

# Improving the Quality of End of Life Care for Older Adults in Health Centers

## Session 3

2018 Learning Collaborative Series

Thursday, December 13, 2018



# National Center for Equitable Care for Elders (NCECE)

[www.ece.hsdm.harvard.edu](http://www.ece.hsdm.harvard.edu)

**Who We Are-** Established in 2017, the National Center for Equitable Care for Elders (NCECE) is a training and technical assistance Center that provides innovative and culturally competent models of care, inter-professional training and educational resources to health care professionals providing care to older adults

**Our Mission** is to build strong, innovative and competent health care models by partnering with CHCs, PCAs and FQHCs to provide quality, and inclusive care for older adults



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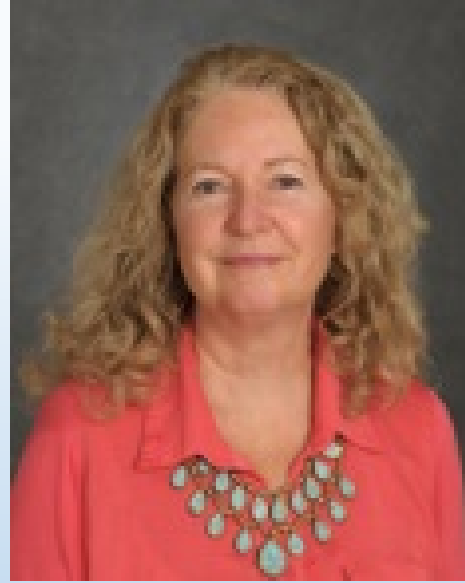


# Health Center Resources Clearinghouse

- This comprehensive website provides easy access to a broad framework of resources, tools, and information developed by the National Cooperative Agreement (NCA) organizations, and additional partners soon! Check it out at [www.healthcenterinfo.org](http://www.healthcenterinfo.org).



# Session Leader



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# ADVANCE DIRECTIVES

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December 13, 2018

# Objectives

- Discuss strategies to document advance directives of health center patients including the 'living will'.
- Discuss importance of identifying a healthcare proxy or 'medical power of attorney'.
- Provide examples of advance directive laws by state.

# Self Determination

- Every adult with decisional capacity has the right to consent to or refuse medical treatment even if that decision will result in the patient's death.
- The right to refuse treatment is a liberty interest protected by the due process clauses of the U.S. Constitution
- The Patient Self-Determination Act (PSDA) is a federal law. Through advance directives, the right to accept or reject treatment is available to adults while competent, in the event that such adults become incompetent, they would more easily continue to control decisions affecting their health care.

# Presumption of Capacity

- Every adult is presumed to have capacity to make medical decisions unless there has been a prior court determination, or a court appointed guardian is authorized to decide about health care for the adult.

# Competence and Capacity

- “Competence” and “Capacity” (short for “decision-making capacity”) are often used interchangeably.
- Competence is a legal term. Competence is presumed unless a court has determined that an individual is incompetent. A judicial declaration of incompetence may be global, or it may be limited (e.g., to financial matters, personal care, or medical decisions).
- Decision-making capacity, on the other hand, is a clinical term that is task-specific. A physician may determine that a patient does not have the capacity to make a decision for or against surgery, but may have the capacity to decide if she wants pain meds.

# Formal and Informal:

## Statute vs. Non-Statutory Advance Directives

Statutory- Enacted, permitted or regulated by statute. Several states maintain a database/repository for these advance directives.

Non-statutory- Less formal writings by the individual such as a letter to family, answers written in a workbook, recordings on video or even discussions with health care providers.

- BROADLY, ANY EXPRESSION OF ONE'S FUTURE WISHES ABOUT HEALTH CARE IS AN ADVANCE DIRECTIVE

# Advance Directives- historically

- While each state has their own rules on advance directives, the purpose is similar, i.e., to provide a method for individuals to express and document their wishes.
- Additionally, this added some layer of protection for the physician in complying with the patient's wishes.
- For example, preparation of Advance Directives is often done in the attorney's office along with creation of a Last Will and Testament and Power of Attorney

# Differences from State to State

[https://www.americanbar.org/groups/law\\_aging/resources/health\\_care\\_decision\\_making/Stateforms/](https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/Stateforms/)

For example, some states include both agent and directions on one form

Most require two witnesses or alternatively, notary

Some do not allow the medical personnel to be a witness

Four states maintain a repository/database for ADs

# Is there any portability of an advance directive?

As advance directives are creatures of statutes, and statutes differ from state to state, what happens when a patient is treated in a different state?

