

VALLEYCARE
**OLIVE VIEW-UCLA MEDICAL CENTER/HEALTH CENTERS
POLICY & PROCEDURE**

**NUMBER: 2372
VERSION: 1**

SUBJECT/TITLE: HEALTH CARE DECISIONS FOR UNREPRESENTED PATIENTS

POLICY: Ethical and medically appropriate treatment decisions will be made, at all times, on behalf of persons who lack health care decision-making capacity and for whom there is not a surrogate decision maker. This policy is not meant to be applied in emergency medical situations.

DEPARTMENTS: All

PURPOSE: To guide health care professionals through a process when making medical treatment decisions on behalf of an incapacitated patient who lacks a surrogate decision maker, and has no known family member who is willing and or able to make medical treatment decisions on behalf of the patient. Despite their incapacity, such “unrepresented” patients are entitled to have ethically and medically appropriate medical decisions made on their behalf and in their best interest. It is necessary to ensure that medically appropriate decisions are made in a timely manner before a court-appointed conservator can be established. Adoption of this policy does not preclude any party from seeking judicial intervention. Appropriate judicial remedies may include a timely court order authorizing the provision, withdrawing, or withholding of treatment or appointment of a conservator. This policy does not address the criteria for determining and appointing an appropriate decision maker when one or more are available and willing to serve.

DEFINITIONS: **Capacity** means a patient’s ability to understand the nature and consequences of proposed health care, including its benefits, risks, and alternatives, and to make and communicate a health care decision. Conditions for which psychiatric or psychological treatment may be required do not, in and of themselves, constitute a lack of capacity to make health care decision.

Surrogate decision maker means any of the following:

1. An agent or surrogate appointed pursuant to a valid advance health care directive.
2. A court appointed conservator.
3. A court order issued pursuant to Probate Code Section 3200 authorizing treatment.

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4. Closest available family member, domestic partner, close friend, or emergency contact who is aware of the individual's wishes

Health care decision means a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following:

- a. Selection and discharge of health care providers and institutions.
- b. Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.
- c. Directions to provide, withhold, or withdraw all forms of health care, including cardiopulmonary resuscitation and artificially provided nutrition and hydration.

GUIDELINES:

First the following conditions must be met before making medical treatment decisions for an incapacitated patient:

1. The patient has been determined by the primary physician (with assistance from appropriate consulting physicians if necessary) to lack capacity to make health care decisions.
2. No agent, conservator, or guardian has been designated to act on behalf of the patient.
3. There is no individual health care directive or instruction in the patient's medical record or other available sources that would eliminate the need for a surrogate decision maker.
4. No family member, domestic partner, or close friend can be located who is reasonably available and willing and able to serve. Efforts to locate a surrogate should be diligent and may include contacting the facility from which the patient was referred, and contacting Social Service for assistance. All efforts must be documented in the medical record.

The Risk Manager shall convene a Multidisciplinary Team to make appropriate medical decisions. The Team will include individuals directly involved in the care of the patient and individuals not involved in the care of the patient. The Team shall include:

- The patient's attending physician
- A nurse familiar with the patient
- A social worker
- Chair or Vice-chair of the Bioethics Committee
- If appropriate, consulting clinicians
- The Medical Center's Chaplain
- A physician not involved in the patient's care but knowledgeable about the medical or surgical condition at issue, chosen by the Risk Manager

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In order to determine the appropriate medical treatment for the patient, the Team should:

- Review the diagnosis and prognosis of the patient and assure itself of the accuracy thereof.
- Investigate the possibility of a court-appointed conservator.
- Determine appropriate goals of care by weighing the following considerations:
 - (i) Patient's previously expressed wishes, if any and to the extent known
 - (ii) Relief of suffering and pain
 - (iii) Preservation, improvement, or recovery of function
 - (iv) Quality and duration of life sustained
 - (v) Degree of intrusiveness, risk, or discomfort of treatment
 - (vi) Patient's culture or religious beliefs, to the extent known

The Team will then develop a care plan based upon the patient's diagnosis, prognosis, and the determination of appropriate goals of care.

Any medical treatment decision made pursuant to this policy shall not be biased on account of the patient's age, sex, race, color, religion, ancestry, national origin, disability, marital status, sexual orientation (or any other category prohibited by law), the ability to pay for health care services, or avoidance of burden to family/others or to society, except to the extent that such a factor is medically relevant.

Under the terms of this policy, the Team may make the same treatment decisions, and will have the same limitations, as does an agent appointed pursuant to a power of attorney for health care specified under current law. However, this policy shall not apply to decisions pertaining to autopsies, anatomical gifts, disposition of remains, and withdrawal or withholding of artificially delivered nutrition and hydration.

The Team must assure itself that the medical decision is made based on sound medical advice, is in the patient's best interest and takes into account the patient's values, to the extent known. In determining the best interest of the patient, it is not required that life support be continued in all circumstances, for example, when treatment is otherwise non-beneficial or is medically ineffective or contrary to generally accepted health care standards, when the patient is terminally ill and suffering, or when there is no reasonable expectation of the recovery of cognitive functions.

AGREEMENT ON TREATMENT:

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- a. If all members of the Team agree to the appropriateness of providing treatment, it shall be provided.
- b. If all members of the Team agree to the appropriateness of withholding or withdrawing treatment, it shall be withheld or withdrawn. Any implementation of a decision to withhold or withdraw life-sustaining medical treatment will be the responsibility of the primary treating physician.

DISAGREEMENT ON TREATMENT:

If the members of the Team disagree about the care plan, the Bioethics Committee will be consulted and meet with the Team to facilitate resolution of the disagreement as follows:

- a. If agreement is reached by the Bioethics Committee and the Team, the decision becomes final.
- b. If agreement still is not reached, current treatments will be continued and any other medically necessary treatments provided, until such time that the issue is resolved through court intervention or the disagreement is otherwise resolved.

In all cases, appropriate pain relief and other palliative care shall be provided.

EXCEPTIONAL CIRCUMSTANCES:

Legal counsel should be consulted if a decision to withdraw or withhold treatment is likely to result in the death of the patient and the situation arise in any of the following circumstances:

- a. The patient's condition is the result of an injury that appears to have been inflicted by a criminal act.
- b. The patient's condition was created or aggravated by a medical accident.
- c. The patient is pregnant.
- d. The patient is a parent with sole custody or responsibility for support of a minor child.

DOCUMENTATION:

One of the team members shall be designated to document the results of the team meeting. That team member will prepare a signed, dated, and timed medical record progress notes that will include the following:

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- a. The findings used to conclude that the patient lacks medical decision-making capacity.
- b. The finding that there is no advance health care directive, no conservator, guardian, or other available decision maker, and no health care instructions in the patient’s medical record or other available sources.
- c. The attempts made to locate surrogate decision makers and/or family members and the results of those attempts.
- d. The basis for the decision to treat the patient and/or the decision to withhold or withdraw treatment.
- e. Any other relevant information, including the opinion of the Bioethics Committee should it be convened.

REFERENCES:

- 1. California Health and Safety Code Section 1418.8
- 2. California Probate Code Sections 4617, 4650 (c), 4652, 4683, 4717, 4734, 4735, 4736
- 3. California Hospital Association Consent Manual, 37th Edition , 2010

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