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ORIGINAL ARTICLE

The effect of a state health care consent law on patient care in hospitals: A survey of physicians

Amber R. Comer*¹, Margaret Gaffney², Cynthia Stone³, Alexia Torke⁴

¹Indiana University School of Health and Rehabilitation Sciences, United States

²Indiana University School of Medicine, United States

³Indiana University Richard M. Fairbanks School of Public Health, United States

⁴Indiana University Center for Aging Research, Regenstrief Institute, Inc. Charles Warren Fairbanks Center for Medical Ethics, Indiana University Health, United States

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ABSTRACT

Objective: When a patient cannot make medical decisions for him or herself, and has not appointed a healthcare representative, default state healthcare consent laws determine who is able to make healthcare decisions for the patient. The narrow construction of some state laws leaves many patients in situations where the closest person to the patient does not qualify as a representative under the law, or where the patient has too many representatives and a consensus cannot be reached on the patient's medical care.

Methods: In order to determine how state healthcare consent laws affect patient care in hospitals, a survey of 412 Indiana physicians was conducted.

Results: The data shows 53.8% of physicians experienced a delay in patient care because they were unable to identify a legally appropriate health care representative. Almost half (46.01%) of physicians experienced delay of patient care due to the inability to identify a final decision maker when disputes arose between multiple legal representatives.

Conclusions: The results of this study have important implications for hospital administrators as a delay in patient care can be costly and unnecessarily utilizes hospital resources. Additionally, the results of this study have important implications for the status of state surrogate decision making laws. Amending state laws to include more potential surrogates, has the potential to minimize delays in patient care and ensure that appropriate surrogates are making medical care decisions for patients without the undue burden of court intervention.

Key Words: Medical ethics, Informed consent, Patient autonomy, Surrogate decision making, Health care consent

1. INTRODUCTION

A patient is medically incapacitated when she can no longer make medical decisions for or by herself.^[1,2] According to a recent study, 47% of geriatric patients in hospitals will require a health care surrogate to help make medical decisions on their behalf.^[3] While almost half of all patients will require a surrogate decision maker, less than 20% of all

patients present to the hospital with an advance directive or health care representative form identifying who the patient would like to act as their surrogate decision maker.^[4-8] In situations where patients have not appointed a health care surrogate, each state must determine who is able to serve as the patient's decision maker.

In 36 states, health care consent laws have been passed that

*Correspondence: Amber R. Comer; Email: comer@iu.edu; Address: Indiana University School of Health and Rehabilitation Sciences, 1050 Wishard Blvd, RG 3034, Indianapolis, IN 46202, United States.

list who qualifies as a legally appropriate surrogate.^[9] Unfortunately, the narrow construction of state laws can leave patients in situations where they either have no qualified surrogate under the law or where they have too many surrogates with competing interests, and a consensus cannot be reached on the patient's medical care.^[7,10,11] In many states, patients are left without a legal surrogate because the state health care consent law does not allow unmarried partners, grandparents, grandchildren, or close friends to serve as surrogate decision makers.^[9] Conversely, with too many surrogates, disagreements between potential surrogate decision makers over life-sustaining treatment and interventions are common, with studies reporting disagreements occurring in as many as one-half of Intensive Care Unit ("ICU") cases involving more than one surrogate.^[1,12]

In most states, if a surrogate not authorized under the state health care consent law wishes to assume decision making authority over the patient's medical care, the legally appropriate route is for the potential surrogate to pursue a guardianship through the court. In states with no hierarchy specifying a final decision maker, a potential surrogate who wants to assume final decision making authority must also pursue a guardianship through the court.^[2] The pursuit of a guardianship can be expensive and time consuming.^[7,13-15]

In order to determine how narrowly constructed state surrogate decision making laws affect patient care in hospitals, a survey of physicians was conducted in one state, Indiana, with a law that does not have a hierarchy of surrogates and also does not allow grandchildren, nieces/nephews or close friends to make surrogate decisions. The goal of the survey was to answer four questions: (1) the number of times physicians experience a delay in patient care due to the unavailability of a legal surrogate; (2) the number of days that the absence of a legal surrogate delays appropriate patient care; (3) the number of times physicians experience a delay in patient care due to the presence of too many legal surrogates who cannot agree on the patient's plan of care; and (4) the number of days that patient care is delayed due to the inability of surrogates to reconcile a plan of care.

2. METHODOLOGY

A statewide, quantitative, descriptive, cross-sectional survey of physicians working in Indiana hospitals was conducted between November 2014 and January 2015 to determine the delay in patient care physicians experience as a result of state surrogate decision making laws.

