fall under one of the three situations described above, the medical team will check whether you prepared advance medical directives. If you did, the team must follow the wishes in your directives. Advance medical directives “speak” for you, and it's not necessary for another person to make healthcare decisions for you.

You can accept or refuse these types of care in advance medical directives:

 no	 yes	My Directives
<input type="checkbox"/>	<input type="checkbox"/>	cardio-pulmonary resuscitation (CPR)
<input type="checkbox"/>	<input type="checkbox"/>	ventilator-assisted breathing or breathing assisted by another device
<input type="checkbox"/>	<input type="checkbox"/>	kidney dialysis
<input type="checkbox"/>	<input type="checkbox"/>	forced or artificial feeding
<input type="checkbox"/>	<input type="checkbox"/>	forced or artificial hydration

What if your wishes aren't respected?

If the medical staff isn't respecting your advance medical directives, a person close to you can ask a court to order the staff to follow them.

Preparing Your Directives

You can get a free form from the Régie de l'assurance maladie du Québec (RAMQ). It is called *Advance Medical Directives in Case of Incapacity to Consent to Care*.

The form has instructions on how to fill it out. You must then sign it in front of two witnesses who are at least 18 years old. You don't have to tell the witnesses what is in your directives.

You can also ask a notary to help you prepare directives.

As long as you still have the capacity to consent to health care, you can always change or cancel your directives.

Filing Your Directives With the Advance Medical Directives Register

To ensure that your directives can be accessed by medical professionals when needed, it's strongly recommended that you file them with the Advance Medical Directives Register of the Régie de l'assurance maladie du Québec (RAMQ).

The RAMQ form has instructions on how to file them in the Register. You can also ask a notary to do this for you.

It's also a good idea to send a copy of your directives to your doctor.

Directives Accessible When Needed

Medical teams in hospitals, clinics and other healthcare institutions can directly access the RAMQ's register to check if you have directives.

But they won't be able to do this if your doctor is the only person who has a copy.



Protection Mandate

A protection mandate lets you choose ahead of time one or more trusted people to care for you and manage your affairs if a court finds you are incapacitated.

Your protection mandate can state your wishes concerning health care, including the types of care you want or don't want.

If you become incapacitated, your protection mandate must be activated (“homologated”) by a court. The person named in your protection mandate must follow your wishes as far as possible.

The protection mandate used to be known as a “mandate given in anticipation of incapacity.” It goes by a different name now, but it's still the same document.

If Your Wishes Aren't Respected

If the person taking care of you and your affairs (the “mandatary”) isn't doing a proper job and isn't following your wishes, any person concerned with your well-being can report the situation to a government agency called the Curateur public (public curator). A court can also take responsibilities away from the mandatary.

As of 2022, your protection mandate must say to whom the mandatary must report and how often these reports must be made.

Preparing a Protection Mandate

You can ask a notary to draw up your protection mandate. In this case it will be placed in the register of the Chambre des notaires du Québec (notaries' association). A notary can provide personalized legal advice when preparing your mandate. There's a fee for this.

You can also prepare your own protection mandate and sign it in front of two witnesses. The public curator has a free form you can use. It comes with a brochure with explanations. To find the form and brochure, go to the public curator's website. The website is listed in the Resources section at the end of this guide.

A lawyer can also prepare a protection mandate for you. In this case, your mandate will be registered in the Register of Wills and Mandates of the Barreau du Québec (Quebec bar). A lawyer can give you legal advice about your protection mandate. There's a fee for this.

To learn more about protection mandates, see Éducaloi's website articles and guide at www.educaloi.qc.ca/seniors.

Conflict Between Advance Medical Directives and a Protection Mandate

If your protection mandate doesn't say the same thing as your advance medical directives, your advance medical directives will be followed, even if your protection mandate is more recent.



Living Will

A living will is another way to indicate health care you want or don't want in cases where you're unable to make decisions. It expresses your wishes to your loved ones and the medical team, in particular regarding end-of-life care. If you're unable to consent to your health care, the person making decisions for you must respect your wishes as much as possible.

