The policies and procedures that address patient ethical issues. Describe the leadership of nurses in developing and participating in these programs.

Following are the policies that address ethical issues, including:

- Withholding / Withdrawing Medical Treatment
- Patient Refusal of Blood Transfusion for Personal/religious Reasons (e.g. Jehovah’s Witness)
- Matters of Conscience/Staff Rights
- Do Not Resuscitate Orders (DNR Orders)
- Advance Directives - Administrative

Subject: Advance Directives - Administrative

Policy:
It is Riverside Medical Center’s policy to comply with applicable law and honor the treatment preferences expressed by patients in the advance directives.

Riverside Medical Center recognizes the right of our patients to make informed decisions about their medical care and to provide a procedure to inform patients about their legal rights regarding Advance Directives.

The medical center acknowledges and respects the rights and wishes of patients to have written documents which allow a person to give directions about future medical care or to designate another person to make medical decisions if the individual loses decision-making capacity, such as, a Living Will or Power of Attorney for Health Care.

Additionally, when a patient makes a verbal expression of treatment preferences to their physician, but does not execute a written advance directive, the physician shall note these preferences in the patient’s medical record.

It is the medical center’s policy not to condition care or otherwise discriminate against a patient based on the patient having or lacking an advance directive.

State law does allow for objection by the physician, hospital, or nursing staff on the basis of conscience that they cannot implement a patient’s advance directives. Information on the extent to which the hospital is able, unable, or unwilling to honor advance directives is given if the patient has an advance directive and it is applicable to the patient.

A patient's advanced directives will be made available on in the electronic
medical record to all nursing staff, Patient Safety/Employee Health Director, Education, Medical Records, Social Services, Patient Liaison, Quality Improvement Director, Pastoral Care and a designee from Miller Center. Blank copies are also available on Rivernet. Confidentiality policies and procedures apply.

**Procedure:**
- At the time of admission through the Care Coordination Center and the nursing admission assessment, an adult patient is asked whether he/she has an advance directive.

- The appropriate documentation of the advance directive or the information provided to the patient will be documented in the medical record.

- Documentation must include patient/family response to whether they have an advance directive and where it is located. If the patient states they have an advance directive but did not bring a copy with them to the hospital, the substance of the advance directive is documented in the patient’s medical record.

- The patient is responsible for submitting their most recent advance directive upon admission. However, when the patient is discharged from the medical center, a copy of the advance directive is maintained in the patient's electronic medical record. A copy can be requested for subsequent admissions through the patient's electronic medical record. Medical Records will scan into the electronic medical record the latest advanced directives on discharge or earlier if received before discharge. If the patient has advance directives, copies shall be obtained and placed in the patient's medical record while an inpatient. If the patient or family member has stated there is an advance directive, encourage them to bring it in as soon as possible and document that conversation.

- If an advanced directives is received by a person who has never been a patient at Riverside, the advanced directives may be scanned into the electronic medical record by Medical Records. If someone brings an Advance Directive to Riverside but has never been a patient at Riverside so has no medical record, the Social Security number of the individual will be used as an identifier in the electronic medical record.

- During the admission process and at the patient’s request, information regarding advance directives will be provided. If the family wishes further information, the Patient Liaison will be contacted to provide "How to Make Future Health Care Decisions NOW" folder and information.

- If the patient or family wishes assistance to complete "How to Make Future Health Care Decisions NOW" folder, the following staff have been identified to
assist the patient with executing the advance directive:

- Patient Liaison
- Pastoral Care Department
- Social Service Department

Because this is not generally an emergent situation they are available between the hours of 8:00 a.m. and 4:30 p.m Monday through Friday. In the event of an emergency or after the hours listed above, the Nursing Supervisor can be contacted.

- A patient may review, modify, or revoke the advance directive at any time throughout their episode of care. To access this service, staff are to send an order to the Social Services Department. The requisition will print in the Social Service department and the Patient Liaison will see the patient for Advance Directive guidance. The outcome of this conversation will be documented in the medical record.

- To avoid confusion, conflict of interest, hospital employees who are providing direct care to the patient are not to be a witness to the advance directive. Non-direct care employees and volunteers may witness these documents provided that:
  
  · they are not related to the patient by blood, marriage or adoption.
  · they do not have knowledge that they are entitled to or have claim on any portion of the patient's estate.
  · they are not financially responsible for the patient’s health care.
  · they are not a health care provider who is serving the patient at the time the document is executed.
  · they are not the patient’s health care agent.

**Subject:**
**Do Not Resuscitate Orders (DNR Orders)**

**Policy:**
A physician shall determine when DNR Orders are appropriate for a specific patient. It is deemed medically appropriate when the patient is chronically ill, terminally ill or when death is imminent. In the absence of written DNR orders, all cardiac and respiratory arrests will be resuscitated. An individual is not required to consent to a DNR order as a condition of treatment or care.

