

# Social Work Continuing Education Series

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# Topics

- When a resident is unable to give consent?
- What are the proper steps when initiating a Durable Power of Attorney for Healthcare (DPOAH)?
- What are the provision in state law when there is no advanced directive in place and the resident is unable to make decisions?

# Decision-making Capacity

- 34-12H-1. Definitions. Terms used in this chapter mean:
  - (3) "Decision-making capacity," a patient's ability to understand to a reasonable extent the nature of and the significant benefits, risks and alternatives to any proposed health care and to make and communicate, with reasonable accommodation when necessary, a decision regarding the health care.

# Who Decides Decision-making Capacity

- The attending provider determines the patient's decision-making capacity.
- The attending provider may ask for consults; however, the final decision is the attending provider's.
- Care team has pivotal role in relaying concerns to attending provider to conduct assessments.

# Limitations on Determination

- After attending provider determines a patient's decision-making capacity, only health care decisions are affected.
- The determination of lacking decision-making capacity DOES NOT:
  - Allow family members to access bank accounts;
  - Allow family members to acquire or sell property; or
  - Create a guardianship for the patient.

# Proper Steps for Initiating a DPOAH

- Make sure there are no questions about the patient's decision-making capacity.
  - No one can execute a DPOAH on behalf of someone else.
  - If decision-making capacity is in question, DO NOT initiate DPOAH.
- Follow your facility's policy regarding advance directives.

# DPOAH Considerations

- Use any facility-approved guides to walk the patient through the different decisions that need to be made (e.g., Personal Choices).
- Be aware of the signature requirements for your state.
  - Use the state forms approved at your facility.
  - Do not provide advice on other forms brought to the facility by the patient/family.
  - This is the one document a facility notary may notarize. NO OTHER DOCUMENTS SHOULD BE NOTARIZED OR WITNESSED!!!!

# Iowa Considerations

- A treating healthcare provider cannot be named as the patient's surrogate.
- A non-relative employee of the treating healthcare provider or the facility where a patient receives care cannot be named as the patient's surrogate.



# Nebraska Considerations

- A treating healthcare provider cannot be named as the patient's surrogate.
- A non-relative employee of the treating healthcare provider or the facility where a patient receives care cannot be named as the patient's surrogate.
- A non-relative owner or operator of a community care facility where the patient or resident is receiving care cannot be named as the patient's surrogate.

# Minnesota Considerations

- A treating healthcare provider cannot be named as the patient's surrogate.
- A non-relative employee of the treating healthcare provider or the facility where a patient receives care cannot be named as the patient's surrogate.
- The agent named in the document cannot be a witness to the HCPOA.
- At least one witness must NOT be an employee of the healthcare provider.

# No Advance Directive

- SD Healthcare Consent Act – SDCL ch. 34-12C.
  - Attending provider determines patient lacks decision-making capacity; preference is to have that noted in the chart.
  - All types of decisions can be made regarding any treatment, service or procedure to maintain, diagnose or treat a person's physical or mental condition; including admission to, and personal and custodial care provided by a licensed healthcare facility.

# Health Care Consent Act - SD

- Guidelines for Decision-makers:
  - Follow express wishes of patient, if known.
  - Exercise authority in best interest of the patient.
  - Consider the recommendation of the attending provider.

# Health Care Consent Act – SD

- If available to consent, the following family members, in the order stated shall consent:
  - Spouse, if not legally separated;
  - Adult child;
  - Parent;
  - Adult Sibling;
  - Grandparent or adult grandchild;
  - Adult aunt or uncles, adult cousin, or adult niece or nephew; or
  - Close friend.

# No Advance Directive – Iowa

- If available to consent, the following family members, in the order stated shall consent:
  - Spouse, if not legally separated;
  - Adult child, majority rules;
  - Parent;
  - Adult Sibling; or
  - Next closest relative.
- Only regarding decisions about life-sustaining treatment.

# No Advance Directive – NE

- If available to consent, the following family members, in the order stated shall consent:
  - Spouse, if not legally separated;
  - Adult child;
  - Parent; or
  - Adult Sibling.
- Remember, adult in Nebraska is a person who is 19 years old.
- All types of healthcare decisions can be made.

# Limitation on Effectiveness

- A patient may not have the preferred family member making a decision.
- A very elderly person or young adult may be thrown into making tough decisions.
- When there is more than one family member entitled to act, those family members may not all agree.



# QUESTIONS