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CALTCM.org

Webinar Series

COVID-19: CALTCM Weekly Rounds

November 2, 2020

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Housekeeping

- Review your name and make any necessary adjustments.
- Close all other windows and apps, especially mail and messaging programs.
- During the Q&A session, we invite you to turn on your camera and unmute your line to ask questions or participate in the discussion.
 - Feel free to raise your hand when you have a question.
 - **To help keep background noise to a minimum, make sure you mute your microphone when you are not speaking.**
 - Don't talk over others.

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Webinar Faculty

Jay Luxenberg, MD
Chief Medical Officer, On Lok
CALTCM, Wave Editor-in-Chief



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Webinar Faculty

Karl E. Steinberg, MD, CMD, HMDC
President-Elect, AMDA: The Society for Post-
Acute and Long-Term Care Medicine;
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Compassionate Care of California



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**Webinar Faculty &
Moderator**

Michael Wasserman, MD, CMD
Geriatrician
Medical Director, Eisenberg Village,
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CALTCM Immediate Past-President




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Webinar Faculty

Chris Wilson, RN, JD, MS, HEC-C
Tyler & Wilson, LLP
Founder & Director, Community Healthcare
Ethics
Member, Joint Bioethics Committee of the LA
County Bar, LA County Medical Association,
and two acute care hospitals





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**Bioethics,
Person Centered-Care,
and COVID-19
Challenges**



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Presented by:


Chris Wilson, RN, JD, MS, HEC-C
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Person-Centered Care


- A philosophy that emphasizes the ethical principle of autonomy
- View resident as a member of the care team and focus care around his/her desires and choices
 - In care-planning process, resident is the center of control, not a passive and compliant recipient of care that is deemed best by healthcare professionals
- Relevant at all levels of decision-making
 - Minor issues, like what time to eat dinner
 - Major issues, like decision to decline medical treatment in spite of physician's advice

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42 CFR § 483.21(b)(1) (F 656)
Comprehensive Care Plans

- Develop person-centered care plan that is consistent with resident rights and includes measurable objectives and timeframes to meet medical, nursing, and mental and psychosocial needs; Plan must describe:
 - The services provided to attain/maintain resident's "highest practicable physical, mental, and psychosocial well-being..."
 - Any services required [by other sections] but not provided due to exercise of resident rights, including right to refuse treatment
 - Any specialized services provided because of PASARR recommendation; if facility disagrees with PASARR findings, indicate rationale in medical record
 - Resident's goals for admission and desired outcomes
 - Resident's preference and potential for future discharge; must document whether facility assessed desire to return to community, and any referrals to appropriate agencies for this purpose
 - Discharge plan, as appropriate

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Principles of Bioethics Support Person-Centered Care

- Autonomy: Protecting individual rights, self-determination and choice
- Beneficence: The course of action that will give the greatest benefit
- Non-Maleficence: The course of action that will cause the least harm
- Justice: Fairness to the patient with consideration of the needs and rights of others



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Ethics Resources in Long Term Care

- Since 1992, hospitals accredited by The Joint Commission are required to have "a mechanism to educate stakeholders and aid in the resolution of ethical dilemmas."
- AMDA - The Society for Post-Acute and Long Term Care Medicine began to recommend that nursing facilities have bioethics committees in order to provide a forum for discussion of end-of-life issues in 1997. By 2008, this issue resulted in White Paper C08, which became policy in March 2008.



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Ethics and Bioethics Resources Education/Mediation/Consultation

- Bioethics resources can alleviate staff, consumer, legal and regulatory issues
 - Professional Evaluation of specific cases [ethics consultation]
 - Resource for physicians and facility staff
 - Mediation of family/resident issues and breakdowns in communication with physician and/or facility staff
 - Staff and resident/family education [including end of life care and directives]
- Solve problems before they get to legal department
- Create satisfied residents and families
- Support autonomy, reduce frustration
- Reduce staff dissatisfaction, distress, and turnover



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Ethics Consultants

- Medical background and training/experience in health care ethics/bioethics
 - Consult per facility policies and needs
 - Educational programs
 - Assist to form and implement ethics committee
 - Often a "team" but not always
 - May provide written ethics consultation
- Typically available in hospitals and some skilled nursing facilities (generally those connected with an acute care hospital)



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The Effective Ethics Committee

Interprofessional/multidisciplinary

- Not just MDs
- Other professionals such as nurses, social workers and others
- Ethicist
 - Individual with some formal background
 - Conversant with ethics literature
- Educational resource
- Maintains confidentiality
- Meaningful deliberation from all members
- Focuses upon relevant ethical principles and application to the case presented



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Ethics Committee Compared to the Interdisciplinary Team (IDT)

- Ethics committee:
 - Not required by law
 - Educational and advisory; no authority to initiate treatment
 - Functions confined exclusively to ethical matters
 - Recommendations are not mandatory, but are given significant weight
 - Members should include MD, RN, social services, other health care providers, a bioethicist, a community representative



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California's IDT Law

Health and Safety Code 1418.8 (Epple), enacted 1999

Where a medical intervention requires informed consent, resident lacks capacity, and there is no person with legal authority to give consent, then . . .

IDT must *review* (except in emergency) risks, benefits, alternatives etc. [informed consent]

IDT includes attending MD, RN, other appropriate staff and a resident representative "where practicable"



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California Prepares for the New IDT

The wording of 1418.8 hasn't changed; here are some HIGHLIGHTS of the new rules based upon the final Court of Appeal decision & trial court order in CANHR v. CDPH (Chapman/Smith/Angell):

1. Detailed written and oral notices to resident and "competent person whose interest are aligned with the resident" or Ombudsman *
2. Patient representative is now *required* – must be "unaffiliated with the nursing home"
3. Process may be used for antipsychotic medication AND end-of-life decisions (POLST, DNR, comfort care, and hospice election).
4. Effective date for the mandatory "new IDT" rules July 27, 2021—unclear where we will find widespread "pt. representatives" who fit the criteria—but we should be looking for them now!



*CAHF has templates of first and second notification forms available

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California Prepares for the New IDT

On October 30, 2020, DPH issued AFL 20-83 with their interpretation of 1418.8. Some inconsistencies:

- (1) Patient representative "of the resident's choosing"
- (2) Competent Person whose interests are aligned is narrowed to a friend or family member either with (a) written authorization by the resident or (b) a competent person or entity authorized by law
- (3) Specific and detailed policy, procedure and documentation requirements
- (4) No mention of end of life, POLST, hospice, antipsychotics.

<https://www.cdph.ca.gov/Programs/CHDC/LCP/Pages/AFL-20-83.aspx>



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Bioethics and COVID-19

- Ethical focus not only "person-centered" but also requires consideration of the principle of Justice, which considers public health impact upon others
- Balancing of patient rights: restrictions on movement includes risk of depression, increased confusion, physical consequences



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Bioethics and COVID-19

- Acute care hospitals have created surge/triage policies for resource allocation (e.g., ventilators)
- Triage team is separate from care team
- SOFA scoring (Sequential Organ Failure Assessment) is often used
- SOFA scoring based upon comorbidities and prognosis for survival
- Other "scarce" resources may include remdesivir, monoclonal antibodies (mAb) that may see triage



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Bioethics and COVID-19

- Non-discrimination laws apply to triage policies
- Applicable to race, color, national origin, disability, **age**, sex, religion, national origin, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status
- Reaffirmed by March 30, 2020 DHCS/DPH memo



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Bioethics, Person-Centered Care, and COVID-19 Challenges

Thank you for joining us!
Any questions?

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Q & A



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