The Illinois Department of Public Health (IDPH) Uniform Do-Not-Resuscitate (DNR) Order Form, or a copy of the form (henceforth referred to as the IDPH DNR Order Form), will be honored by Riverside emergency medical services personnel, hospital staff and Miller staff.
• When possible the IDPH DNR Order form will be copied on bright pink paper.
• If the previous IDPH DNR Order form, formerly the orange IDPH DNR Order form, is brought in by patient when they are admitted, staff will honor the directives on that form also.
• The IDPH DNR Order form must be witnessed by two (2) individuals 18 years of age or older.
• A health care professional or health care provider may presume, in the absence of knowledge to the contrary, that a completed IDPH DNR Order form or a copy of that form (whether on bright pink paper or not) is a valid DNR order.
• An employee of Riverside Health Systems or a healthcare professional or provider who in good faith complies with the IDPH DNR Order Form is not, as a result of that compliance, subject to any criminal or civil liability, except for willful and wanton misconduct, and may not be found to have committed an act of unprofessional conduct.

If a patient presents with an IDPH DNR Order form, a physician order must be obtained in addition to the order on the IDPH DNR Order form.
• If the IDPH DNR Order Form is not utilized, substantive documentation for the order shall be made in the chart.
• If the physician wishes, he may complete the IDPH Do Not Resuscitate (DNR) Order form and place it in the chart.
• If the physician writing the DNR order is not the attending physician, the attending physician should be notified as soon as possible.

If, for matters of conscience, a physician will not enter such an order in a timely manner, the care of the patient shall be transferred to another physician who is willing to write such an order. If this is not possible, the nurse must notify the Department Director, Nursing Supervisor, Vice President of Patient Care, or the Ethics Committee chairman.

A DNR Order will not be written for a patient who is pregnant as long as in the opinion of the attending physician it is possible that the fetus could develop to the point of live birth with the continued application of death delaying procedures.

Basic care including whatever monitoring may be appropriate and/or the performance of any medical procedure necessary to provide comfort care or alleviate pain will be provided after a DNR Order has been written or the IDPH DNR Order Form is utilized.

In the event that the patient's condition changes or the circumstances upon which the DNR is based, the physician should discuss the DNR order with the patient, the patient's family, or patient's appointed agent.
When a patient with a DNR order requires a surgical or diagnostic procedure, the physician performing the procedure and the anesthesiologist, if applicable, will discuss with the patient or surrogate the handling of the DNR order. Discussion should include information about the goals of surgery for the patient, the likelihood of requiring resuscitative measures, and possible outcomes with and without resuscitation.

**Procedure:**

A. **IDPH Uniform Do-Not-Resuscitate (DNR) Order Form.**

- **Page one of the IDPH DNR Order Form is the actual DNR Order.** This side MUST be completed in order to be a valid DNR order.
- **The form indicates, in a pre-checked box, that no attempts at cardiopulmonary resuscitation should be made in the event of a full cardiopulmonary arrest when both breathing and heartbeat stop.**
- **The pre-arrest emergency section of the IDPH DNR Order form provides additional guidance to health-care providers when a patient has a DNR order, and breathing is labored or stopped, but the heart is still beating.**
- **There are 2 lines for other instructions to indicate the type of resuscitative to be performed at that time.** If the patient wants no resuscitative attempt at that pre-arrest stage, then he or she can indicate, again, that no attempt at CPR be made.
- **If an individual provides a valid IDPH DNR Order Form, ambulance personnel will honor the patient’s wish NOT to have CPR.** The patient or his legal representative must sign the consent to the DNR order. In addition, two adult witnesses must sign that they witnessed the giving of consent. Witnesses can include healthcare workers and family members.
- **The physician MUST sign the form in order to be a valid DNR order.**
- **The second side of the form allows healthcare providers to periodically review and update the DNR order, a process that is highly recommended.**
- **The form also has places to indicate whether the patient has other advance directives such as Healthcare Power of Attorney or Living Will.**
- **An incomplete second side does not render the DNR order invalid as long as the first page is complete.**
- **If the patient is being discharged from the hospital and brought in the orange IDPH DNR Form, staff will attempt to DNR order written on the new IDPH Uniform DNR Order**
Form in order to ensure that paramedics and nursing home staff abide by the DNR order as well.

B. THE COMPETENT ADULT PATIENT. The Competent adult patient (age 18 or over), or an emancipated minor, who is conscious, alert, oriented and able to understand the nature and severity of his/her illness or condition may request a DNR Order. No prior judicial approval is necessary for a competent patient to request a DNR Order. Whenever such a request is made, the attending physician shall consult with the patient to ascertain that the patient understands his/her illness or condition and the provable consequences of refusing resuscitation treatment. The DNR Order or the IDPH DNR Order form shall be completed after the appropriate discussion with the patient. The discussion shall be documented.

FOR ADULTS WITH A LIVING WILL.

The patient shall provide a copy to attach to the chart. If the patient is competent, alert and oriented, efforts should be made to determine whether the living will still reflects the patient's wishes. This discussion should be documented in the chart. Documentation is done in the Affinity System and should be placed on the chart. When it is determined that it is the patient's desire and reflects his/her wishes, the doctor shall write the DNR Order or complete the IDPH DNR Order form.

WHEN THE PATIENT HAS BEEN PREVIOUSLY JUDICIALLY DETERMINED TO BE INCOMPETENT, the discussion regarding DNR Orders shall be between the physician and the patient's legal guardian. The sole responsibility for concurrence with a physician's DNR Order (or the initiation of a DNR Order or the IDPH DNR Order form) rests with the legal guardian, the patient's family wishes not withstanding. Guardianship must be validated by presenting proper documentation.

