

Maryland's Health Care Decisions Act

Maryland MOLST Train the Trainer Program

Maryland MOLST Training Task Force
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Health Care Decisions Act

- The Health Care Decisions Act applies in all health care settings and in the community throughout Maryland
- It became effective on October 1, 1993

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Four Considerations

1. Who is the Decision Maker?
2. What are Qualifying Conditions?
3. What are Advance Directives?
4. What is Medical Ineffectiveness?

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Who is the Decision Maker?

Presumption of Capacity

- A patient is presumed to have capacity until two physicians certify that the individual lacks the capacity to make health care decisions or a court has appointed a guardian of the person to make health care decisions

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Certification of Incapacity

- If the individual lacks capacity, the attending physician and a second physician must certify in writing that a patient lacks the capacity to make health care decisions
 - One of the physicians must have examined the patient within two hours before making the certification
- Only one physician's certification is needed if the patient is unconscious or unable to communicate by any means

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Who Makes Decisions if the Patient Lacks Capacity?



1. A designated health care agent
2. If no agent is designated or the agent is not available or is unwilling to act, a surrogate decision maker is used

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Determining the Appropriate Surrogate Decision Maker

If there is no health care agent, Maryland law specifies the type and order of the surrogate decision maker(s) as follows:

1. Guardian of the person
2. Spouse or domestic partner
3. Adult child
4. Parent
5. Adult brother or sister
6. Friend or other relative

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Domestic Partners

- Not related to the individual
- Not married
- Gender irrelevant
- "In a relationship of mutual interdependence in which each contributes to the maintenance and support of the other"

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Authority of Surrogates

- All surrogates in a category have the same authority
- All surrogates of equal authority must agree on a decision regarding life-sustaining interventions
- A physician may not withhold or withdraw life-sustaining procedures if there is disagreement among persons in the same class

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Resolving Disputes Among Equally Ranked Surrogates

- Hospitals and nursing homes are required to have a patient care advisory committee
- Refer the issue to the patient care advisory committee
- Attending physician has immunity for following the recommendations of the patient care advisory committee

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Patient Care Advisory Committee

- Patients, family members, guardians, or caregivers may request advice from the committee
- Committee must notify patients, family members, guardians, and health care agents of the right to discuss an issue
- Committee's advice is confidential and members not liable for good faith advice

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Documenting the Process

- The process that has been used in determining the correct surrogate decision maker should be documented in the medical record
- When the patient is transferred to another care setting, contact information for the surrogate decision maker should be sent to the receiving facility or program

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What are Qualifying Conditions?

Withdrawing Life-Sustaining Treatments

- If no health care agent was appointed, then life-sustaining treatments may only be withdrawn when:
 1. Certification of incapacity by attending physician and second physician
 2. Certification of condition by attending physician and second physician which could include:
 - Terminal condition
 - End-stage condition
 - Persistent vegetative state

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Withdrawing Life-Sustaining Treatments

- Or, two physicians certify a treatment as medically ineffective for this patient

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Terminal Condition

- A terminal condition is incurable
- There is no recovery despite life-sustaining procedures
- Death is imminent, as defined by a physician

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End-stage Condition

- An advanced, progressive and irreversible condition caused by injury, disease, or illness
- Severe and permanent deterioration indicated by incompetency and complete physical dependency
- Treatment of the irreversible condition would be medically ineffective

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Persistent Vegetative State

- The individual has no awareness of self or surroundings
- Only reflex activity and low level conditioned responses
- Wait "medically appropriate period of time" for diagnosis
- One of two physicians who certify a persistent vegetative state must be a neurologist, neurosurgeon, or other physician who is an expert in cognitive functioning

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What are Advance Directives?

Advance Directive

- An advance directive is a written or electronic document or oral directive that:
 1. Appoints a health care agent to make health care decisions - and/or -
 2. States the patient's wishes about medical treatments when the patient no longer has capacity to make decisions (living will)

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Living Will

- A living will contains a patient's wishes about future health care treatments.
- It is usually written "if, then":
 - "If I lose capacity and I'm in (specified conditions),
 - Then use or do not use a specific medical intervention

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Authority of a Health Care Agent

- The advance directive determines when the health care agent has authority
 - "When I can no longer decide for myself": The individual may decide whether one or two physicians must determine incapacity
 - "Right away": When the document is signed, the agent has authority

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Basis of Agent's Decisions

- The health care agent is to make decisions based on the "wishes of the patient"
- If the patient's wishes are "unknown or unclear," then decisions are to be based on the "patient's best interest"

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An Exception to Following a Living Will

- In some instances, a living will may allow the health care agent to act in the patient's best interest, regardless of what wishes are stated in the living will
- Most living wills are not written this way

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Revoking an Advance Directive

- A competent individual may revoke an advance directive at any time by:
 1. Completing a new written or electronic advance directive
 2. Giving an oral statement to a health care practitioner
 3. Destroying all copies of the advance directive

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Can an ADM make or revoke an advance directive?

- An authorized decision maker cannot make or revoke a patient's advance directive



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"Mom didn't understand what she signed"

See the link below:

<http://www.dhmd.state.md.us/ohcq/download/alerts/alert-v1-n1-sum2002.pdf>

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What is Medical Ineffectiveness?

Medical Ineffectiveness

- A medically ineffective treatment is a medical procedure that, to a reasonable degree of medical certainty, will not prevent or reduce the deterioration of the patient's health or prevent impending death
- Physicians need not offer medically ineffective treatments

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	<h3>Advising Patients of Medical Ineffectiveness</h3>
	<ul style="list-style-type: none">■ If two physicians determine an intervention is medically ineffective, the patient or ADM must be informed of the decision■ The physician must make a reasonable effort to transfer the patient to another physician if the patient or ADM requests it■ Pending transfer, the physician must provide the requested treatment if failure to do so would likely result in the patient's death <p style="text-align: right;">31</p>

	<h3>Medical Ineffectiveness in the Emergency Room</h3>
	<ul style="list-style-type: none">■ In an Emergency Room, if only one physician is available, a second physician certification of medical ineffectiveness is not required  <p style="text-align: right;">32</p>

	<h3>For More Information</h3>
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