

Hospitals, LTC Facilities Are Moving Toward Newer End-of-Life Strategies

Physician-ordered life-sustaining treatment orders are joined by default surrogates approach.

BY JOYCE FRIEDEN

PHILADELPHIA — Two new ways of dealing with end-of-life issues—default surrogates and physician-ordered life-sustaining treatment orders—are becoming more common in hospitals, according to several legal experts. The latter innovation, known as POLST, is already well known in many nursing facilities.

So far, 37 states have passed default surrogate regulations, aimed at naming a person who can act on behalf of an incapacitated hospital patient who does not have an advance directive, said Nina Kohn of Syracuse (N.Y.) University's College of Law.

The vast majority of Americans—especially minorities, those with lower education levels, and younger patients—do not have an advance directive, noted Ms. Kohn, who spoke at a meeting of the American Society of Law, Medicine, and Ethics.

The states that have passed the default surrogate statutes “create a priority list saying if there is not an appointed surrogate, first the spouse does it, then the parent, then an adult sibling, and so on,” she explained. “The common justification is the idea that the statutes help protect wishes of the incapacitated person.”

But does that really work? Ms. Kohn and her associate Jeremy Blumenthal, also of Syracuse University, have been studying whether the laws result in the selection of the surrogates that incapacitated patients would have selected for themselves, and whether those surrogates made the decisions that those patients would have made.

They found that Americans tend to favor close family members as surrogates, which is consistent with most of the state laws. On the other hand, said Ms. Kohn, “The priority lists don't account for a number of factors predictive of surrogate selection, such as surrogate gender. Women are disproportionately selected as surrogates.”

In addition, the statutes “don't do a good job of accounting for nontraditional family structures such as same-sex couples, or [situations] where people have more inclusive or more intergenerational notions of families.”

This is particularly true of African Americans, who are less likely than are members of other racial groups to se-

lect a spouse or adult child as a surrogate, according to studies, she said.

As to whether the surrogates are deciding things the same way the patients would have, “we can't know for sure ... because the patient is incapacitated,” she said. “But I think we can confidently say that there's real reason to be skeptical about the congruence levels being obtained.”

The literature on the subject shows that surrogates are very bad at predicting patient wishes; in addition, surrogates are not always willing to do what they know the patients would want them to do. Also, surrogates “tend to be overconfident in thinking they know more about what the patient would want than they actually do,” Ms. Kohn continued.

These problems aren't necessarily the fault of the people who wrote the statutes, however, Ms. Kohn continued. “If we look at the treatment decisions of *appointed* surrogates, they do not appear to be significantly better.” A 2006 meta-analysis of 16 studies found that there was 69% congruence with decisions made by patient-selected surrogates compared with 68% using legally selected surrogates, “a statistical dead heat,” she noted.

Ms. Kohn had two suggestions for improving decision making by surrogates: first, having rules and statutes that move away from selecting surrogates based on familial relations, and more toward surrogates whose values are more consistent with those of the patient. And second, providing surrogates with information to better inform their decisions—for example, what a typical patient would do in a particular situation.

Another emerging tool for hospital-based end-of-life care is the POLST form, said Robert Schwartz, JD, professor of law at the University of New Mexico, Albuquerque. These orders also go by other names: medical orders on life-sustaining treatment, medical orders on scope of treatment, or physician orders on scope of treatment.

POLSTs, originally developed at the Oregon Health Sciences University, have already become valuable components of end-of-life care in long-term care. Unlike an advance directive, a POLST represents and summarizes the patient's wishes in the form of physician orders for end-of-life care.

For a POLST to go into effect, the attending physician

must sign the form and provide contact information. The POLST must include the patient's name, resuscitation orders, and a physician or nurse practitioner signature. The forms are typically completed following a discussion of end-of-life choices between a patient and his or her health care surrogate and physician.

“This is the next step from the advance directive,” Mr. Schwartz explained, noting that these forms are usually bright green or bright pink so they will be easily noticed. “These are physician orders that go in the patient's chart and provide information about the kind of patient care that should be provided.”

Usually, a POLST form addresses resuscitation issues, the extent of appropriate medical intervention, use of antibiotics, provision of nutrition and hydration, desired place of treatment, and the identity of the authorized health care provider, Mr. Schwartz said. In a few states, the POLST form is now formally authorized by statute, and other states are considering similar measures.

The state of Colorado is developing a version of a POLST called MOST (Medical Orders for Scope of Treatment). Currently, pilots are underway at several long-term care facilities in the state. “We cannot tell you how effective people think it is at this stage, but we are hopeful this will be embraced,” said Cari Levy, MD, CMD, of the Denver Veterans Affairs Medical. Other states are considering similar actions.

Ohio-based medical director William Smucker, MD, CMD, noted, “We are not using [POLSTs] in Ohio, but there are work groups advocating for statewide endorsement, and they say they are close. I think it will be a vast improvement over traditional [do not resuscitate orders] and typical living wills.”

But Mr. Schwartz expressed some reservations about POLSTs in hospitals. “My problem with all these documents is that it seems like it's a step backwards [because] doctors are deciding these things in the hospital [rather than] patients having the authority to make these decisions. On the other hand, if patients make these decisions and they're never honored, we haven't achieved a whole lot.”

The proponents of POLST, he added, say that they “lead to the discussions between the health care provider, the families, and the patients that allow for the physician order that actually will be carried out in the hospital, so ultimately they're more effective than just having the advance directive on the front of the chart.”

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Paint Them Happy

Art • from page 1

how to complete each painting.

“Students get a new interest in life,” said Ms. Downs, who taught the class while a resident at the Good Shepherd Nursing Home in Little Rock. “Creativity is an important natural instinct. Even though the book gives students paintings to copy, it's amazing how creative and unique each completed work is.”

Ms. Downs knows personally the difference art can make for an elder with health problems. “I had a stroke and was left with physical problems including impaired speech,” she explained. “Painting

helped me recover. It gave me something to look forward to and feel good about.” Now, teaching keeps her active and alert. She noted, “People ask me if it hurts to teach at my age. I tell them that it only hurts not to teach.”

Her students agree. Ms. Marsh noted, “We haven't formally surveyed facilities that have used Pearl's program, but those who have painted with Pearl will openly tell you that it has changed their lives.”

The class encourages socializing and improves hand-eye coordination, and the paintings themselves give residents pride. Said Ms. Marsh, “They use them as Christmas gifts for their families and friends. This especially means a lot to seniors who have little money.” Additionally, many residents

have submitted their works for contests at county fairs, and several have won ribbons.

“Art fights loneliness, helplessness, and boredom, three things that haunt many nursing facility residents,” observed Ms. Marsh. “Using Pearl's program, residents get the satisfaction of knowing that they can still do something, make contributions, and be unique and valuable members of their community.”

Senior contributing writer Joanne Kaldy is a freelance writer in Hagerstown, Md., and a communications consultant for AMDA and other organizations. See page 13 for information on AMDA's “Art at the Wall” silent auction at the Annual Symposium next March in Charlotte, N.C.



An arts workshop for elders leads to an expressive outcome.