ADULTS INCAPABLE OF PARTICIPATING IN A DNR DECISION.

- These are persons who are functionally incompetent but who have not been declared incompetent by a court.
- If a patient without family is comatose, semi-comatose, senile, disoriented or otherwise incapable of participating in the decision making process, the physician may write a DNR Order or complete the IDPH DNR Order form without being required to petition a court to appoint a legal guardian. The physician may want to obtain a second opinion from a concurring physician. This should be documented in the chart.
- If the family members are available, they should be consulted regarding the DNR decision. When the family is in agreement with the DNR decision, such an agreement should be documented in the patient's chart.
If there is substantial disagreement among the family members, the physician is advised to refrain from writing a DNR Order or completing the IDPH DNR Order form. Consultation with the family should be continued toward the resolution of any disagreement. This should also be documented in the chart.

THE COMPETENT PATIENT WHO BECOMES INCOMPETENT DURING TREATMENT
If a competent patient becomes incompetent, his or her previously expressed written wishes should remain in effect so long as the clinical conditions supporting the original decision remains in existence.

FOR ADULTS WITH A HEALTH CARE POWER OF ATTORNEY
- The patient or the agent acting pursuant to the health care power of attorney must provide a copy of the document to attach to the chart.
- Until the copy of the health care power of attorney can be placed on the chart, the wishes of the patient will be documented in the chart by the nursing staff or the physician.
- The physician, social worker, the hospital chaplain, risk manager, or the patient liaison may ascertain whether the document meets the requirements of the Illinois Powers of Attorney for Health Care Law.
- If the patient is comatose, semi-comatose, senile, disoriented, or otherwise lacks the capacity to participate in the decision-making process, whether to write a DNR Order shall be discussed with the agent acting pursuant to the power of attorney.
- The physician and the agent shall review together the provisions of the health care power of attorney relative to the type of the treatment desired by the patient. This discussion shall be documented in the chart.
- If the agent acting pursuant to the health care power of attorney consents, the DNR Order should be entered on the chart or the IDPH DNR Order form completed by the physician providing the physicians agrees. In the event the physician disagrees, he/she should withdraw from the case following the transition of care to another physician.

FOR MINORS.
- If the patient is a minor (under 18 years of age), a DNR Order should be discussed with the minor's parents or with
the appointed legal guardian who has the responsibility to make such a decision.

- If the minor's parents disagree among themselves as to an appropriate course of action, the physician should request the family or the hospital's administration to seek appointment of a legal guardian before writing a DNR Order or completing the IDPH DNR Order Form.
- In the event the minor's parents are divorced, the physician should still attempt to discuss the decision and get the consent of both parents. If an emancipated minor requests to be made a DNR, such request should be seriously considered if the minor understands the consequences of such a request.
- Emancipated minors may request DNR status (See Consent Policy for definition of emancipated minors).

C. ORDERS.

Do Not Resuscitate (DNR) Orders shall be written only in accordance with accepted standards of medical practice. The medical record shall contain documentation of the discussion regarding the DNR decision and consider the patient's personal views, medical conditions and related medical considerations, use of CPR in the event of an unforeseen accident (such as a car crash or choking on food), quality of life issues before and after CPR, use of CPR during surgery or other medical condition, organ donation and use of mechanical ventilator, and where appropriate any necessary authorization by the patient, patient's family or the consent of a court appointed guardian.

If the competent, capable patient does not agree to the DNR Order, it cannot be written and the IDPH DNR Order Form cannot be completed.

When a patient presents with a completed IDPH DNR Order, the staff should review with the patient at that time if it remains the patient's choice. This should be documented on back of the IDPH DNR form with the date, reviewer's name and title, location of review and the "No change" box documented. A copy of the form will be placed on the patient's chart.

- When the physician writes a DNR Order in the chart, staff will place a blue DNR Band on the patient's arm. This process thus signifies that the patient is a DNR universally throughout the hospital.

D. The attending physician shall discuss the DNR Order and its meaning with appropriate members of the hospital staff.
E. REVOCATION OF A DNR ORDER.

- A patient may revoke the DNR Order or the IDPH DNR Order Form at any time.
- The attending physician shall be notified immediately and a "Cancel DNR Order" elicited from the physician.
- If the patient chooses to rescind the IDPH DNR Order Form or change their selection, this should be documented on the back of the IDPH DNR Order Form with the date, reviewer's name and title, location of review and check the appropriate box, either "FORM VOIDED; new form completed" or "FORM VOIDED; no new form completed".
- A copy of the form will be placed on the patient's chart.
- The revocation of the DNR order should be documented in the physician's and nurse's progress notes.
- A DNR Order is to be cancelled by the physician by writing a "Cancel DNR Order" in the chart. Telephone or verbal orders are acceptable.

F. CONFLICT RESOLUTION

The actions of the Ethics Committee and its members in helping resolve dilemmas which may arise should be considered advisory in nature, and are not intended to interpose a third party between physician and patient. The outcome of consultations by the Ethics Committee is to assist in clarifying available options and improving communications.

