

# Family Health Care Decisions Act (FHCDA) and HIV/AIDS



# Outline

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# Brief Overview

# Family Health Care Decisions Act (FHCDA)

- FHCDA went into effect on 6/1/10
  - › NYS Public Health Law, Article 29-CC
- Laws related to legal guardianship and health care proxy are still in place
- FHCDA specifies who has legal authority to make health care decisions if a patient:
  - › cannot make their own decisions and
  - › does not have a legal guardian or health care proxy

# Applicability

- FHCDA only applies in:
  - > General Hospitals: as defined by NYS PHL 2801(10) and excludes wards, wings, units, etc. used to provide services for persons with mental illness
  - > Residential Health Care Facilities: as defined by NYS PHL 2801(3) and includes nursing homes

# Surrogate Hierarchy List: Legally Authorized to Make Health Care Decisions

1. Spouse (if not legally separated) or domestic partner\*

No

2. Adult child

No

3. Parent

No

4. Adult sibling

No

5. Close friend

\* Note: If patient has Mental Hygiene Law Article 81 guardian authorized to make health care decisions, he/she is at top of surrogate list.

# Surrogates

- Can make any type of health care decision
  - › No exceptions for HIV diagnosis or treatment
  - › Decisions must always be based on patient's wishes (or based on patient's best interests if wishes are unknown)
  - › FHCDA includes specifics regarding clinical criteria for decisions to withhold or withdraw life-sustaining treatment and includes related clarifications regarding minor patients

# Physicians

- If no surrogate is available, physicians at facilities are allowed (but not mandated) to make any type of health care decision without going to court
- Required procedures and clinical criteria vary
  - > Routine medical treatment
  - > Major medical treatment
  - > Decisions to withhold or withdraw life-sustaining treatment



# Do Not Resuscitate (DNR) Orders

- FHCDA changes existing law
  - > DNR order: an order not to attempt CPR if patient has cardiac or respiratory arrest
  - > For general hospitals and nursing homes, DNR orders will be issued under provisions of FHCDA for decisions to withhold or withdraw life-sustaining treatment



# How FHCDA Relates to HIV/AIDS

# Consent for HIV-Related Testing

- ◉ Surrogate from FHCDA surrogate list can consent to HIV-related testing in a general hospital or nursing home
  - > Must make decisions according to patient's wishes (including religious and moral beliefs)
  - > If unknown, then according to patient's best interests:
    - Dignity and uniqueness of patient;
    - Preserve patient's life;
    - Patient's health or functioning;
    - Relief of patient's suffering; and,
    - Any medical condition, other concerns/values

# Consent for HIV-Related Testing

- If no surrogate, HIV-related test can be done (e.g., no close family or friends)
- Categorized as “major medical treatment” and authorized if:
  - > Attending physician recommends in consultation with staff directly responsible for patient’s care:
    - General Hospital: At least 1 other physician designated by hospital must independently concur
    - Nursing Home: Medical director or his/her physician designee must independently concur
      - If medical director is patient’s attending physician, a different physician designated by nursing home must make this determination

# Source Patient Testing to Inform Post-exposure Prophylaxis (PEP)

- PEP should be initiated ASAP (within 2 hours and generally no later than 36 hours post-exposure)\*
  - Source Patient should be given opportunity to directly consent if he/she is without health care agent, under anesthesia and likely to be able to consent within above timeframe
  - If not, surrogate consent may be considered

•AIDS Institute's "HIV Prophylaxis Following Occupational Exposure" (May 2010)  
<http://www.hivguidelines.org/clinical-guidelines/post-exposure-prophylaxis/hiv-prophylaxis-following-occupational-exposure/>

# Decisions Regarding Source Patient Testing

- Should recognize patient is tested to make sure health care worker has not been exposed (e.g., needle-stick)
- In the best interest of both the health care worker and patient
- ~ Provides valuable information necessary to guide PEP for exposed health care worker
- NYSDOH perspective:
  - > In patient's "best interest" to be HIV-tested following occupational exposure
  - > Testing may also provide important information to guide medical care of Source Patient

# NYS Public Health Law, Section 2781(6)

- Effective 9/1/10, authorizes durable consents for HIV-related testing and HIV-related testing of Source Patients without consent
  - In certain cases involving occupational exposures, with results disclosed only to the health care provider of exposed person
  - Applies when no person is available or reasonably likely to become available to consent in time for exposed person to receive appropriate medical care

# Disclosure

- Surrogates have right to be fully informed by a doctor about patient's medical condition and doctor's proposed treatment (including patient's HIV status)
- Surrogates are not legally prohibited from sharing confidential HIV-related information
  - › Health care providers should caution surrogates about inappropriate disclosure and the need to protect patient's best interests



