Uniform Law Commission
The National Conference of Commissioners on Uniform State Laws

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Health-Care Decisions Act Summary

Who may consent to health care? It has been largely assumed that the common law gives each individual with legal capacity the right to determine his or her own health-care. The right includes refusal of treatment that would clearly sustain life.

When a person lacks legal capacity, the issue is much more obscure. Parents of minor children and guardians appointed by the courts for children and adults who lack legal capacity may usually be relied upon by health-care providers as substitutes for the individuals themselves. For adults who lack legal capacity and have no appointed guardian, the law in the large majority of states provides no clear answer to the question of who may make health-care decisions for these individuals.

Public attention has focused, over the last couple of decades, upon withdrawal of treatment in specific kinds of situations. The treatment of terminally ill individuals after they lose the capacity to control their own treatment is the classic case. The comatose patient dying of incurable cancer provides the paradigm. Cannot that patient do something before the final coma to direct withdrawal of treatment when it is clear it does no more than prolong technical life for slightly longer than if no treatment is administered?

The state legislatures have responded to the public concern with a proliferation of statutes providing for "living wills," "health-care powers of attorney," or combinations of both of them. The concern has expanded beyond the plight of terminally ill individuals to those who are in a permanent coma, in a persistent vegetative state, or in one or another of the rarer conditions that have in common the permanent loss of cognitive life. In many state legislatures, the "living will" statutes and "health-care power of attorney" statutes have been expanded to encompass individuals in these categories.

The result, beyond the spectacular diversity of statutes from state to state, and frequently within states, is law for these special cases, but no resolution of the broader problem of individual control over general health-care. The result in most states is much better law for those who are dying than law for those who are treated to get well.

In 1982, the Uniform Law Commissioners promulgated the Model Health-Care Consent Act, which addressed the broader issues of consent to treatment, but stopped short of addressing the problems of the dying patient. However, it followed that Act with the Uniform Rights of the Terminally Ill Act in 1985 (amended in 1989), which addresses the narrower issues of dying patients.

In 1993, in a further effort to spur uniformity, the Uniform Law Commissioners have promulgated a comprehensive, third-generation Act that solves both the broader problem of health-care decision-making and the narrower problem of who decides when to withdraw treatment, allowing a patient to die. That Act is the Uniform Health-Care Decisions Act (UHCDA). It applies to health-care decisions for adults and emancipated minors.

The basic principle is simply stated. Any adult with capacity or emancipated minor may give an oral or written instruction to a health-care provider, which remains in force even after the individual loses capacity. But there are other alternatives for making these decisions when the individual loses capacity.

The adult or emancipated minor may also execute a written power of attorney for health care that authorizes an agent to make any health-care decision that the principal could make while having capacity.

If there is a court appointed guardian of the person of the individual, the guardian may not revoke the authority of an agent unless the court specifically authorizes a revocation. An agent's decision under an unrevoked power of attorney takes precedence over a decision of a guardian. If there is no agent, a guardian may make health-care decisions on behalf of the ward.

If the adult or emancipated minor does not appoint an agent and no guardian is appointed, a surrogate may assume the authority to make health-care decisions in the same manner as an agent under a power of attorney. An adult or emancipated minor with legal capacity may select the surrogate by simply communicating the selection to a supervising health-care provider. If the adult or emancipated minor does not select a surrogate, then an individual related to the adult or emancipated minor can step forward and assume the authority.

There is a priority list of those authorized to assume this authority absent selection by the patient. First is a spouse, then an adult child, then a parent, and then an adult brother or sister. If there is no available person so related to a patient, the authority may be assumed by "an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is willing and able to make a health-care decision for the patient." In the event nobody qualifies as a surrogate, the health-care provider may turn to an appropriate court for an appointment.

There are, therefore, four possible sources for making health-care decisions, the individual while having legal capacity; if not the individual, then the individual's appointed agent; if no validly appointed agent, then a court appointed guardian; or, if all else fails, a surrogate.

The individual is always the dominant source for decision-making. Even if another assumes the decision-making role as agent, guardian, or surrogate, the decision-maker must always follow the individual's instructions. Without instructions, the agent, guardian, or surrogate must make the decision in the best interests of the individual.

The health-care provider is bound to accept the decisions of the individual who assumes the role of decision-maker. If the health-care provider faces an issue of conscience or a demand for health-care that is ineffective or contrary to accepted health-care standards, the provider can decline to comply, but must make a reasonable effort to transfer the individual to the care of a provider who will comply.

When a health-care provider complies with UHCDA in good faith, the provider has immunity from prosecution or from civil liability, even if the provider withdraws treatment that prolongs life.

UHCDA provides a form for executing a health-care power of attorney, for written instructions to a health-care provider, and even for making anatomical gifts. The form is optional, but is designed for ease of use in document preparation. A health-care power of attorney requires only a signed writing that indicates an intent to appoint someone as an agent. Witnesses or other formalities are not required.

An important provision of UHCDA assures the validity of any advance health-care directive that complies with it, "regardless of when or where executed or communicated." Because there are almost no formal requirements for an advance health-care directive in UHCDA, this means that "living wills" and "health-care powers of attorney" drafted pursuant to the law of another state will surely be valid in a jurisdiction that adopts UHCDA. Until every state enacts UHCDA, this provision will be a very substantial benefit to people who live in and/or who seek medical treatment in a UHCDA state.

The Uniform Health-Care Decisions Act leaps over the entire prior development of "living will" and "health-care power of attorney" Acts, meeting the letter and spirit of the constitutionally protected rights of individuals. It should be adopted by all states as soon as possible.

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