1. In the event there is conflict in decision-making between staff, or family and patient, a designated subcommittee of the full Ethics Committee shall be available.

2. If a satisfactory resolution of the conflict cannot be agreed upon after consultation, the matter should be referred to the full Ethics Committee of the hospital which should be available for call.

(The IDPH Do Not Resuscitate Form should be copied on bright pink paper when possible)

Subject:
Matters of Conscience/Staff Rights
**Policy:**
Riverside will consider a request by an employee not to participate in an aspect of patient care when such a request is based on personal or cultural values and/or religious beliefs; however, in no event will a patient's care be negatively affected as a result of requests of this nature.

**Procedure:**
It is recognized that there are treatment and procedures generally accepted as good medical practice and/or provided for by law with which some individuals may have objections of conscience due to cultural values, sense of ethics, or religious beliefs.

The responsibility for decisions as to the treatment and procedures to be carried out and/or not carried out with respect to any patient rests with the physician in charge and with Riverside HealthCare. In no instance will the mission of the organization be compromised. Treatment and care will be provided to all persons in need without regard to disability, race, creed, color, gender, national origin, lifestyle, legal status, or ability to pay.

An employee having objections of conscience to a physician's lawful order may not amend or delay those orders. An employee may express his/her objections to their supervisor and ask not to be assigned that kind of duty. The aspects of patient care or treatment that an employee may elect not to participate in include but may not be limited to the following:

- Sterilization procedures
- Withholding or withdrawing of life-sustaining treatment, including nutrition and hydration
- Following a physician's order of plan of care when the employee believes that the best interests of the patient are at risk

An employee must notify his/her supervisor in writing of the decision not to participate in the care or treatment of a patient. The supervisor will try to make other arrangements to carry out the assignment. If the supervisor cannot make other arrangements to carry out the assignment, the employee is required to carry out the assignment. Failure to do so will result in possible discharge and legal action.

When an employee has exercised his/her rights under this policy, the care or treatment of the patient shall not be compromised. The objections of conscience on the part of an employee are to be treated with respect. Accommodations will be made if reasonable. Some situations may be referred to the Ethics Committee for comment and review. The employee may be asked to appear before the Ethics Committee to review the request.

An employee may not refuse to participate in the care or treatment of a patient based solely on the patient's diagnosis (e.g. HIV/AIDS or other sexually
transmitted diseases, tuberculosis, or other contagious diseases) or behavior. Such a refusal is deemed to be insubordination and the employee will be subject to disciplinary action up to and including termination.

**Subject:**
**Patient Refusal of Blood Transfusion for Personal/religious Reasons (e.g. Jehovah’s Witness)**

**Policy:**
Riverside Medical Center will honor an individual’s right to refuse medical treatment including personal/religious convictions regarding blood and blood products transfusion. In an emergency, a patient who has expressed refusal of blood and blood products may be treated with non-blood volume expanders including Dextran, saline, ringer's solution and Hetastarch.

**Procedure:**
**For a patient or patient guardian/responsible party who refuse blood or blood products for personal or religious reasons:**

A. Notifications -
Physician’s caring for an individual who is refusing blood or blood products for personal/religious reasons should be informed and a Social Services referral should be made. The Patient Safety Officer should be notified as well.

B. Adults with Decisional Making Capacity
For adults with decisional making capacity, the blood transfusion refusal will be honored. If an emergency or life-threatening condition exists and the patient continues to refuse blood and blood products, the physician may seek an Ethics Committee consult. If blood is withheld under the provision of this paragraph, the *Blood Transfusion of Blood Products Refusal and Release* form should be completed.

C. Adults Lacking Decisional Capacity: - If an adult patient lacks decisional capacity, and if the physician believes that blood or blood products are needed, and the patient’s guardian, agent or surrogate refuses to consent to blood or blood products for personal/religious reasons, this individual shall complete the *Blood Transfusion of Blood Products Refusal and Release* form

  · The hospital shall honor the refusal
  · In the absence of a guardian, agent or surrogate, blood products will be administered as needed

D. Minor Children - In situations involving minor children, the physician will make every effort to avoid administering blood or blood products in accordance with the parent’s wishes. If the minor’s condition is deemed to
be life threatening, the physician may administer blood and/or blood products as necessary.

E. Pregnant Patients – have the right to refuse blood or blood products and the hospital shall honor the refusal

F. Physician Care - If a physician cannot ethically or morally agree with a patient's refusal of blood or blood products, the physician should continue to care for the patient until the patient's care can be transferred to another physician who accepts the patient's refusal of blood or blood products.

G. Judicial intervention may be sought in any case in which the physician believes that blood or blood products are needed, and the patient refuses to consent to blood or blood products for personal/religious reasons. The physician and hospital administrator may decide to file a petition to have the court appoint a guardian for the purpose of authorizing necessary medical treatment.

Riverside Medical Center
Blood Transfusion and Blood Products
Refusal and Release*

Date: __________________

In respect for my religious convictions and or personal beliefs, it is my desire that no blood or blood components be given to me. I understand that my refusal to accept blood transfusions may lead to or aggravate a life-threatening condition, possibly leading to my death. I have been informed of all attendant risks and understand those risks.

