



WYATT TARRANT & COMBS LLP

2013 Revisions to POST

Next Step: Needed Update to Advance Directive Laws

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2004 Tennessee Public Chapter 862

- Section 1 enacted the Tennessee Health Care Decisions Act (now codified as Tennessee Code Title 68, Chapter 11, Part 18)
- Section 3 adopted a new Tennessee Code Section 68-11-224, recognizing a “**universal do not resuscitate order**” or “**UDNR**”
 - only addressed the withholding of CPR (DNR)
 - could only be issued by a physician
 - did not authorize withholding of intravenous fluids
 - did not address other life-sustaining treatment or palliative care

2004 Tennessee Public Chapter 862

- 2004 law defined UDNR as:
 - “a written order that applies regardless of the treatment setting and that is **signed by the patient’s physician** which states that in the event the patient suffers cardiac or respiratory arrest, **cardiopulmonary resuscitation should not be attempted.**”
- UDNR could only be issued:
 - with the **consent** of the patient, agent, guardian, or other surrogate
 - or **if none available**, if the physician determines CPR would be contrary to accepted medical standards

2013 Tennessee Public Chapter 254

- Rewrote Tennessee Code Section 68-11-224
 - Substitutes the term “physician orders for scope of treatment” or “POST” in place of “UDNR”
 - Permits POST to be issued by
 - physicians
 - physician assistants (PAs)
 - nurse practitioners (NPs)
 - clinical nurse specialists (CNPs)
 - POST still applies “regardless of treatment setting”

2013 Tennessee Public Chapter 254

- POST may specify **either or both of the following**:
 - “whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation **should or should not** be attempted”
 - “other medical interventions that are to be provided or withheld”
- Like UDNR, POST may be issued by a physician:
 - with the **consent** of the patient, agent, guardian, or other surrogate
 - or **if none available**, if the physician determines CPR would be contrary to accepted medical standards

2013 Tennessee Public Chapter 254

- POST may also be issued by PA, NP, or CNP if:
 - **no physician** with whom the patient has a physician-patient relationship is “**present and available** for discussion with the patient,” agent, guardian, or other surrogate
 - authority to issue a POST is in the PA, NP, or CNP **protocols**
 - **AND . . .**

2013 Tennessee Public Chapter 254

➤ AND . . .

➤ patient is a **nursing home resident, ICF/MR facility resident, or hospital patient in the process of being discharged or transferred to another facility**

➤ AND either

➤ with the **informed consent** of the patient, agent, guardian, or other surrogate

➤ or **if none available**, if the PA, NP, or CNP determines **CPR** would be contrary to accepted medical standards

Advance directives in Tennessee before 2004

- Living wills (Tenn. Code Ann. §§ 32-11-101 et seq.)
- Durable powers of attorney for health care (Tenn. Code Ann. §§ 34-6-201 et seq.)
- Not repealed by 2004 law – still can be used
- 2007 Tennessee Public Chapter 8 included changes to conform attestation requirements for living wills and durable powers to HCDA
 - effect is to render old and new laws more in line with each other, except as to form

Proposal to conform old and new forms

- Public continues to be confused by “living will” versus “uniform durable power of attorney for health care” versus “appointment of agent” versus “advance care plan”
- New legislation can resolve (see handout)

Proposal to conform old and new forms

➤ Revised Tennessee Code Section 32-11-103, subsection (5):

(5) “Medical care” includes This part shall not be interpreted to allow the withholding or withdrawal of ~~simple nourishment or fluids so as to condone death by starvation or dehydration~~ unless the provisions of the instrument ~~which~~ **that** creates a living will or durable power of attorney for health care ~~include the following or substantially the following: “I authorize the withholding or withdrawal of artificially provided food, water or other nourishment or fluids;”~~ **includes a specific declaration of such intent.**

Proposal to conform old and new forms

- Replace the old statutory living will form, Tennessee Code Section 32-11-105 with a new form
 - new form is identical to the existing Advance Care Plan
 - but adds the subtitle “Living Will”
- Recognize same form a sufficient under Uniform Durable Power of Attorney for Health Care law, Tennessee Code Section 34-6-205
- Add a provision to the HCDA adopting the same form
 - TDOH retains authority to develop and issue model forms consistent with the HCDA (Tennessee Code Section 68-11-105)

Proposal to conform old and new forms

- Eliminate different forms for
 - Living Wills
 - Durable Powers of Attorney for Health Care
 - Appointment of Agent
- Should reduce or eliminate confusion
- Instruments adopted under old statutes will remain effective



Discussion/Q&A

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