

UConn HEALTH

POLICY NUMBER 2012-05
February 17, 2015

POLICY: LEGAL REPRESENTATIVE FOR HEALTH CARE DECISIONS

PURPOSE:

UConn Health will protect the rights of patients when making health care decisions, including the identification of an appropriate patient representative for those patients who may lack capacity for health care decision-making.

FLOW DIAGRAM:

Please see attached link for quickly determining appropriate patient representative:
http://health.uconn.edu/policies/wp-content/uploads/sites/28/2015/07/policy_2012_05_appendix.pdf

SCOPE:

This policy applies to all patients under the care of UConn Health except those that are in the custody of the Connecticut Department of Correction (CDOC).

POLICY STATEMENT:

Patients 18 Years or Older

1. Adult patients with capacity for health care decision-making should make their own healthcare decisions. This includes decisions to refuse or withdraw care. Advanced age does not preclude decisional capacity.
2. Lack of capacity for health care decision-making may be determined by the attending physician, in consultation with specialty physicians as appropriate.
3. For an adult patient without capacity for health care decision-making, the process for identification of the appropriate decision-maker is according to the following order – with exceptions as noted below:
 - a. The Health Care Representative named in a valid Advance Directive executed after October 1, 2006, may make all health care decisions including withdrawal or withholding of life-support systems.
 - b. Court-appointed conservator of person, except for voluntary conservatorship.
 - c. Durable Power of Attorney for Health Care executed prior to October 1, 2006, may make all medical decisions except to withdraw life support systems.

- d. Health Care Agent executed prior to October 1, 2006 may only make decisions regarding withdrawal or withholding of life support systems.
- e. Next of kin – in relationship order of spouse (same or opposite sex), adult child, parent (or someone serving in loco parentis for the patient who is a minor child), adult sibling, grandparent. Proof of next of kin relationship is not required, the hospital is expected to accept this assertion without requiring supporting documentation with few exceptions. These exceptions may include situation where more than one person claim to be the patient representative, or if reasonable suspicion that person is falsely asserting to be next of kin.

4. **EXCEPTIONS** include:

- a. Certain psychiatric treatment: There are specific psychiatric treatments which require written patient consent (e.g., electroconvulsive therapy). Absent patient consent, the matter requires review by the Probate Court.¹
- b. Intellectual disability: For an adult patient with intellectual disability, the patient may:
 - i. Have capacity for health care decision-making; and should make health care decisions as any other adult.
 - ii. Lack capacity for health care decision-making and have no legally appointed guardian; in this case the identification of the appropriate patient representative follows the same process as for all other adults.
 - iii. Lack capacity for health care decisions and have a legally appointed guardian. The legal guardian has limited decision-making authority.

5. Role of legal guardian for intellectually disabled adult:

- a. Any decision regarding a **Do Not Resuscitate (DNR)** order is beyond the scope of a **legal guardian**'s legal authority since **DNR** orders are not considered routine medical treatment. Further, a legal guardian might be contacted when the ward is permanently unconscious or in the final stage of a terminal condition. In such circumstances, if the ward is a DDS client, DDS must make a determination that the statutory procedures in Section 17a-238(g) of the General Statutes have been followed as a condition precedent to a valid **DNR** order.
- b. The legal guardianship may be plenary or limited:
 - i. **Plenary guardian**: A full or plenary legal guardian has the duty to assure the care and comfort of the ward within the limitations of their appointment, and the public or private resources available to a ward. The legal guardian may exercise all eight (8) statutory duties on behalf of a ward, in order to assist the ward in achieving self reliance. The plenary legal guardian has no other legal authority beyond the duties specified in the Probate Court decree and state statutes. C.G.S. §45a-669(a).

- ii. **Limited legal guardian:** has similar but fewer responsibilities when compared to a plenary legal guardian. The limited legal guardian may exercise only those statutory duties which are specified in the Probate Court decree. If, for example, the Probate Court provides the limited guardian with authority to consent to medical and dental care only, then the limited guardian is not authorized to consent to a place of residence or other treatment. C.G.S. §45a-669(c)
- iii. Statutory duties of **plenary guardian** is to provide assurance and consent for:
 - a) Place of residence within a facility operated or licensed by the Department of Mental Retardation;
 - b) Place of residence which is privately operated;
 - c) Habilitative and education programs;
 - d) Release of clinical records and photographs of the ward;
 - e) Behavioral intervention programs;
 - f) Routine medical and dental care;
 - g) Elective or emergency medical and dental care;
 - h) To assure and consent to services necessary to develop or regain the ward's capacity to meet essential requirements for physical health and safety.²

Plenary or limited guardian does **not** have the authority³ to:

- a) Consent to institutionalization for treatment of the mentally ill;
- b) Consent to sterilization, psychosurgery
- c) Consent to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment, unless certain conditions apply.⁴
- d) Consent to an abortion or removal of a body organ, unless it is necessary to preserve the life or prevent serious harm. The Probate Court should always be consulted for these situations.

