POLICY

High Peaks Hospice (HPH) will follow New York State Public Health Law Article 29-CC (Family Health Care Decisions Act [FHCDA]) concerning decisions to give, withhold or terminate life-sustaining treatment using the Guidelines listed below. The attending physician has an obligation to record in the patient’s chart the decision concerning life sustaining treatment.

DEFINITION

Life Sustaining Treatment means any medical treatment or procedure without which the patient will die within a relatively short time, as determined by an attending physician to a reasonable degree of medical certainty. Cardiopulmonary resuscitation (CPR) is presumed to be life-sustaining treatment without the necessity of a determination by an attending physician.

GUIDELINES:

A. Treatment of Patients with Capacity: In general, decisions are made as follows for patients (over 18 years of age) with capacity:

1. Capacity is defined as the mental ability to know reality so that the nature and effect of illness and treatment can be understood and decisions made are the product of a reasoned thought process.

2. If the patient has capacity, the attending physician and HPH team must then consult with the patient to insure that the patient understands the illness and the probable consequences of each course of treatment so that any decision represents informed choice.

3. The following information must be included in the patient’s chart should a decision to give, withhold or terminate treatment be made:

   a. A summary of initial discussions with the patient as well as all subsequent follow-up discussions.

   b. A descriptive statement of the patient’s capacity, indicating that the patient was fully aware of all the consequences of the course of action upon which they decided.

   c. A statement of the circumstances of consent to the treatment made by the patient concerning the consequences of such a decision.
4. When dealing with individuals with capacity, the decisions not only include decisions to terminate life sustaining treatment, but all decisions concerning the patients course of treatment (e.g., refusing blood transfusions).

NOTE: No distinction shall be made between decisions to withhold treatment and decisions to stop treatment once it has been started.

5. Determination of Capacity: If the patient is deemed not to be capable of making health care decisions, two physicians, one of whom is the patient’s attending physician or his/her designee, must document the reason and probable duration of the incapacity. If the cause of the incapacity is a special situation, i.e. developmental disability or psychiatric illness, then the concurring physician must meet the qualifications as outlined in the appropriate New York State legislation in this matter.

B. Treatment of Patients without Capacity: If a request is made to withdraw life-sustaining treatment and the patient is not capable of making their own decisions regarding this issue, a decision after consultation with the attending physician and one of the following, according to the hierarchy of decision-makers:
   1. A health care proxy (See Clinical Policy “Advance Directives CP204”)
   2. A court-appointed guardian
   3. A surrogate decision maker (knowledgeable of statements of intent or actions indicating desire for hospice care)
      a. Case will be referred to the HPH Ethics Committee prior to admissions.
      b. Legal Counsel may be consulted to determine whether judicial determination is required if case is still in question.

C. Withholding or Termination of Care for a Patient Without Capacity
   1. If a HPH patient is without capacity, terminating or withholding treatment is permissible where the treatment under consideration will merely preserve physiological function while psycho-social-spiritual function remains beyond the potential of the patient.
      a. Such treatment may be regarded as medically futile and/or non-beneficial.
      b. Whether or not medical treatment is effective should be a medical judgment and not simply a question of whether life can be prolonged.
      c. Proper analysis in such a case will also consider the benefit of treatment (i.e. the ability to benefit the patient by allowing the person some ability to pursue the purposes of human life) and the burdens associated with the treatment considered. (e.g. excessive pain, prolonged life in non-cognitive state, etc.)

   and if either 2 or 3 is true
   2. The patient has previously indicated either orally, or in writing, by clear and convincing evidence that he/she would have the care terminated in his/her present circumstances. Documents specifying advanced directives, including the health care proxy, other written declarations of intent (i.e., living will), and Do Not Resuscitate Orders, as well as oral instructions are valid expressions of the patient’s wishes and must be respected.
3. In the absence of clear and convincing evidence of a patient’s wishes, there is unanimous agreement among both the patient’s family or surrogate and physicians that the proposed or ongoing treatment is medically futile under the present circumstances and that it would be in the patient’s best interest to discontinue or withhold said treatment.

4. Current HPH policy regarding Patient Self-Determination, Advance Directives and DNR will be followed. If a conflict arises during this process, the issue will immediately be referred to the HPH Ethical Committee for review.

NOTE: Should any other health care agencies be actively involved in the patient’s ongoing care, dialogue should be initiated with treatment decisions (for example, Office of People with Developmental Disabilities (OPWDD) facilities). Consult with the Executive Director or Patient Care Coordinator for further information.

5. Should any dissent arise as to the expressed wishes of the patient who lacks capacity, then it is imprudent to give, withhold or withdraw life-supporting treatments.

6. When decision making causes a conflict it is an expectation that healthcare professionals caring for the patient will facilitate more discussion and dialogue among all parties involved.

7. If the conflict cannot be resolved any person may request a consultation from the HPH Ethical Committee. Should this Committee be unable to resolve the conflict, treatment or withdrawal of such should only be pursued after obtaining a court order.

Also See Clinical Policies:
Advance Directives CP204
Ethical Issues: Consultation & Resolution CP225
Patient/Family Informed Consent CP248

LAST REVIEW DATE: IDT 1/4/17, Clinical Comm 2/7/17, 04/25/17

LAST UPDATED: Comp Coord 1/23/17, 3/17/17, 05/10/17, 05/24/17, 09/01/18

BOARD APPROVAL: May 23, 2017