



School of Health and Human Sciences

One is the Loneliest Number: Surrogate Medical Decision Making During Covid-19

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Medical Decision Making

- A patient's ability to make medical decisions is fundamental to the ethical principle of respect for autonomy and is a key component of informed consent to medical treatment.
- Surrogate medical decision makers act on behalf of the patient to make medical decisions when the patient is incapacitated.



Capacity versus Competency

Competency: *Legal* determination which “refers to the mental ability and cognitive capabilities required to execute a legally recognized act rationally.”

Capacity: *Medical* determination which refers to the patient’s ability to understand, appreciate, and manipulate information and form rational decisions.



Medical Decision Making for Older Adults

- 47.4% of hospitalized older adults in Indiana lack capacity and thus, require a surrogate decision maker
 - Torke AM, Sachs GA, Helft PR, Montz K, Siu LH, et. all. Scope and Outcomes of Surrogate Decision Making Among Hospitalized Older Adults. JAMA Intern Med. 2014; 174(3):370-377.



Identifying Surrogate Medical Decision Makers

Surrogate medical decision makers are identified via:

1. Court Order:
 - Guardianship
2. Appointment by the patient through a legal document such as:
 - Health Care Power of Attorney;
 - Health Care Representative Form;
 - *Physician Order for Scope of Treatment (POST); or
3. State Health Care Consent Law



Indiana Health Care Consent Statute

Indiana Code §16-36-1-5

Provides that any of the following may act as a surrogate decision maker, listed in order of priority:

1. Spouse;
2. Adult Child;
3. Parent;
4. Adult Sibling;
5. Grandparent;
6. Adult Grandchild;
7. The nearest other adult relative in the next degree of kinship;
8. Friend;
9. Religious superior if the individual is a member of a religious order.



What Constitutes a “Friend”

An adult, who:

- Has maintained regular contact with the individual; and
- Is familiar with the individuals activities, health, and religious or moral beliefs.



The Legal Standard for Making Surrogate Medical Decisions

Indiana Code §16-36-1-5

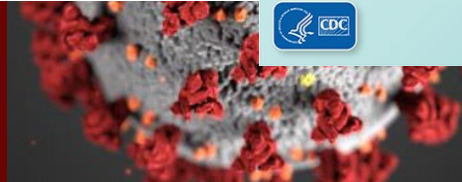
An individual authorized to consent for another under this section shall act in good faith and in the **best interest** of the individual incapable of consenting.



The New York Times

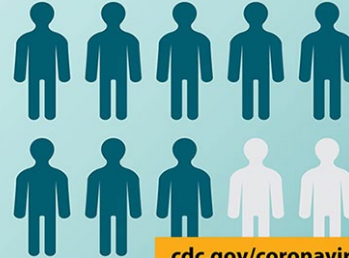
'A Heart-Wrenching Thing': Hospital Bans on Visits Devastate Families

To curb the risk of spreading the coronavirus, hospitals nationwide are banning visits from family and friends.



CDC Has Information For Older Adults at Higher Risk

8 out of 10 COVID-19 deaths reported in the U.S. have been in adults 65 years old and older. Visit [CDC.gov/coronavirus](https://www.cdc.gov/coronavirus) for steps to reduce your risk of getting sick.



STATE OF CONNECTICUT DEPARTMENT OF PUBLIC HEALTH



Deirdre S. Gifford, MD, MPH
Acting Commissioner

Neil Lamont
Governor
Susan Bysiewicz
Lt. Governor

ORDER

moment (the Governor), in response to the global pandemic of 2019 public health and civil preparedness emergency throughout the State and 28-9 of the Connecticut General Statutes, to remain in effect until ordered by the Governor; and

7K, dated March 23, 2020, authorized the Commissioner of Public Health to modify or suspend any regulatory requirements adopted by the State under Chapters 268a, 368d, 368f, 369 to 381a, inclusive, 382a, 382b, 400a, 400e and 474 of the Connecticut General Statutes as the result of COVID-19 and to protect the public health; and any health care facilities have restricted access to their premises if the disease; and

members, personal care assistants or similar disability service providers through his or her stay at the facility, causing such patient to be in the care they require as well as inconvenience and distress.

and of COVID-19 and to protect the public health, and, in accord with the public health and civil preparedness emergency, unless the Governor sooner repeals or modifies Executive Order No. 7K, this emergency, I hereby order that, effective June 15, 2020:

and special), 19-13-10a (Short-term hospitals, Children's Hospital), 19-13-10b (Outpatient dialysis unit) and 19-13-10c (Facilities) of the Regulations of Connecticut State Agencies are hereby amended to read as follows:

may include, but not be limited to, altered mental status, physical, vision barriers or behavioral concerns, who need assistance due to designated support person with them to support their disability

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Virtual Intensive Care Units (vICU)

- Visitation bans in hospitals due to COVID-19 have resulted in the use of virtual technology to facilitate remote visitation with patients.
- Two recently published studies found:
 - “Use of vICU for remote family visitations evoked happiness, joy, gratitude and relief and a sense of closure for those who lost loved ones.”
 - Virtual visitation “bolstered the mental and emotional status” of patients.



Assessing Suffering and Poor Prognosis

- It is extremely hard for surrogate medical decision makers to assess suffering and accept the patient's poor prognosis when they are not able to experience the hospital setting.



Developing Relationships Essential for Shared Medical Decision Making is Challenging

1. Provider & Patient
2. Provider & Surrogate
3. Surrogate & Patient



The Role of Advanced Care Planning

- Assist surrogates in making medical decisions and providers in making recommendations.
- Types of advanced directives:
 - Living will
 - Out of hospital DNR
 - Life Prolonging Procedures Declaration
 - Physicians Orders for Scope of Treatment (POST)



POLL

In Indiana, are physicians legally able to follow a patient's advanced directive over the objection of a surrogate medical decision maker?

It Depends . . .



Surrogate Wishes versus the Patient's Advanced Directive

- Generally, advanced directives are ethically binding, but not legally binding as surrogate medical decision makers can override the preferences stated in an advanced directive.
- Whether and to what extent an advanced directive may be overridden by a surrogate is different between states and is codified in State Health Care Consent Statutes.
- The Indiana Life Prolonging Procedures Declaration should be followed, even over the objection of the surrogate.
- Only one state, Texas, has a law which provides legal protection for physicians who do not wish to abide by a patient's advanced directive or the direct wishes of the patient or the patient's surrogate medical decision maker.



Legal Implications of Visitation Policies

- A disability rights group sued the State of Connecticut for failing to ensure that persons with disabilities who are hospitalized receive reasonable accommodations.
- Specifically, the complaint alleges that the state executive order which mandated “non-visitor” policies in hospitals and other facilities due to the pandemic were resulting in patients being denied:
 - Access to medical treatment
 - Effective communication
 - The ability to make decisions
 - The ability to provide consent



Visitation Recommendations

- The surrogate medical decision maker should be allowed visitation, albeit with limitations:
 - The surrogate medical decision maker should be vaccinated or have a negative rapid COVID-19 test.
 - The surrogate medical decision maker should wear appropriate PPE.
- Continue implementation of vICUs.



“We have to be the surrogate family during COVID”

-Dr. Elizabeth Prsic, Palliative Care, New York



“Behind each closed door is a patient: breathless, exhausted, often confused, perhaps scared, always alone. Behind each patient is a family, also confused and scared, and unable to visit their loved one ... If we can’t hold the hand of a dying person in their last hours on this planet, we might as well all pack up and go home.”

- Dr. Ben Moor, Anesthesiologist, MA



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