Patients Under 18 Years

1. Minors should be informed and participate in their health care to the extent possible, but lack legal capacity for health care decisions unless certain exceptions apply.
2. **EXCEPTIONS** include:
 - a. Emancipated through court order or common law. Common law emancipation is found where there is evidence that the minor is living independently. Parent has no financial responsibility for an emancipated minor.
 - b. Connecticut statutory exceptions allow a minor to control decisions for the following:
 - i. Inpatient mental health when 16 years or older are treated as adults; ages 14 and 15 may give voluntary consent for admission but requires parent/guardian notification within 5 days.

- ii. Sexually-transmitted disease, including HIV testing and treatment (physician should document why parent/guardian is not involved).
 - iii. Substance abuse.
 - iv. Outpatient mental health, under certain circumstances⁵
 - c. Decisions regarding reproductive health including contraception and pregnancy.
 - d. Abortion for 16 years or older are treated as adults; if less than 16 years, may consent without parent/guardian if appropriate counseling is provided or in emergency.⁶
 - e. Making a health decision for their own child
3. When no exception applies, the appropriate decision-maker for a patient < 18 years follows these guidelines:
- a. Natural or adoptive parents: Are generally the legal representative, except when a legal guardian has been appointed, or as described below:
 - i. **Co-guardians** - a parent or court-appointed guardian may share responsibility for a child with a grandparent or other relative who has been granted co-guardianship by the Probate Court. The co-guardian would also be a legal representative.
 - ii. **Standby guardians** - may be assigned when a parent is ill, unable to care for the child or incarcerated. The parent has a written agreement with a selected adult to be the Standby Guardian. This agreement can last up to one year and does not require a court order. The parent has the right to end the standby guardianship agreement at any time.
 - b. Non-custodial parents: Except if restricted by court order, remain legal representatives for their children.
 - c. Step-parents, foster parents and other informal guardians (e.g., family care givers) are **not** health care decision-makers.

Duties of Surrogate Decision-Maker

1. Substituted Judgment: Surrogate decision-makers have an obligation to adhere to the doctrine of substituted judgment, which is to act according to the patient's expressed wishes, in consideration of their advance directives and in keeping with the patient's values and beliefs towards sickness, suffering, medical procedures, and death. This will render a decision that would as closely as possible reflect what the patient would have decided if he or she were capable of making the decision.
2. Best Interests: When there is no information to help understand how the patient may have decided the situation, then decisions should be made consistent with the patient's best interests (i.e., by weighing the benefits versus the burdens of a specific treatment for

the patient, taking into account the overall condition of the patient). Decisions made in the patient's best interest should assure the outcome that is most likely to promote the patient's well-being, for example, beneficial treatment of reversible conditions, relief of pain / suffering, dignity at the end of life, etc.

Physician Duty

When a patient representative: (1) cannot be identified; (2) is unwilling / unable to participate, or (3) acts in a manner inconsistent with the duties of the surrogate decision-maker, UConn Health will rely on physician judgment to provide care that is in the best interests of the patient. Application to the Probate Court for conservatorship will be considered as appropriate.

Resources

1. UConn Health resources which may be contacted for assistance with these issues include: social work, hospital administration, legal, risk and compliance.
2. When there are disputes among family members or between family and health care providers, the use of the John Dempsey Hospital Ethics Committee may help facilitate decision making.
3. See Appendix 1, a flow diagram to assist in identifying patient representative.

References:

- ¹ Connecticut General Statutes, Sec. 17a-543, available at https://www.cga.ct.gov/current/pub/title_17a.htm
- ² Connecticut General Statutes, Section 45a-677, available at https://www.cga.ct.gov/current/pub/title_45a.htm
- ^{3,4} Connecticut General Statutes, Sec. 45a – 669, 676, available at https://www.cga.ct.gov/current/pub/title_45a.htm
Probate Court Procedures Involving Persons with Intellectual Disability, available at <http://jud.ct.gov/lawlib/Notebooks/Pathfinders/GuardianshipinCT/Guardianship.pdf>
- ⁵ Connecticut General Statutes, Sec 19a – 14c, available at https://www.cga.ct.gov/current/pub/title_19a.htm
- ⁶ Connecticut General Statutes, Chapter 368y, available at https://www.cga.ct.gov/current/pub/title_19a.htm
Connecticut Law about Rights of Minors, available at <http://www.jud.ct.gov/lawlib/Law/minors.htm>

Andrew Agwunobi (Signed)

3/10/15

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Date

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