

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

Four Considerations

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

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

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

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

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

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”

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

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

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

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

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

Withdrawing Life-Sustaining Treatments

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

Terminal Condition

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

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

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

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)

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

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

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"

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

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

Can an ADM make or revoke an advance directive?

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



“Mom didn’t understand
what she signed”

See the link below:

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

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

Advising Patients of Medical Ineffectiveness

- 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

Medical Ineffectiveness in the Emergency Room

- In an Emergency Room, if only one physician is available, a second physician certification of medical ineffectiveness is not required



For More Information

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