POLICY

High Peaks Hospice (HPH) recognizes that all patients are presumed to have capacity to make their own medical decisions unless it has been determined that they do not have such capacity. HPH will obtain informed consent from every patient and family at the time of admission to participate in the HPH program. If the patient is unable to sign the documents, the patient’s representative may sign.

DEFINITION:

Representative: An individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

REFER TO: POLICY ON HOSPICE INFORMED CONSENT (located in PCC’s Office)
Prepared by Arent Fox PLLC

PROCEDURES:

1. The admitting nurse will review HPH philosophy and services with the patient and family including the provisions outlined in the “Admission and Care Consent” form at the admitting visit. If the patient and family are in agreement regarding the admission, the “Admission and Care Consent Form” is completed according to the following guidelines:
   A. The form must be dated
   B. The patient must sign their own name if they are mentally sound and over the age of 18, or an emancipated minor.
   C. A competent person, who must sign their entire name, must witness the form.
   D. The patient’s representative may sign the form provided the following guidelines are followed:
      1) Generally, a determination that a patient lacks capacity to make health care decisions shall be made by the attending physician in writing, stating the cause of the incapacity, and its extent and probable duration. A second physician’s opinion that the patient lacks capacity is required to permit a health care proxy to withdraw or withhold life-sustaining treatments.
2) If the attending physician determines that a patient in a general hospital or mental hygiene facility lacks capacity to make health care decisions because of mental illness, the attending physician must consult with a qualified psychiatrist prior to permitting the health care proxy to make these medical decisions.

3) If the attending physician determines that a patient lacks capacity to make health care decisions because of a developmental disability, the attending physician must consult with a physician or clinical psychologist prior to permitting the health care proxy to make these medical decisions. The consultation must be with a physician or clinical psychologist who:
   a) Is employed by a school named in Mental Hygiene Law § 13.17; or
   b) Who has been employed for a minimum of two years to render care and services in a facility operated or licensed by the Office of People with Developmental Disabilities (OPWDD facilities); or
   c) Who has been approved by the Commissioner of OPWDD in accordance with regulations that require the consulting physician or psychologist possess specialized training or three years’ experience in treating developmental disabilities.

Note: If the attending physician is the patient’s health care proxy, they cannot make a decision as to the patient’s capacity. Also, if the patient objects to the incapacity determination by the physician to permit the health care proxy to make medical decisions, the patient prevails unless a court determines that the patient lacks capacity.

4) Any determination of incapacity should be documented in the medical record.

2. Any patient with capacity can make their own decisions regarding hospice care. All discussions and decisions regarding hospice care will be made with the patient unless the patient instructs HPH differently in writing.

3. If a patient no longer has capacity, but had elected a health care proxy when they did have capacity, the health care proxy may make the decision to elect hospice care for the patient.

4. If a patient does not have capacity and does not have a health care proxy but does have a guardian or legal representative, the guardian or legal representative may elect hospice care for the patient.

5. If a patient is developmentally disabled and does not have capacity but does have a court-appointed guardian, the provisions set forth in the “New York Surrogate’s Court Procedure Act § 1750-b” and “Mental Hygiene Law § 81.29” apply for hospice election.

6. If a patient is not developmentally disabled, does not have capacity, and does not have a proxy or a legal representative, but has made statements of intent, or by actions has indicated a desire for hospice care, New York case law supports that a surrogate decision-maker may possibly elect hospice for the patient. Prior to
hospice admission for any patient who meets these criteria, a referral to the HPH Ethics Committee will be made to determine what evidence exists to determine the patient’s wishes.

7. If a patient is not developmentally disabled, does not have capacity, does not have a health care proxy or legal representative, and no prior statements of intent or actions have been made regarding hospice, but the family believes that the patient should be on hospice, the case will be referred to the HPH Ethics Committee prior to hospice admission.

8. A patient, or their health care proxy, or their legal guardian, must sign an election statement electing hospice care.

HPH recognizes that many individuals do not have health care proxies and have not given advance directives to their relatives regarding their desire to receive hospice services. In consultation with the HPH Ethics Committee and legal counsel, if necessary, HPH will make all efforts to insure that hospice-appropriate patients who are not developmentally disabled, but do not have decisional capacity and lack proxies, legal guardians or advance directives, will receive the appropriate hospice care.

For more information also see Clinical Policies:
Admission Criteria CP202
Advance Directives CP204
Ethic Issues: Consultation & Resolution CP225
Life Sustaining Treatment: Decision to Give, Withhold or Terminate Treatment CP235

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