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

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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
A statewide, quantitative, descriptive, cross-sectional survey was designed on the basis of information from a review of the literature. The survey was reviewed for validity 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. 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 validity 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.

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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. 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 172 (46.01%) 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 (52.77) |
| • 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) |

*Physicians were able to select multiple clinical practice settings.
surrogate decision making laws to include more ethnically 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.\textsuperscript{[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 study 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.\textsuperscript{[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.\textsuperscript{[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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### Table 2. Physician characteristics (N = 412)

| Number of Occurrences where Patient Care Was Delayed | 1–3 N (%) | 4–6 N (%) | > 7 N (%) | No Delay 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) |
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