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 . . .
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 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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