



End-of-Life Health Care Decisions – What Skilled Nursing Facilities Should Know About the Family Health Care Decisions Act and Guardianships

Cona Elder Law PLLC

Nursing homes are entrusted with ensuring that residents' end-of-life health care decisions for their residents are carried out in accordance with the wishes of the residents, and in full compliance with all applicable laws. This becomes an even more delicate balance when a resident is incapacitated and cannot express what those issues are.

For this reason, the Family Health Care Decisions Act (FHCDA) allows one individual to act as Surrogate health care decision maker, and direct health care decisions for the resident, including at end-of-life, provided that they are the highest level of priority based on their relationship with the resident. (The FHCDA will not apply where the resident has a health care agent, in which case the health care agent would be authorized to make health care decisions, including end-of-life decisions, on behalf of the resident.) The order of priority of relationships under the FHCDA are (from highest to lowest): (i) Guardian, pursuant to Article 81 of the Mental Hygiene Law; (ii) Spouse/Domestic Partner; (iii) Son/Daughter (over the age of 18); (iv) Brother/Sister; and (v) Close Friend.

Under the FHCDA, there may be multiple individuals who share the same priority relationship level as one another and who may disagree regarding the resident's care or end-of-life decisions (i.e. if the resident has 3 adult children who are not in agreement), conflicts may arise which may require court intervention. In those cases, and in cases where there is no one with any of the relationships listed under the FHCDA, it may be necessary to petition the Court under Article 81 of the Mental Hygiene Law to appoint a Guardian empowered to address the resident's personal needs and to make health care decisions on the resident's behalf.

Even when a Guardian is appointed, however, the Order and Judgment Appointing a Guardian may still require further Court approval concerning end-of-life decisions, despite the FHCDA listing a Guardian as the highest level of relationship for Surrogate health care decision makers. It is important to review the Order and Judgment Appointing a Guardian to determine whether prior Court approval is necessary prior to ceasing end-of-life medical care for an incapacitated resident.

The experienced attorneys at Cona Elder Law can assist your health care facility in addressing these and other legal issues impacting skilled nursing facilities. Additionally, to schedule your free **virtual** "Best Practices" webinar free for LeadingAge New York members. Please contact Christina Pecoraro at 631.390.5000 or cpecoraro@conalaw.com to schedule one today.

Cona Elder Law PLLC is an award-winning Elder Law and Health Care Law firm. In practice for over two decades, Cona Elder Law offers unsurpassed expertise in Health Care Facility Reimbursement and Recovery, Elder Law, litigation and collections. Health care facilities turn to Cona Elder Law for innovative strategies and cutting-edge solutions regarding complex Medicaid eligibility matters, Guardianship proceedings, PRUCOL matters, collections, litigation, and other matters related to resident financial accounts and the facility's bottom line. Representing over 200 skilled nursing

facilities, CCRCs and assisted living facilities throughout New York and New Jersey, Cona Elder Law is a preeminent law firm in this practice area. The firm has been ranked the #1 Elder Law Firm by *Long Island Business News* for eight consecutive years and received the Business Achievement Award from the Hauppauge Industrial Association (HIA-LI). For additional information, visit www.conaelderlaw.com.

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