I will accept non-blood volume expanders [such as Dextran, Saline, Ringer's Solution, Hetastarch, or other crystalloid or artificial colloids] and other non-blood management.

I understand that this refusal and release will be valid only for this hospitalization.

I agree to indemnify and hold harmless Riverside Medical Center and its officers, directors, trustees, agents, employees and independent physician contractors from and against any and all claims, costs, actions, causes of actions, losses, or expenses including attorneys' fees resulting from or caused in whole or part by acts or omissions as a result of my refusal for this treatment.
Subject:
Withholding / Withdrawing Medical Treatment

Policy:
In accordance with current patient rights policies, and the Illinois Health Care Surrogate Act effective September 26, 1991, Riverside Medical Center supports the withdrawing or withholding of medical treatment under the appropriate circumstances.

Procedure:

A. Generally, an alert patient with decisional capacity may direct withholding or withdrawing of medical treatment. Consult Administration and Consent Policy if there is an apparent exception to this general rule.

B. If the patient is without decisional capacity, but a valid Illinois Living Will or Healthcare Power of Attorney is available, either of those documents would govern if the patient meets their criteria.

C. If the patient is without decisional capacity and has not valid Advanced Directive, the Illinois Health Care Surrogate Act (HCSA) applies.

2. The Illinois Health Care Surrogate Act procedures:

A. Refer to the attached summary by the IHA Legal Department, November 1997 and to the attached forms, "Health Care Surrogate Act Physician Certification, " and, "Consent to Forgo Life-sustaining Treatment."

B. If the patient meets the criteria in the IHA summary, "Applicability of the Act," section, a Surrogate may then be identified according to the hierarchy described in the Summary.

C. Next, the physician and nursing staff collaborate in completing the form,"Health Care Surrogate Act Physician Certification", which should be filled out in it’s entirety.
D. If the patient has no objection and a Surrogate is identified and listed on the Physician Certification form, the Surrogate may then complete the, "Consent to Forgo Life-Sustaining Treatment," form. Ordinarily, nursing staff may witness this form. Keep the original form on the patient's chart and provide a copy of both sides to the Surrogate. (If a Surrogate is properly identified and agrees to serve, but cannot physically be present to sign the form, complete both lines of Item 1 and the "Telephone Consent," section.

E. When all the above steps have been completed, the Surrogate may now make appropriate health care decisions for the patient, including decisions to withhold or withdraw life-sustaining treatment. If such decisions are made, appropriate documentation in the medical records includes both forms described above, properly completed, and written physician orders indicating the plan of care.

F. If a situation arises in which there are further concerns or lack of agreement, Riverside Medical Centers' Ethics Committee may be consulted.

SUMMARY OF THE HEALTH CARE SURROGATE ACT

By

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November 1997*

I. Introduction

A. In 1991, Illinois adopted the Health Care Surrogate Act ("HCSA"). 755 ILCS40 (1996). Originally, this law defined the process under which decisions concerning life-sustaining treatment could be made by a surrogate acting on behalf of a patient who had a “qualifying condition”, did not have an advance directive, and who lacked decisional capacity, without having to resort to the courts.

B. Public Act 90-246 amended the Health Care Surrogate Act so that, effective January 1, 1998, a surrogate may make decisions concerning most other types of medical treatment (not only life sustaining treatment) for patients lacking decisional capacity and who do not have an advance directive, without having to resort to the courts. Essentially, this change gives clear authorization in Illinois law for the longstanding custom and practice of obtaining consent from the family for patients who lack decisional capacity.

C. This outline summarizes the requirements of the Health Care Surrogate Act, as amended by Public Act 90-246.
II. Legislative Findings and Purposes. 755 ILCS 40/5 (1996) as amended by P.A. 90-246

With the continuing focus on end of life care and decision making, it is important to recognize that Illinois public policy, as reflected in the following statements from the Health Care Surrogate Act, clearly supports the private decision making approach.

“The legislature recognizes that all persons have a fundamental right to make decisions relating to their own medical treatment, including the right to forgo life-sustaining treatment”

“Lack of decisional capacity, alone, should not prevent decisions to forgo life-sustaining treatment from being made on behalf of persons who lack decisional capacity and have no known applicable living will or power of attorney for health care.”

“This Act is intended to define the circumstances under which private decisions by patients with decisional capacity and by surrogate decision makers on behalf of patients lacking decisional capacity to make medical treatment decisions or to terminate life-sustaining treatment may be made without judicial involvement of any kind.”

“This Act is intended to establish a process for that private decision making.”

“This Act is intended to clarify the rights and obligations of those involved in these private decisions by or on behalf of patients.”

This Act is not intended to condone, authorize, or approve mercy killing or assisted suicide.”

This outline is intended to be informational and educational in nature; it is not intended to serve as legal advice. Anyone having particular questions should consult legal counsel.

III. Patients with decisional capacity.

For an adult patient with decisional capacity, decisions concerning medical treatment, including decisions to forgo life-sustaining treatment may be made by that adult patient. 755ILCS 40/20(a) (1996) as amended by P.A. 90-246.
IV. Routine Medical Treatment Decisions. Effective January 1, 1998

Beginning January 1, 1998, except for decisions to forgo life sustaining treatment, decisions concerning medical treatment on behalf of a minor or adult who lacks decisional capacity may be made surrogate decision maker in consultation with the attending physician. 755 ILCS 40/20 (b-5), as amended by P.A. 90-246. Prior to this change in law, a surrogate could only make decisions concerning life sustaining treatment. Thus, the change clearly authorizes in Illinois statute the longstanding practice of obtaining family consent for patients who lack decisional capacity.