2.1 Survey design

The survey was designed on the basis of information from a review of the literature. The survey was reviewed for va-

lidity and pretested during three works in progress sessions sponsored by a hospital systems ethics center. Feedback regarding question clarity, choice of words, missing items, and length was then obtained during the survey pretest from approximately 40 physicians.

The survey was designed to measure the delay in patient care physicians experience as: (1) a result of the inability to identify a legal surrogate; and (2) as a result of having too many legal surrogates who cannot agree on a patient's plan of care. In order to measure the delay in care physician's experience, the survey asked physicians to recall the number of times over the past year surrogate decision making concerns resulted in the delay of appropriate care of their patients. Additionally, physicians were asked to recall the number of days that patient care was delayed, meaning they could not make any further medical care decisions for the patient. This survey section was completed as part of a larger survey which measured physician understanding of surrogate decision making laws, and whether physicians follow these laws in practice. The Indiana University Purdue University Indianapolis Institutional Review Board approved the survey.

2.2 Survey sample

Utilizing the 2014 Physician Masterfile of the American Medical Association (AMA), all physicians who work on inpatient hospital staffs within the state of Indiana were identified. Study exclusion criteria included pediatricians and pediatric sub-specialties, as well as pathologists who work on inpatient hospital staffs. Pediatricians and pediatric sub-specialties were excluded due to their population consisting of minors who fall under a different surrogate decision making protocol than adults. Pathologists were excluded because they do not traditionally interact with patients. From the resulting 1,444 physicians, the AMA randomly selected a total sample of 1,200 physicians.

2.3 Survey administration

Surveys were conducted via U.S. postal mail. Three survey distribution waves were utilized with each wave mailed approximately one month apart starting in November 2014 and ending in January 2015. The first two waves included a cover letter, paper copy of the survey, and a self-addressed postage-paid envelope. Additionally, the first wave included a \$5 coffee shop gift card that the physician was informed they could keep regardless of whether they completed the survey.

The third wave consisted of a postcard which reminded physicians either to return the paper survey or take the survey in REDCap (Research Electronic Data Capture) an electronic survey platform accessed via an online link provided on the

post card.^[16] Each survey was individually labeled with a subject identification number to allow tracking of non-respondents. Upon receipt of completed surveys all data was entered and stored in Redcap.

2.4 Statistical analysis

Power analyses were performed to determine the appropriate sample size for logistic regression models. Using an alpha level of 0.05, a sample size of 385 would provide a power level of more than 0.80 to detect an odds ratio of 2.0 or higher, using estimated proportions of physician knowledge based on expert advice from the research team, as no previous work has been done in this area. This same power holds for Chi-Square tests. Results are presented as a percentage of the total number of study participants. Pearson's Chi Square tests were conducted in order to determine demographic predictors of physician delay in care. All *p*-values were two-tailed. Analytic assumptions were tested and verified. All analyses were performed using SAS version 9.4 (SAS Institute, Cary, N.C.).

3. RESULTS

A total of 412 physicians completed the questionnaire, yielding an overall response rate of 34.33%. The characteristics of physicians who responded to the questionnaire are represented (see Table 1). There were 303 males (73.54%) and 109 females (26.46%). The largest number of respondents indicated that their medical specialty was family medicine 70 (16.99%) and emergency medicine 70 (16.99%). The majority of physician respondents 229 (55.66%), indicated that they have practiced medicine for greater than 20 years.

The data shows that 217 (52.67%) physicians reported experiencing a delay of patient care at least one time in the last year because they were unable to identify a legally appropriate surrogate (see Table 2). Additionally, 151 (36.65%) of physicians reported experiencing a delay in appropriate patient care at least one time in the past year due to disputes about patient care that arose between two or more legal surrogates (see Table 2). Emergency Medicine Physicians and Hospitalists experienced the most delays in patient care due to disputes between surrogates (*p*-value < .05).

More than half of physicians, 220 (53.40%) reported experiencing at least a partial day delay of patient care due to the inability to identify a final decision maker when there were multiple surrogates (see Table 2). Furthermore, in total 172 (46.01%) of physicians experienced at least a partial day delay of patient care due to the inability to reconcile multiple surrogate decision makers opinions (i.e. an issue with a lack of hierarchy among legal decision makers). Among physicians reporting a delay in patient care due to the inability to

identify a legally appropriate surrogate, 184 (44.66%) experienced this delay while working in the inpatient setting, 99 (23.86%) experienced this delay while working in the Intensive Care Unit, and 70 (16.99%) physicians experienced this delay while working in the outpatient setting.

