

NH Health Surrogacy Law

- Effective **January 1, 2015**
- Read the Law (*RSA 137-J*)
- Know Your Organizational Policy
- Develop Procedures/Workflow
- Educate Patients & Families
- Maintain Quality Improvement Process



NH Health Care Surrogacy

Why health care decision-making process is important?

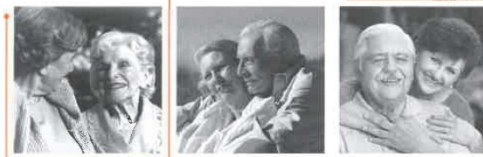
- Respect patient autonomy**
- Know patient's goals of care**
- Care provided in more, different settings**
- More care providers involved**
- Increase in aging population in NH**
- Increase in prevalence of dementia**



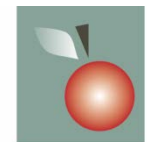
Avoid Health Care Surrogacy

Advance Care Planning Guide

How to think about, talk about and plan for serious illness or injuries which may keep you from making your own health care decision.



New Hampshire Advance Directives:
Durable Power of Attorney for Health Care (DPOAH)
Living Will



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Health Care Surrogacy Assumptions & Obligations

- Respect the right of all adults to make their own medical decisions.
- Honor the decisions of a patient who has the capacity to make health decisions or the decisions of an activated DPOAH or guardian when the patient lacks health decision-making capacity.
- It our obligation to ascertain whether the principal has a DPOAH or guardian and, if there is one, that they be contacted to help the patient who lacks health care decision making capacity.



Health Care Surrogacy - Order of Priority

- (a) Patient's spouse, or civil union partner or common law spouse unless there is a divorce proceeding, separation agreement, or restraining order limiting that person's relationship with the patient.
- (b) Any adult son or daughter of the patient.
- (c) Either parent of the patient.
- (d) Any adult brother or sister of the patient.
- (e) Any adult grandchild of the patient.
- (f) Any grandparent of the patient.
- (g) Any adult aunt, uncle, niece, or nephew of the patient.
- (h) A close friend of the patient.
- (i) The agent with financial power of attorney or a conservator appointed in accordance with RSA 464-A.
- (j) The guardian of the patient's estate.



Health Care Surrogacy-Close Friend

Defined as any person 21 years old or older who presents an affidavit to the physician or APRN stating:

- He/she is a close friend of the patient.
- Willing and able to become involved in the patient's health care, and
- Maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious and moral beliefs.
- The affidavit shall also state facts and circumstances that demonstrate such familiarity with the patient.



Health Care Surrogacy Changes in Priority Order

- In the event an individual of a higher priority as an identified surrogate becomes available, willing and able to be the surrogate, then the individual with higher priority may be identified as the surrogate.
- In the event an individual in a higher, a lower, or the same priority level, or a health care provider seeks to challenge the priority or ability of the surrogate or the life sustaining treatment decisions of the recognized surrogate decision-maker, the challenging party may initiate guardianship proceedings in accordance with RSA 464-A.



Multiple Surrogate Decision-Makers

- Where there are multiple surrogate decision-makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach a consensus as to their decision on behalf of the patient regarding any health care decision.
- If 2 or more surrogates who are in the same category and have equal priority indicate to the physician/APRN that they disagree about the health care decision, a majority of the persons in that category shall control, unless the minority or another party initiates proceedings for guardianship.



Health Care Surrogacy

Good Faith Effort

- A surrogate shall also make a good faith effort to explore all avenues reasonably available to discern the desires of the patient's written or spoken expression of wishes and their known religious or moral beliefs.



Health Care Surrogacy Conflict & Care of Patient

- The surrogate role ends when a guardianship proceeding has been initiated due to a challenge or conflict and a court decision is pending. (Whoever initiates a guardianship petition shall immediately notify in writing the health care facility caring for the patient.
- This process shall not preempt the care of the principal. Current policy regarding health care decision-making, in the absence of a DPOAH or guardian of the person, will take effect if a guardianship proceeding is initiated.



Health Care Surrogacy -Time Limit

A surrogate may make health care decisions for up to 90 days unless:

- Person regains health care decision-making capacity,
- A guardian is appointed
- Patient is determined to be near death by 2 physicians or a physician & APRN



Health Care Surrogacy - Limits

- A surrogate shall not be identified over the express objection of the patient and surrogacy will end if at any time a patient for whom a surrogate has been appointed expresses objection to the continuation of the surrogacy.



The *toughest* conversations...



...are sometimes the *most* important.

Give your loved ones the peace of mind of knowing your wishes if you were to have a life threatening illness and encourage them to do the same for you. Need help starting the conversation? For more information about advance care planning and putting your wishes into writing, visit www.healthynh.com.



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