- Answer: Some states clearly state in the statute they validate out of state AD.

Health care providers will honor AD from another state.

# Patient making their own decisions

- Living Wills, also called instruction directive, advance care plans, lets medical professionals about what treatments a patient wants or refuses. It only goes into effect if the patient meets certain criteria, for example:

*“If I should be in an incurable or irreversible mental or physical condition with no reasonable expectation of recovery, I direct my attending physician to withhold and withdraw treatment that serves only to prolong my dying. These directions shall apply if (a) I am in a terminal condition, or (b) I am permanently unconscious, or (c) I am conscious but have irreversible brain damage and will never regain the ability to make decisions and express my wishes”.*

# Patients making their own decisions (Con't)

“The procedures and treatment to be withheld and withdrawn include, without limitation, surgery, antibiotics, life extending drugs, cardiac and pulmonary resuscitation, respiratory support, and artificially administered feeding. I direct that treatment be limited to measures to keep me comfortable and to relieve pain, even if such measures shorten my life under the circumstances indicated above. I direct that neither artificially administered nutrition nor hydration be provided to me under the circumstances indicated above. And under the above circumstances, I do not wish to be connected to a vent or artificial respiration machine”.

# Some limitations

- The living will provides guidance and may limit an agent or surrogate's decision making authority.
- Health Care Agent and Surrogate are required to make decisions consistent with the patient's wishes and instructions as set forth in the living will.

\*Fourteen states limit Advance Directives of a pregnant woman

# Psychiatric Advance Directives (PAD)

- A Psychiatric Advance Directive (PAD) is a legal document written by a currently competent person who lives with a mental illness. A PAD allows a person to be prepared if a mental health crisis prevents them from being able to make decisions. A PAD describes treatment preferences, or names a person to make treatment decisions, should the person with a mental health condition be unable to make decisions. Currently, 25 states have laws that permit psychiatric advance directives.
- Ref: NAMI

# Making health care decisions for the patient

- Appointing a Health Care Agent through a Health Care Proxy, Medical Power of Attorney: Subject to any express limitations in the health care proxy, an agent has the authority to make any and all health care decisions that the patient could make.
- Surrogate: In the absence of an appointed agent or guardian (45 states):
- [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2014\\_default\\_surrogate\\_consent\\_statutes.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_default_surrogate_consent_statutes.authcheckdam.pdf)

# Conflicts

- Health care decisions by a health care agent have priority over decisions by any other person, except the patient.
- Under the states' surrogate statute, if another person on the surrogate list objects to a Surrogate's healthcare decision and the dispute cannot be resolved, the dispute must be referred to the Ethics Committee, to the courts, or to the physician

# Conflicts with Living Will

- A Health Care Agent or Surrogate can not make a decision contrary to the instructions given in the living will, unless the agent or surrogate has a valid reason for disregarding the living will, such as:
  - The patient revoked the living will;
  - The patient gave more recent, superseding instructions.

# Conflicts ( Con't)

- A Health Care Agent and Surrogate have no legal authority to override a patient's living will in order to replace the patient's wishes with the agent's beliefs.
- If the Health Care Agent or Surrogate refuses to make decisions consistent with the patient's wishes as expressed in the living will, a health care provider may seek a court order to resolve the dispute.

# What do you mean by.....?

- Conflicts can occur when terminology is broad or uses unexplained medical or legal jargon
- Specifics are important- What is meant by life sustaining treatment?

# 5 Wishes

- The Person I want to make care decisions for me when I cannot
- The kind of medical treatment that I want or don't want
- How comfortable I want to be
- How I want people to treat me
- What I want my loved ones to know

# Life Sustaining Treatment if Provider disagrees

- If a Health Care Agent or Surrogate directs the provision of life-sustaining treatment, the denial of which would be likely to result in the patient's death, the health care provider that does not wish to provide such treatment must nonetheless comply with the decision pending either transfer of the patient to a willing provider or court order.

# Documenting the Patient's Wishes

Molst/Polst/Post/ Most forms (39 states):

- Initiate
- Update

A copy should be given to the family and directions on use the forms and a copy should go in the patient's medical record.

Time should be set aside to review the forms every 6 months or as the patient's condition changes

Know how rapid responders/EMS treat these forms in your community

# The Take Home Message

*Any* discussion regarding patient's wishes while they have decisional capacity is important.

Keep up the good work!

Questions?

# Question

- What instructions do you give to patients and families regarding Advance Directives once they have been completed?

# Question

- You have several “snow birds” as patients. What can you tell them about their advance directives when they travel out of state?