Health and Safety Code Section 1418.8:
Snapshot Guide for Long-Term Care Ombudsman Representatives

Summary of Health & Safety Code § 1418.8:
When a resident in a Skilled Nursing Facility (SNF) or Intermediate Care Facility (ICF), who is no longer capable of providing informed consent, has been prescribed a medical intervention in which informed consent is required, and there is no legal surrogate decision maker and/or Advance Directive, the facility's Interdisciplinary Team (IDT), along with the attending physician and surgeon, can make health care decisions on behalf of the resident.

The IDT shall include the resident's attending physician, registered professional nurse with responsibility for the patient, other appropriate staff in disciplines as determined by the resident's needs, and a patient representative, in accordance with applicable federal and state requirements. The IDT shall oversee the care of the resident utilizing a team approach to assessment and care planning and shall conduct an interdisciplinary team review of the prescribed medical intervention prior to the administration of the prescribed medical intervention.

The 1418.8 IDTs may not authorize any treatment that is intrusive or not ongoing or day to day such as the administration of psychoactive drugs, the withdrawal of artificial life support, initiating hospice care, surgery, executing a DNR or POLST form, or overriding a resident's refusal of proposed treatment. If the attending physician believes that an extraordinary medical intervention is necessary, he or she must seek court authorization pursuant to Probate Code section 3201, or through the appointment of a conservator.

The Role of the Ombudsman in Health & Safety Code § 1418.8 IDTs:

1) Verify the lack of capacity- Ensure the capacity determination is current, accurate, and the result of a thoughtful, deliberate process.
2) Verify the lack of surrogate- Make certain the SNF or ICF staff have followed an adequate process to determine that there is no surrogate with the legal authority to make decisions on behalf of the resident.
3) Encourage the resident's family or friends to participate- Provide education and encouragement to family or friends to participate in the IDT process.
4) Advocate for resident attendance- Require the resident to be in attendance and/or be provided the opportunity to express treatment preference.
5) Ensure the legal process is followed- Insist that those required to attend and those deemed appropriate to attend are present and that they conduct a team review of the prescribed medical intervention.
6) Ensure the treatment contemplated is routine or day-to-day- Verify that the proposed medical intervention is routine and not outside the authority of the IDT.
7) Do not vote for, or give approval to, a treatment decision- Refrain from imposing either professional or personal feelings and do not take on the role of a health care provider or surrogate decision maker.
8) Do not express treatment preference other than those communicated by the resident – Refrain from asserting any treatment preference other than what is conveyed by the resident.

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