



**Office of Public Guardianship
Ad Hoc Committee
Phone Conference Minutes
December 8, 2008**

Purpose: Plan to Provide Medical Surrogate Decision Makers.

Description: Currently, if a patient is believed to lack the capacity to make a health care decision, has not appointed a durable power of attorney, does not have a guardian or family member who is legally authorized to make major medical treatment decisions on the patient's behalf, in the absence of an emergency, such treatment decisions can only be made directly by a court or through the judicial appointment of a guardian. The process of seeking such a court order can be lengthy.

The Office of Public Guardianship plans to develop a plan to submit to the legislature, which outlines an alternative to guardianship to obtain decisions for medical care for persons who lack the capacity to make medical decisions.

Capacity to consent to medical care is defined as follows:

“The ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision (Uniform Health-Care Decisions Act of 1993, 1994)”.

Phone Conference Invitees:

Jerry Fireman, Washington State Association of Area Agency on Aging
Vickie Foster, Disability Rights Washington
David Lord, Disability Rights Washington
David Maltman, Developmental Disabilities Council
Laird Pisto, Washington State Hospital Association
Julie Peterson, Aging Services of Washington
Louise Ryan, Long Term Care Ombudsman (not confirmed)

Phone Conference Participants:

Shirley Bondon, Office of Public Guardianship
Jerry Fireman, Washington State Association of Area Agency on Aging
Vickie Foster, Disability Rights Washington
David Lord, Disability Rights Washington
David Maltman, Developmental Disabilities Council
Laird Pisto, Washington State Hospital Association
Julie Peterson, Aging Services of Washington

Participants reviewed and discussed summaries of a facility ethics committee, an external consent committee and a mental capacity advocate. Summaries are provided below:

Facility Ethics Committee (generally a hospital)

When individuals lack the ability to understand the nature and consequences of proposed health care, including its significant benefits, risks and alternatives and to make and communicate a health care decision, an ethics consultant (one or more persons) from the facility's ethics committee will provide advice. Members of the ethics committee are employees of the facility. Consultants will make reasonable effort to determine the individual's preferences. When the decision is about withholding or withdrawing life-sustaining treatment, a second medical opinion will be sought. The chair of the ethics committee will appoint a subcommittee and review the decision. When the subcommittee is in general agreement, the decision can be implemented by the primary treating physician. If the subcommittee members disagree, the director or chief of staff will resolve disagreements. If disagreements can't be resolved this can be referred to court.

Participant Comments:

The facility ethics committee has the potential for bias. This was the least liked program of the three reviewed.

External Consent Committee

Volunteers are recruited from the community to serve on consent committees. Committees have geographic territories. Committee members are drawn from health professionals, former patients, parents, spouses, attorneys and advocates. Committees are used for decisions related to major medical treatments – medical, surgical or diagnostic intervention. Routine treatments and sterilization are excluded. Generally an informal hearing is held.

Participant Comments:

This is a resource intensive process. It is very similar to a court procedure, without judicial officers. Resources will be needed to recruit volunteers and manage the process.

Mental Capacity Advocate

Services are provided by individuals under contract with a state entity (Department of Health, Office of Public Guardian). Advocates utilize two processes – instructed advocacy and non-instructed advocacy.

Instructed advocacy requires the advocate to determine the values, preferences and wishes of the person who needs assistance making decisions. The advocate will assist the person in:

- Expressing their views.
- Securing their rights.
- Having their interest represented.
- Accessing information and services.
- Exploring choices and option.

Non-instructed advocacy would be used when the person is unable to communicate his or her views.

Advocates are provided according to statute. Obtaining an advocate does not require court involvement.

Participant Comments:

Advocates must be thoroughly trained and screened.

Next Steps

- Develop a chart comparing the three alternatives (Shirley Bondon).
- Schedule next phone conference (Shirley Bondon).