Among physicians experiencing a delay in patient care due to the inability to reconcile multiple surrogates during times of conflict, 141 (34.23%) of physicians reported experiencing these delays while working in the inpatient setting, 92 (22.33%) reported these delays occurred while working in the Intensive Care Unit and 55 (13.35%) reported these delays occurred while working in the outpatient setting.

Table 1. Physician characteristics (N = 412)

Item	N (%)
Medical Specialty	
• Family Medicine	70 (16.99)
• Emergency Medicine	70 (16.99)
• Anesthesiology	43 (10.44)
• Inpatient Internal Medicine	41 (09.95)
• Surgery and Surgical Subspecialties	40 (09.71)
• Gynecology	13 (03.16)
• Cardiology	11 (02.67)
• Oncology	11 (02.67)
• Intensive Care	8 (01.94)
• Palliative Care	7 (01.70)
• Pulmonology	5 (01.21)
• Neurology	4 (00.97)
• Geriatrics	3 (00.73)
• Nephrology	1 (00.24)
• Other	85 (20.63)
Years as a Licensed Physician	
• 0–10	47 (11.57)
• 11–20	136 (32.77)
• > 20	229 (55.66)
Gender	
• Male	303 (73.54)
• Female	109 (26.46)
Clinical Practice Setting*	
• Inpatient	217 (29.77)
• Outpatient	246 (33.74)
• Emergency Department	100 (13.72)
• Inpatient Care Unit (ICU)	85 (11.65)
• Urgent Care	23 (03.16)
• Nursing Home/Long Term Care	19 (02.61)
• Other	39 (05.35)

Note. *Physicians were able to select multiple clinical practice settings

Table 2. Physician characteristics (N = 412)

Number of Occurrences where Patient Care Was Delayed	1–3	4–6	> 7	No Delay
	N (%)	N (%)	N (%)	N (%)
Physician inability to identify a legally appropriate surrogate decision maker	163 (39.57)	31 (7.52)	23 (5.58)	195 (47.33)
Physician inability to reconcile multiple surrogate decision makers opinions	118 (28.64)	17 (4.13)	16 (3.88)	261 (63.35)

4. DISCUSSION

Our study found that more than half of physicians report that they have experienced a delay in patient care due to the inability to identify a legally appropriate surrogate decision maker. This may occur because physicians and courts tend to err on the side of caution and wait to make treatment decisions until a legally appropriate surrogate decision maker can be identified.^[16] An unnecessary delay in appropriate patient care may result in increased costs.^[17–20] Delays may also increase patient suffering and prolong medical decisions as surrogates are often used for end-of-life decision making.^[17–20] This is evidenced by recent studies that show deaths in ICUs are preceded by a surrogate's decision to withhold or withdraw life support in over 90% of cases.^[2,17–19,21] These findings also align with past research studies which have found that patients without an available surrogate decision maker spent twice as many days in the Intensive Care Unit as patients with available surrogates.^[20]

In addition to the potential of increased patient suffering and monetary costs, perspective surrogates and physicians may experience distress when faced with a situation where they must delay appropriate patient care due to a restrictive state health care consent law.^[14,15,17] The current laws intended to provide a surrogate for patients who did not prospectively appoint someone to make their medical decisions through either a Health Care Power of Attorney or Health Care Representative Form.^[22–24] Although the legislation was well intentioned, the narrow scope of allowable surrogates available under the law has resulted in a delay in patient care as physicians must wait for ethically allowable surrogates who are not named in the state law to pursue a court order before they can make decisions for the patient. Changing

surrogate decision making laws to include more ethically appropriate surrogates to make decisions for patients, such as grandparents, grandchildren, nieces, and nephews would provide a surrogate for patients who would otherwise require a guardianship through the courts.^[22–24]

This study has several limitations. First, this study was conducted in a single state, Indiana, which may not be representative of other states laws that allow different family members to serve as surrogates or may have different mechanisms for resolving potential surrogate disagreement. Second, this survey asks physicians to recall the number of times patient care was delayed and the number of days that patient care was delayed in the last year. It is possible that physician recall bias may lead physicians to report different numbers than what they actually experienced during their practice.^[24]

Our findings align with past research showing a relationship between physicians working in the ICU setting and delays in patient care due to the inability to identify a legally appropriate decision maker.^[12] The results of this study have important implications for hospital administrators as a delay in patient care can be costly and unnecessarily utilizes hospital resources. Additionally, the results of this study have important implications for the status of state surrogate decision making laws. Amending state laws to include more potential surrogates, has the potential to minimize delays in patient care and ensure that appropriate surrogates are making medical care decisions for patients without the undue burden of court intervention.

CONFLICTS OF INTEREST DISCLOSURE

The authors declare they have no conflicts of interest.

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