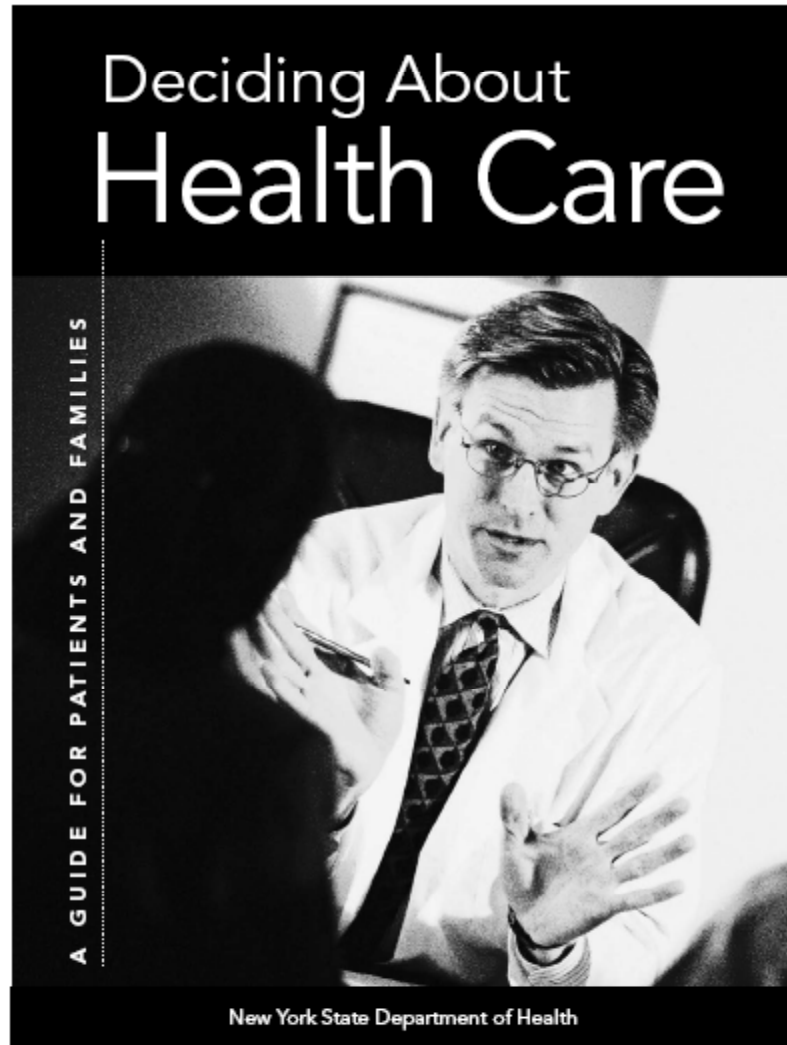
# Authorization for Release of Confidential HIV-related Information

- If authorized pursuant to law to consent to health care for patient, may also sign release of confidential HIV-related information
- "HIPAA Compliant Authorization for Release of Medical Information and Confidential HIV-related Information (English/Spanish) available on NYSDOH web site

# Decisions Regarding Withholding or Withdrawing Life-Sustaining Treatment

- Life-sustaining treatment: Attending physician believes patient will die within short time if patient does not receive the medical treatment or procedures
  - > Applies to all patients, including persons living with HIV/AIDS
  - > Decisions based on specific criteria, including (for example):
    - Would treatment be extraordinary burden or inhumane?
    - Can patient be expected to die within certain timeframe?
    - Is the patient permanently unconscious?
    - Does the patient have an irreversible or incurable condition?

# Additional Information



- "Deciding About Health Care: A Guide for Patients and Families"  
<http://nyhealth.gov/publications/1503.pdf>
- Recommended for staff and to make available for patients/clients living with HIV/AIDS, as appropriate

# Additional Information

NEW YORK STATE DEPARTMENT OF HEALTH

## Medical Orders for Life-Sustaining Treatment (MOLST)

**THE PATIENT KEEPS THE ORIGINAL MOLST FORM DURING TRAVEL TO DIFFERENT CARE SETTINGS, THE PHYSICIAN KEEPS A COPY.**

LAST NAME, FIRST NAME, INITIAL OF PATIENT \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY/STATE/ZIP \_\_\_\_\_  
DATE OF BIRTH (MM/DD/YYYY)  Male  Female \_\_\_\_\_ MOLST NUMBER: (THIS IS FOR AN MOLST FORM)

### Do-Not-Resuscitate (DNR) and Other Life-Sustaining Treatment (LST)

This is a medical order form that tells others the patient's wishes for life-sustaining treatment. A health care professional must complete or change the MOLST form, based on the patient's current medical condition, verbal wishes and MOLST instructions. If the patient is unable to make medical decisions, the orders should reflect patient wishes, as best understood by the health care agent or surrogate. A physician must sign the MOLST form. All health care professionals must follow these medical orders as the patient moves from one location to another, unless a physician examines the patient, reviews the orders and changes them. MOLST is generally for patients with serious health conditions. The patient or other decision-maker should work with the physician and consider asking the physician to fill out a MOLST form if the patient:

- Wants to avoid or receive any or all life-sustaining treatment.
- Resides in a long-term care facility or requires long-term care services.
- Might die within the next year.

