

Default surrogate consent statutes may differ with wishes of patients

April 7 2015

Among a sample of veterans in Connecticut, a substantial number had individuals listed as next of kin who were not nuclear family members, according to a study in the April 7 issue of *JAMA*. State default consent statutes do not universally recognize such persons as decision makers for incapacitated patients.

For patients who lose capacity and have no legally appointed surrogate decision maker, most states have laws that specify a hierarchy of persons who may serve as [surrogate decision makers](#) by default. A patient's spouse is usually given priority, followed by adult children, parents, and siblings (members of the nuclear family). Even though an increasing number of adults are unmarried and live alone, state default surrogate consent statutes vary in their recognition of important relationships beyond the nuclear family, such as friends, more distant relatives, and [intimate relationships](#) outside marriage. Little has been known about how often patients identify a person who is not a nuclear family member as their next of kin, according to background information in the article.

Andrew B. Cohen, M.D., D.Phil., of the Yale University School of Medicine, New Haven, Conn., and colleagues reviewed the next-of-kin relationships for patients receiving care at Connecticut Veterans Health Administration (VHA) facilities from 2003-2013. Patients receiving care at VHA facilities are asked for information about their next of kin, which is entered into the electronic record along with a description of the relationship between the patient and next of kin.

From 2003-2013, 134,241 veterans received care at Connecticut VHA facilities, of whom 109,803 were included in the analysis. For most patients (93 percent), the next of kin was a nuclear family member. For 7.1 percent of the patients, a person outside the patient's nuclear family was listed as next of kin. There were 3,190 patients (2.9 percent) with a more distant relative and 4.2 percent for whom the individual was not a blood or legal relative. This was most often a friend or an intimate relationship outside marriage (e.g., "common law spouse," "live-in soul mate," and "same-sex partner"). Veterans younger than 65 years were more likely than those 65 years or older (9.2 percent vs 6.0 percent) to have a next of kin who was not a nuclear family member.

Even though some [patients](#) use advance directives to identify [decision makers](#) who differ from their next of kin, completion rates remain low.

"Clinicians may be uncertain about whether a next of kin outside the nuclear family may make decisions for an incapacitated person, particularly when difficult choices arise during life-limiting illness. Such uncertainty may interfere with timely clinical care. In some circumstances, a guardian must be appointed, which is a slow and costly process," the authors write.

If the finding that a substantial number of veterans have a next- of-kin relationship outside the nuclear family is confirmed in other populations, "states should consider adopting uniform default consent statutes, and these statutes should be broad and inclusive to reflect the evolving social ties in the United States."

More information: *JAMA*, [DOI: 10.1001/jama.2015.2409](https://doi.org/10.1001/jama.2015.2409)

Provided by The JAMA Network Journals

Citation: Default surrogate consent statutes may differ with wishes of patients (2015, April 7)
retrieved 10 April 2024 from
<https://medicalxpress.com/news/2015-04-default-surrogate-consent-statutes-differ.html>

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