In general, the same basic requirements that have applied to decisions concerning life sustaining treatment will now apply to routine medical treatment decisions. These requirements are described in greater detail in sections V – VII below.

A. Applicability – Under the revised Health Care Surrogate Act, a surrogate can make medical treatment decisions, except whether to forgo life sustaining treatment, under the following circumstances:

1. The patient does not have an operative advance directive

This means that the patient does not have a Living Will, Health Care Power of Attorney or a Declaration of Mental Health Treatment or that the patient has such an advance directive but that it does not apply to the patient’s condition. 755 ILCS 40/15, as amended by P.A. 90-246.

2. The patient lacks decisional capacity.

a. “Decisional Capacity” means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment and the ability to reach and communicate an informed decision in the matter as determined by the attending physician. 755 ILCS 40/10 (1996), as amended by P.A. 90-246.

b. For the purposes of this Act, a patient is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. A diagnosis of mental illness or mental retardation, of itself, is not a bar to a determination of decisional capacity. 755 ILCS 40/20(c) (1996).

c. The determination that the patient lacks decisional capacity shall be made by the attending physician in writing in the patient’s medical record and shall set forth the physician’s opinion regarding the cause, nature, and duration of the
patient’s lack of decisional capacity. 755 ILCS 40/20(c) (1996).

d. Unlike with life-sustaining treatment decisions, for routine medical treatment decisions, there is no requirement in the Act that there be a concurring determination that the patient lacks decisional capacity. 755 ILCS 40/20(c) (1996), as amended by P.A. 90-246.

3. The patient need not have a qualifying condition.

If the decision does not involve life sustaining treatment, the patient need not have a qualifying condition, as described below.

a. Identifying a Surrogate – The same requirements as described in section VI below for identifying a surrogate decision maker shall be followed.

b. Surrogate Decision Making – The same basic requirements, as described in section VII below, relating to the process for making and implementing surrogate decisions shall be followed.

c. Definition of medical treatment – The Health Care Surrogate Act does not expressly define “medical treatment”. For guidance, one may look to the definition of “health care” which is defined in the Health Care Power of Attorney Law as “any care, treatment, service or procedure to maintain, diagnosis, treat, or provide for the patient’s physical or mental health or person care” 755 ILCS 45/4-4(b) (1996).

d. Exception for electro-convulsive therapy, psychotropic drugs and mental health admission. As of November 18, 1997, there is legislation that has been passed by the legislature and is awaiting approval by the Governor that would prohibit a surrogate decision maker under the Health Care Surrogate Act from consenting to the administration of electro-convulsive therapy or psychotropic drugs. (SB 317, awaiting action by the Governor) Since it appears likely that this measure will be adopted, providers should recognize this limitation on a surrogate’s decision making authority.

V. Life Sustaining Treatment Decisions

As originally enacted, the HCSA only permitted a surrogate to make decisions concerning life sustaining treatment. Beginning January 1, 1998, the surrogate’s decision-making authority is not limited to life sustaining treatment, but includes routine medical treatment decisions. However, under the Act, in order to make decisions concerning life sustaining treatment the following three conditions must exist:

A. The patient does not have an operative advance directive.

This means that the patient does not have a Living Will, Health Care Power of Attorney or a Declaration
B. The patient lacks decisional capacity.

1. “Decisional Capacity” means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment and the ability to reach and communicate an informed decision in the matter as determined by the attending physician. 755 ILCS 40/10 (1996), as amended by P.A. 90-246.

2. For the purposes of this Act, a patient is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. A diagnosis of mental illness or mental retardation, of itself, is not a bar to a determination of decisional capacity. 755 ILCS 40/20(c) (1996).

3. The determination that the patient lacks decisional capacity shall be made by the attending physician in writing in the patient’s medical record and shall set forth the physician’s opinion regarding the cause, nature, and duration of the patient’s lack of decisional capacity. 755 ILCS 40/20(c) (1996).

4. Before implementing a decision to forgo life-sustaining treatment, at least one other qualified physician must concur in the determination that the patient lacks decisional capacity. The concurring opinion must be made in writing in the medical record after a personal examination of the patient. 755 ILCS 40/20(c) (1996).

C. The patient has a qualifying condition

“Qualifying Condition” means the existence of one or more of the following conditions in a patient, as certified in writing in the medical record by the attending physician and at least one other qualified physician. 755 ILCS 40/10 (1996).

1. “Terminal Condition” means an illness or injury for which there is no reasonable prospect of cure or recovery, death is imminent, and the application of life-sustaining treatment would only prolong the dying process.

a. “Imminent” means a determination made by the attending physician according to acceptable medical standards that death will occur in a relatively short period of time, even if life-sustaining treatment is initiated or continued.
2. “Permanent unconsciousness” means a condition that, to a high degree of medical certainty,
a. will last permanently, without improvement,

b. in which thought, sensation, purposeful action, social interaction, and awareness of self and environment are absent, and

c. for which initiating or continuing life-sustaining treatment, in light of the patient’s medical condition, provides only minimal medical benefit.

