



Best practices for resolving patient incapacity issues

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With an aging population that continues to mature, many hospitals are struggling to address a growing problem: how to timely treat and discharge patients who lack mental capacity to provide informed consent to medical care.

When a patient lacks the requisite capacity to make discharge plans or consent to medical care, unless the patient has previously signed a health care power of attorney or has a court-appointed guardian, a hospital must decide whether to authorize the patient's discharge or next level of care without first obtaining legal consent.

To address this problem, many hospitals have adopted policies that allow an incapacitated patient's family to make medical decisions on the patient's behalf. In cases in which no family can be located, hospitals are usually left with no choice but to pursue the establishment of a court-appointed guardianship.

Throughout Ohio, it has become increasingly difficult to identify guardianship applicants. And even when an applicant can be identified, it can take a month or more before a guardianship can be established. As a result, the inability to quickly locate a patient's family often results in discharge delays, treatment delays and reduced bed space, all of which increase costs and lead to poorer patient outcomes.

With the assistance of legal counsel, Ohio hospitals can perform comprehensive next of kin searches. These searches often quickly resolve patient incapacity issues without the need to involve Ohio courts. For example, in about 80% of cases referred, we are able to locate a patient's family within a few days. This decreases costs, reduces unnecessary hospital stays and improves patient outcomes without the need for lengthy legal proceedings to establish court-appointed guardianships.

Patient incapacity issues can be complex, and many hospitals find it beneficial to receive guidance from legal counsel when confronted with these issues, including performing comprehensive next of kin searches and, when necessary, navigating the probate court process for establishing court-appointed guardianships.

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