

Shaker Place Rehabilitation and Nursing Center

Information Sheet
New York State Family Health Care Decisions Act

Effective June 1, 2010, New York State adopted the Family Health Care Decisions Act (FHCDA). This Act applies to treatment decision including decision to forego life-sustaining treatment for patients in hospitals and nursing homes who do not have the capacity to decide for themselves and have not signed or executed a health care proxy. The law allows those closest to the patient, in consultation with health care professionals, to make decisions that promote the patient's wishes and best interests.

The FHCDA specifies the individuals who can decide for incapacitated adults (and for children) and sets forth the standards for those decisions. The Act sets forth a priority list of individuals who can decide about treatment for adult patients who lack the capacity to decide for themselves. An individual from the highest priority class on the list who is reasonably available, willing and competent to decide, will be authorized as the "surrogate" for treatment decisions. The priority class list is as follows:

1. A legal guardian duly appointed by a Court of Law
2. The patient's spouse, if not legally separated from the patient, or the domestic partner
3. A son or daughter 18 years of age or older
4. A parent
5. A brother or sister 18 years of age or older
6. A close friend

Health care decisions made by a surrogate only apply when the physician has determined that the patient lacks the capacity to make pending health care decisions for him or herself. Once the physician determines lack of capacity and the surrogate it duly designated, the surrogate shall have the authority to make all health care decisions on behalf of the patient that the patient could make. Such decisions are subject to the provisions of the FHCDA and nursing home policy.

Once designated, the surrogate has the right to receive medical information and records necessary to make informed decisions about the patient's health care. In fact, the surrogate is obligated to seek information about the patient's diagnosis and prognosis prior to making health care decisions. Such information should include the nature and consequences of proposed health care or treatment and the benefits and/or risks of and alternatives to proposed health care decisions.

The surrogate is required to make decisions that are consistent with the wishes of the patient, including the patient's religious or moral beliefs. If the patient's wishes are not



reasonably known and cannot with reasonable diligence be ascertained, then decisions by the surrogate must be made in accordance with the patient's best interests. The surrogate's decision(s) shall be patient-centered and made on an individual basis to be consistent with the patient's values. The surrogate shall consider the dignity and uniqueness of the person; the possibility and extent of preserving the patient's life; the preservation, improvement, or restoration of the patient's health or functioning; the relief of pain and suffering; and other values that a reasonable person in the patient's situation would wish to consider.

Decisions by a surrogate may be made either orally or in writing. The surrogate incurs no liability for the cost of the surrogate's decisions unless the surrogate had an obligation for payment prior to being appointed surrogate. Liability for payment is the same as if the patient made the health care decision.

If a patient regains decision-making capacity at any time and the surrogate has consented to the withdrawal or withholding of life sustaining treatment, the physician is obligated to immediately cancel the orders or plans of care that forego life sustaining treatment.

Under certain circumstances, especially in cases where it is determined that life sustaining treatment shall be withheld or withdrawn, the individual case of the patient may be referred to the Ethics Committee of the Shaker Place Rehabilitation and Nursing Center. The Ethics Committee shall respond promptly to all cases placed before it. Cases may be referred to the Ethics Committee by any person who has a bona fide interest in the case. Such persons may include, but not necessarily be limited to, the patient, the surrogate, any other persons on the surrogate list, the attending physician, or Facility Staff. In certain cases, the decisions of the Ethics Committee may be binding.

All patients who have capacity upon admission are strongly encouraged to consider the appointment of a health care proxy in order to avoid the necessity of surrogate designation. Additional information about the Family Health Care Decisions Act may be obtained by contacting the Facility's Department of Social Services.

June 2010