3. “Incurable or irreversible condition” means an illness or injury

a. for which there is no reasonable prospect of cure or recovery,

b. that ultimately will cause the patient’s death even if life-sustaining treatment is initiated or continued,

c. that imposes severe pain or otherwise imposes an inhuman burden on the patient, and

d. for which initiating or continuing life-sustaining treatment, in light of the patient’s medical condition, provides only minimal medical benefit.

VI. Identifying a Surrogate. 755 ILCS 40/25 (1996) as amended by P.A. 90-246

A. When a patient lacks decisional capacity, the provider must make a reasonable inquiry as to the availability and authority of a health care agent under the Health Care Power of Attorney law.

B. When no health care agent is available, the provider must make reasonable inquiry as to the availability of possible surrogates listed in items 1-4 below. The surrogate decision maker, as identified by the attending physician, is then authorized to make medical decisions, including whether to forgo life-sustaining treatment, on behalf of the patient without court order or judicial involvement in the following order of priority.

1. the patient’s guardian of the person;
2. the patient’s spouse;
3. any adult son or daughter of the patient;
4. either parent of the patient;
5. any adult brother or sister of the patient;
6. any adult grandchild of the patient;
7. a close friend;
8. the patient’s guardian of the estate.
C. The provider’s duty to make a reasonable inquiry as to the availability of a surrogate only arises after the attending physician has determined that the patient lacks decisional capacity and has a qualifying condition. In a recent case, the family of an 18 year old patient sued the hospital claiming that the hospital failed to determine whether the patient had a qualifying condition and whether a surrogate was available. This failure, allegedly, led to the hospital’s continuing to provide care to the patient contrary to the wishes of the children. Under the statute, the attending physician has the responsibility for determining if the patient lacks decisional capacity and has a qualifying condition. Since these determinations had not been made, the Court ruled that the hospital did not have a duty to initiate the surrogate decision making process. Ficke v. Evangelical Health System, 211 Ill. Dec.95 (Ill. App. 3rd, 1996)

D. The name, address, telephone number and relationship to the surrogate to the patient shall be recorded in the medical record. 755 ILCS 40/25(b) (1996)

E. When there are multiple surrogates at the same priority level, they shall make a reasonable effort to reach a consensus. If there is disagreement among surrogates who are at the same level, a majority of the available surrogates at that level shall control, unless the minority initiates guardianship proceedings to challenge the priority of or decision of the recognized surrogate. 755 ILCS 40/25(a)(d) (1996).

F. The surrogate shall have the same right as the patient to receive medical information and medical records and to consent to disclosure.


A. Life-sustaining treatment means any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition or would serve only to prolong the dying process. Those procedures include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, antibiotics, and artificial nutrition and hydration. 755 ILCS 40/10 (1996).
B. Substituted Judgment. A surrogate shall make decisions for the patient conforming as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient’s personal, philosophical, religious and moral beliefs and values relative to the purpose of life, sickness, medical procedures, suffering and death. 755 ILCS 40/20(b) (b-5) (1996) as amended by P.A. 90-246.

C. Best Interests. If an adult patient’s wishes remain unknown after reasonable efforts to discern them or if the patient is a minor, the decision shall be made on the basis of the patient’s best interests as determined by the surrogate. The surrogate shall weigh the burdens on and benefits to the patient of initiating or continuing life-sustaining treatment against the burdens and benefits of that treatment. 755 ILCS 40/20 (b)(b-5)(1996) as amended by P.A. 90-246.

D. Informing the physician. A surrogate shall express the decision to forgo life-sustaining treatment to the attending physician and one witness who is atleast 18 years of age. This decision is to be documented in writing in the patient’s medical record by the physician and signed by the witness. 755 ILCS 40/20(d) (1996). While the HCSA does not expressly require similar documentation for routine medical treatment decisions, it may be prudent to follow a similar practice, especially for higher risk or more invasive procedures or treatment.

E. Informing the patient. The attending physician shall inform the patient that has been determined that he lacks decisional capacity and that a surrogate will be making medical treatment decisions on the patient’s behalf. The patient shall be informed of the identity of the surrogate and any decisions that are made. If the patient objects to the surrogate or to any decisions made by the surrogate, the Act does not apply. 755 ILCS 40/20(c) (1996).

F. Implementing the decision. The attending physician shall promptly implement the decision to forgo life-sustaining treatment on behalf of the patient, unless he believes the surrogate is not acting in accordance with his responsibilities under the Act, or is unable to do so for reasons of conscience. 755 ILCS 40/20(f)(1996).

VIII. Immunity of Providers. 755 ILCS 40/30 (1996)
A provider who relies on and carries out a surrogate’s directions and who acts with due care in accordance with the Act shall not be subject to any claim based on lack of patient consent or to criminal prosecution or discipline for unprofessional conduct. Every provider has the right to rely on any decision by the surrogate that is not clearly contrary to the Act to the same extent as thought it had been made by the patient. Any person may presume, in absence of actual knowledge to the contrary, that the surrogate is acting in
compliance with the Act.

