New York State Family Health Care Decisions Act – What You Need to Know

1. The Family Health Care Decisions Act (the “FHCDA”) went into effect in New York on June 1, 2010.

2. Certain hospital policies were revised due to the passage of the FHCDA; these policies will be posted shortly on the HQ Net.

3. The FHCDA allows family members and others to make health care decisions (in consultation with medical professionals), including decisions about the withholding or withdrawal of life-sustaining treatment (including artificial nutrition and hydration), for incapacitated persons who have not prepared advance directives regarding their wishes.

4. DNR orders are included in the definition of life-sustaining treatment.

5. Generally, one (1) physician must determine (and document in the medical record) that the patient lacks the capacity to make an informed decision about the procedure / treatment.

6. The FHCDA lists (ranks) the order in which a health care decision for a patient that lacks the capacity to make an informed decision is followed. Below is the list in order of priority.

   a. Health Care Proxy Agent. If the patient has a health care proxy, the health care agent named in the proxy makes decisions.

   b. Legal Guardian. If a patient does not have a health care proxy, then a legal guardian (or the person highest in priority from the surrogate list, known as the “surrogate” makes decisions.

   c. Surrogate List.

      i. Spouse, if not legally separated from the patient, or the domestic partner;

      ii. Son or daughter 18 or older;

      iii. Parent;

      iv. Brother or sister 18 or older; and

      v. Close friend.

7. The highest ranking surrogate should be approached, but may designate another on the list to make the decision, as long as no one higher on the list objects.

8. The Ethics Review Committee can be consulted to help resolve a dispute between two or more persons highest in priority on the surrogates list regarding treatment decisions.

9. The Ethics Review Committee must be consulted and agree with the decision to

   a. withhold or withdraw life-sustaining treatment from an emancipated minor; or

   b. if the attending physician objects to a surrogate’s decision to withhold or withdraw artificial nutrition and hydration from a patient.

10. If there are no surrogates and “major medical treatment” is required (e.g., where general anesthetic is used or there is significant risk), then the attending physician may make the decision, with independent review and concurrence by a second physician.