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

- Brief Overview
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  - Source Patient Testing to Inform Post-exposure Prophylaxis (PEP)
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  - Authorization for Release of HIV-related Information
  - Life-sustaining Treatment
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
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*

2. Adult child

3. Parent

4. Adult sibling

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
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 FHCDIA 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, another 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

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
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 the 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?
Deciding About Health Care

“A Deciding About Health Care: A Guide for Patients and Families”


Recommended for staff and to make available for patients/clients living with HIV/AIDS, as appropriate.
## Medical Orders for Life-Sustaining Treatment (MOLST) (DOH-5003)

For more information, visit the New York Health Department website: [nyhealth.gov/forms/doh-5003.pdf](http://nyhealth.gov/forms/doh-5003.pdf)

### Additional Information

Additional Information

FHC DA Information Center, NYS Bar Association

http://www.NYSBA.org/FHCDA
Questions

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