However, nothing in the Act shall be deemed to protect a provider from liability for the provider's own negligence in performing his or her duties or in carrying out any instructions of the surrogate.

IX. Conscience of Providers. 755 ILCS 40/35 (1996)
A health care provider is not required to comply with a decision to forgo life-sustaining treatment where compliance would conflict with the personal beliefs or conscience of the provider. The provider must, however, immediately notify the administration of the facility, and then assist the patient or surrogate in arranging a transfer to another facility willing to comply with the wishes of the patient or surrogate.

HEALTH CARE SURROGATE ACT
PHYSICIAN CERTIFICATION

It has been determined that patient
__________________________________________
has one or more of the following conditions:
  ▪ terminal condition
  ▪ permanent unconsciousness
  ▪ incurable or irreversible condition

The cause and nature of the condition(s) is summarized as follows:
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

___________________________________________________________
____
___________________________________________________________
____
___________________________________________________________
____

After personally examining the above-noted patient, it has also been determined to a reasonable of medical certainty that the patient lacks decisional capacity to decide whether to forego life-sustaining treatment. The cause, nature, and duration of the lack of decisional capacity is summarized as follows:
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

___________________________________________________________
____
___________________________________________________________
____
___________________________________________________________
____

____
In conformance with the Illinois Health Care Surrogate Act, the patient has been informed and has not objected to the above determinations, the identity of the surrogate decision maker, and the decision made by the surrogate as to whether to forego life-sustaining treatment. The decision and the substance of discussions before making the decision is summarized as follows (include information as to date, time, location, and whether decision by surrogate was received in person, by phone, or in writing):

Surrogate Decision Maker: _____________________
Attending Physician Date ____________________

Name I concur in the determination that the above-noted patient has a qualifying ____________________________ condition and lacks decisional capacity.
Address ________________________________
City, State, Zip Code Concurring Physician Date ____________________

(____)__________________________ I have witnessed the discussion between Telephone Number(s) the attending physician and surrogate decision maker and the decision ____________________________ expressed by the surrogate as to forgoing Relationship to Patient life-sustaining treatment on behalf of the above-noted patient.
SURROGATE CONSENT TO FOREGO LIFE-SUSTAINING TREATMENT

*(See reverse side for definitions and considerations)

1. I hereby authorize Dr. __________________________ and such associates as may be selected by him/her and Riverside Medical Center to forego life-sustaining treatment on behalf of:


   (name of patient who has qualifying condition* and lacks decisional capacity)

2. This direction is given by me as the patient’s surrogate decision maker* after consultation with the above noted attending physician.

3. This direction conforms as closely as possible to what the patient would have done or intended and to the extent that the patient's wishes are unknown, has been given on the basis of the patient's best interests. (See policy for factors which are to be considered by the surrogate decision maker.)

4. To the best of my knowledge, the patient does not have any operative and unrevoked Living Will or an authorized agent under a Durable Power of Attorney for Health Care.

Date Signature of Surrogate Decision Maker

A.M./P.M. ____________________________

Time Name of Surrogate Decision Maker

Signature of Witness Street Address

City, State, Zip Code

(____) ______________________________
Telephone Number(s)

Relationship to Patient
TELPHONE CONSENT

Verbal Authorization to forego life-sustaining treatment* on behalf of:

___________________________________________________________

(name of patient who has qualifying condition* and lacks decisional capacity)

was obtained from the surrogate decision maker* named below after consulting with the Attending Physician.

___________________________________________________________

Date Name of Surrogate Decision Maker

__________________________ ____________________________

A.M/P.M. ____________________________

Time Street Address

___________________________________________________________

Signature of Attending Physician State, City, Zip Code

(_____)______________________

Telephone Number(s)

___________________________________________________________

Signature of Witness Relationship to Patient

Riverside Medical Center
Kankakee, IL
8/93 180017

DETERMINATION OF BRAIN SURVIVAL

Has clinical brain death been diagnosed? [] Yes [] No

DIAGNOSIS AND COMPLICATIONS

___________________________________________________________

___________________________________________________________

___________________________________________________________

Is the catastrophe thought to have caused brain death? [] Yes [] No

Have metabolic diseases or toxins been ruled out by history? [] Yes [] No

BARBITURATE LEVEL AND DEPRESSANT MEDICATION SURVEY
Blood drawn: Date ________ Time ________
Barbituate level: ___________________________
Significant levels of other depressants: [ ] Yes [ ] No
(non-depolarizing agents or polarizing muscle relaxants such as Succinylcholine, Pavalon, etc)

EVIDENCE OF SPONTANEOUS RESPIRATIONS

An ABG will be drawn to document that the pCO2 is 60 or above.

MOVEMENTS Present Absent

Spontaneous [ ] [ ]
Evoked [ ] [ ]

Corneal stimulation [ ] [ ]
Pressure on supraciliary ridge [ ] [ ]
Pressure on sternum [ ] [ ]
Pressure on tibia [ ] [ ]
Loud noise [ ] [ ]

Date and Time _______________ Signed _____________________________ M.D./D.O.

Attending Physician/Consultant

Riverside HealthCare
Kankakee, IL
8/98 560010