A living will doesn't have legal requirements like advance medical directives and protection mandates. In other words, there aren't any specific rules to follow when making it. You can prepare it on your own, with or without witnesses. It's a good idea to sign and date it.

Make sure your loved ones know about your living will and understand your wishes.

Your Will and Your Living Will: Different Documents

It's important not to confuse a living will with a real will, which identifies who inherits from you after you die.



Your Documents Are Ready

When your documents are ready, it's important to let your loved ones know about your wishes and to update them regularly.

- It's a good idea to give a copy of your documents to a close family member or to the person who'll be making the decisions for you. (Refer to the section *If There Are No Advance Directives or They Don't Apply* on page 19.)
- You can also give a copy of your advance medical directives and your living will to your doctor.
- Reread your documents regularly to make sure they still reflect your needs and wishes.

You can always modify or cancel your documents if you change your mind.



Talk to Your Doctor

You can talk to your doctor about the various documents for expressing your wishes about health care you want or don't want (advance medical directives, protection mandate and living will). You can give your doctor a copy of these documents.

You can also talk to your doctor about your state of health, the care you might need and your preferences concerning treatments.

Forms to Plan Your Care

You can plan some of your care with your doctor, especially if your situation is likely to lead to a deterioration of your health or level of independence.

Your doctor will indicate this care plan on a form often referred to as “Levels of Medical Intervention” (LMI). It specifies which of the four “levels” of care you want, from prolonging life by any means to just providing “comfort care.” The form must be updated regularly, and every time your state of health changes.

The form is kept in your medical record. It's used mostly by healthcare professionals and indicates that the doctor and patient have talked about health care. The form lets the medical team know the level of care you want to receive.

Important! Even if you've filled out a LMI form, the medical team must still get your consent, or the consent of the person who can make decisions for you, **before** administering care.



Talk to Your Loved Ones

You can make your wishes known to people close to you informally, by speaking with them to explain your thoughts and choices.

This way, people close to you will be aware of your wishes and know what decisions to make if you can't choose for yourself in the future.

After Your Die: Donating Organs or Your Body

You can agree to donate your organs or your body after you die. You can let your doctor know about this decision.

Organ Donation

There are several ways to donate:

- Complete the form *Consent to Organ and Tissue Donation* available from the Régie de l'assurance maladie (RAMQ).
- Sign an organ donation sticker and place it on the back of your health insurance (medicare) card.
- Ask a notary to include your consent or refusal to donate your organs in your protection mandate or your will. Your consent (or refusal) will then be entered in the Consent Registry for Organ and Tissue Donations of the Chambre des notaires du Québec (notaries' association).
- Express your decision in writing, or orally in front of two witnesses.

Your Wishes About Organ Donation Aren't Known at Death

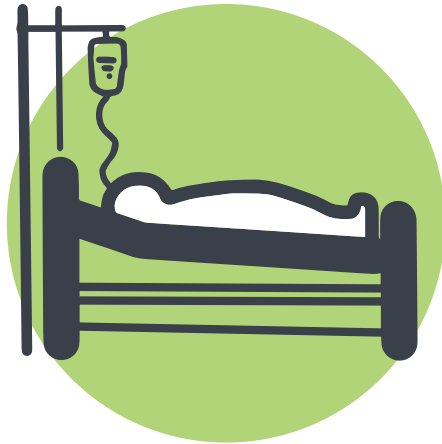
The person authorized to consent to health care on your behalf can authorize the donation of your organs after you die.

Giving Your Body to Science

People can give their bodies to science after they die for teaching or medical research.

Here is how to do this:

- Get a donor card. You must keep this card with you or with your important documents. (To learn how to get this card, see the Resources section at the end of this guide.)
- Ask a notary to include your consent to donating your body to science in your protection mandate or will.



When the Patient Can't Make Healthcare Decisions

In some cases, patients can't consent to health care. This could happen, for example, if they're unconscious after an accident or if an illness prevents them from understanding the information they receive and the impact of their decisions.