If the patient has a developmental disability and does not have ability to decide, the doctor must follow special procedures and attach the appropriate legal requirements checklist.

### SECTION A Resuscitation Instructions When the Patient Has No Pulse and/or Is Not Breathing

Check one:

#### CPR Order: Attempt Cardio-Pulmonary Resuscitation

CPR involves artificial breathing and forceful pressure on the chest to try to restart the heart. It usually involves electric shock (defibrillation) and a plastic tube down the throat into the windpipe to assist breathing (intubation). It means that all medical treatments will be done to prolong life when the heart stops or breathing stops, including being placed on a breathing machine and being transferred to the hospital.

#### DNR Order: Do Not Attempt Resuscitation (Allow Natural Death)

This means do not begin CPR, as defined above, to make the heart or breathing start again if either stops.

### SECTION B Consent for Resuscitation Instructions (Section A)

The patient can make a decision about resuscitation if he or she has the ability to decide about resuscitation. If the patient does NOT have the ability to decide about resuscitation and has a health care proxy, the health care agent makes this decision. If there is no health care proxy, another person will decide, chosen from a list based on NYS law.

SIGNATURE \_\_\_\_\_  Check if verbal consent (Leave signature line blank) DATE/TIME \_\_\_\_\_

PRINT NAME OF DECISION-MAKER \_\_\_\_\_

PRINT FIRST WITNESS NAME \_\_\_\_\_ PRINT SECOND WITNESS NAME \_\_\_\_\_

Who made the decision?  Patient  Health Care Agent  Public Health Law Surrogate  Minor's Parent/Guardian  §1790-b Surrogate

### SECTION C Physician Signature for Sections A and B

PHYSICIAN SIGNATURE \_\_\_\_\_ PRINT PHYSICIAN NAME \_\_\_\_\_ DATE/TIME \_\_\_\_\_

PHYSICIAN LICENSE NUMBER \_\_\_\_\_ PHYSICIAN PHONE OR CELL NUMBER \_\_\_\_\_

### SECTION D Advance Directives

Check all advance directives known to have been completed:

Health Care Proxy  Living Will  Organ Donation  Documentation of Oral Advance Directive

- “Medical Orders for Life-Sustaining Treatment (MOLST)” (DOH-5003)

<http://nyhealth.gov/forms/doh-5003.pdf>

- Additional Information:  
[http://nyhealth.gov/professionals/patients/patient\\_rights/molst/](http://nyhealth.gov/professionals/patients/patient_rights/molst/)

# Additional Information

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### Family Health Care Decisions Act Information Center


New York's Family Health Care Decisions Act (FHCDA)<sup>[1]</sup> establishes the authority of a patient's family member or close friend to make health care decisions for the patient in cases where the patient lacks decisional capacity and did not leave prior instructions or appoint a health care agent. This "surrogate" decisionmaker would also be empowered to direct the withdrawal or withholding of life-sustaining treatment when standards set forth in the statute are satisfied.

The key provisions of the FHCDA became effective on June 1, 2010.

The FHCDA Information Center is a project of the NYSBA Health Law Section. It is designed as a resource for all persons – including health care professionals, health care attorneys, advocacy groups, policymakers and members of the public – who are seeking information about the FHCDA.

- [Summary of Key Provisions of the FHCDA \(PDF\)](#)
- [Text of the FHCDA \(PDF\)](#)
- [Background of the FHCDA \(PDF\)](#)
- [Frequently Asked Questions](#)
- [FHCDA List Serve](#)
- [Related Laws and Regulations](#)
- [Dear Hospital CEO Letter \(NYS Dept. of Health, June 1, 2010\) \(PDF\)](#)
- [Dear Nursing Home Administrator Letter \(NYS Dept. of Health, June 1, 2010\) \(PDF\)](#)
- [Deciding About Health Care: A Guide for Patients and Families \(NYS Dept. of Health, 2010\) \(PDF\)](#)
- [When Others Must Choose: NYS Task Force on Life and the Law \(1992\)](#)
- [Information about Model Hospital and Nursing Home FHCDA Policies and Forms](#)
- [Information about MOLST – Medical Orders for Life-Sustaining Treatment](#)

<sup>[1]</sup> Chapter 8, 2010 Laws of New York, A.7728-D (Gottfried et al.) and S. 3164-B, (Duane et. al). Section 2 of Chapter 8 amends N.Y. Public Health Law to create "Article 29-CC Family Health Care Decisions Act."

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## ○ FHCDA Information Center, NYS Bar Association

<http://www.NYSBA.org/FHCDA>

# Questions

- **Clinical Questions:**

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