The law has rules about who can decide for the patient in these situations. The law generally favours the patient's autonomy and respect for their wishes, even when they can no longer make decisions.

If the Patient Has Advance Medical Directives

If the patient becomes unable to consent to health care and falls under one of the three situations where medical directives apply (see Advance Medical Directives on page 8), the medical staff must check whether the patient has prepared advance medical directives.

If the patient has prepared directives, the medical team must follow them.



There Are No Directives or They Don't Apply

The medical team must get the consent of a person authorized to make decisions for the patient in these situations:

- The patient hasn't prepared advance medical directives.
- The patient has prepared advance medical directives, but they don't apply (see Advance Medical Directives on page 8).

Of all the people authorized by law, only one can make a decision for the patient. This person is chosen based on this order of priority:

1. the person's legal representative, for example, a mandatory appointed in a protection mandate that has been activated ("homologated") by a court, or the patient's tutor
2. the patient's spouse (married, civil union or common-law spouse)
3. a close relative or a person who shows a special interest in the patient

How Someone Else Decides for the Patient

The person authorized to consent to or refuse health care must base decisions solely on the patient's interest. This means respecting wishes the patient expressed in advance as much as possible, whether in a protection mandate, living will or conversations with those close to the patient.

The authorized person can also consult the patients' medical records and talk to the doctor to get all the information needed to make a decision.

When making a decision, the authorized person must also consider these factors:

- whether the care is beneficial and appropriate
- whether the care involves too high a risk for the patient

Resources

More Information About the Law and Your Rights

Éducaloi

educaloi.qc.ca

See also: educaloi.qc.ca/seniors

Community Justice Centres (legal information clinics)

www.justicedeproximite.qc.ca/en/

Advance Medical Directives

Régie de l'assurance maladie du Québec (RAMQ)

To get a form: 1-800-561-9749 (toll-free)

www.ramq.gouv.qc.ca/en/citizens/health-insurance

Scroll down to “Personal decisions.” Then click on “Issue my directives in case of incapacity.”

General Health Information

www.quebec.ca/en/health

Protection Mandate

Quebec's Curateur public (public curator)

- 514-873-4074
- 1-844-532-8728 (toll-free)
- www.curateur.gouv.qc.ca/cura/en

To get the protection mandate form, see the section “Preparing your protection mandate.”

Find a Notary

Chambre des notaires du Québec (notaries' association)

You can search based on language, region, accessibility of the notary's office and whether legal aid cases are accepted.

<https://trouverunnotaire.cnq.org/en/find-a-notary.html>

Organ Donations

To get a consent form or sticker to place on the back of your health insurance card:
www.quebec.ca/en/health

Click on “Blood, tissue and organ donation.” Next, click on “Organ and tissue donation” and download the form “Consent to organ and tissue donation” under the heading “Form.”

Donating Your Body to Science

Get a donor card: www.quebec.ca/en/health

Click on “Blood, tissue and organ donation.” Next, click on “Donating your body to science”, then on “Procedure.” Under the section “Signify your assent”, click on the link “Online order form.”

File a Complaint About Health and Social Services

Service Quality and Complaints Commissioner

www.quebec.ca/en/health/health-system-and-services

Click on “Rights, recourses and complaints.” Then click on “The Health and Social Services Network Complaint Examination System.” Scroll down to “Steps involved in filing a complaint.”

Centres d’assistance et d’accompagnement aux plaintes (assistance and support centres, or CAAP)

1-877-767-2227

www.quebec.ca/en/health/health-system-and-services

Click on “Rights, recourses and complaints” and then click on “The Health and Social Services Network Complaint Examination System.” Scroll down to “Centre d’assistance et d’accompagnement aux plaintes (CAAP).”



OUR LIVES AS CITIZENS

The law is at the heart
of life in society.
So knowing your rights
and responsibilities is key.



THE LAW IS EVERYWHERE

It's part of everyday situations,
not just conflicts.



HANDLE WHAT COMES YOUR WAY

By explaining the law, Éducaloi helps
Quebecers make informed decisions.

Éducaloï is there to help all Quebecers!



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