CHRISTIANA CARE HEALTH SERVICES POLICY

POLICY TITLE:	Medically Non-Beneficial Treatment (Medically Ineffective Treatment, Futility)
LAST REVIEW/REVISION DATE:	New Policy
DATE OF ORIGIN:	12/2009

POLICY:

Christiana Care is committed to providing quality patient- and family- centered care; and to respect the right of Health Care providers to not be required to provide medically non-beneficial treatment.

PURPOSE:

To address situations considered to involve medically non-beneficial, medically ineffective or futile treatment by providing information and a process to resolve conflict.

SCOPE:

Christiana Care Health Services and the Medical-Dental Staff.

DEFINITIONS: For purposes of this policy, the following definitions apply.

Capacity: An individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health-care decision.

Decision Maker: When the patient no longer has decision-making capacity then a decision maker will act on the patient's behalf. Where applicable and available, the decision maker will be a court-appointed guardian, a patient-selected agent (durable power of attorney for healthcare/person named in an advance directive), or a patient-selected surrogate. If the patient has none of these, the descending order of priority in decision-making will be:

a. spouse (any age)
b. children (18 years or older)
c. parents (any age)
d. siblings (18 years or older)
e. grandchildren (18 years or older)

Any member of the same decision-making level who can be contacted may make the decision on the patient's behalf.

Medically Non-Beneficial (Medically Ineffective, Futile) Treatment: Medical treatment that:

a. has no realistic chance of providing a therapeutic benefit that the patient has the ability to perceive or appreciate, such as merely preserving the physiologic functions of a permanently unconscious patient, or

b. has no realistic chance of returning the patient to a level of health that permits survival without acute level of care or hospital setting, or

c. has no realistic chance of meeting the patient's own goals as evidenced by an advance directive or other clear and convincing evidence.

PRINCIPLES:

1. The concept of medical futility is value and goal dependent. Different perspectives may be valid.
2. The term and definition of "futility" are not particularly helpful in resolving conflict.
3. Patients with decision making capacity or their decision makers have the right to accept or refuse medical treatment.
4. There are often many choices for treatment and care at the end of life and people have a right to these choices, however medical providers also have the right to professional integrity and to not provide non-beneficial or harmful treatment.
5. It is the health care provider's responsibility to incorporate patient preferences into a definitive recommendation for patient and decision maker.
6. Conflict of values and goals is only one reason for futility situations. Other causes include miscommunication, misunderstanding, families in crisis, cultural differences, inappropriate decision maker, and lack of confidence and trust in the medical care team. Some of these are iatrogenic. Providers should be aware of their role in these situations.
7. Early and sustained efforts to support and treat a family in crisis can often prevent futility situations. Communication, coordination and continuity building relationships are key to these efforts.
8. Attempts at improved communication and negotiation of a range of options should precede triggering a formal 'due process' health care facility non-beneficial treatment policy.

9. Additional consultation, including but not limited to the Palliative Care Team may be helpful.
10. It is imperative that all members of the health care team are in agreement with the goals of care and provide consistent communication with patients and families.
11. When pursuing 'principled negotiation' one should employ the following steps:
    - Separate the people from the problem.
    - Focus on interests rather than positions.
    - Generate a variety of options before settling on an agreement.
    - Insist that the agreement be based on objective criteria.
12. For truly intractable conflicts, providers may consider if it would be better to focus on finding ways to support each other and maintain morale rather than on overriding the wishes of a decision maker.
13. Decision makers should not be allowed to make decisions that are harmful to patients or to make decisions that are contrary to patient's documented wishes. In these situations, or if decision maker is demonstrating questionable ability to have meaningful participation due to their own capacity, then pursuing a court-appointed new decision maker should be considered.

PROCESS:

1. Collaborate with patients and families to develop goals of care upon admission. Once established, patient and family shall be kept abreast as to the progress towards these goals. When it is determined that patient will not be able to return to health or previous level of functioning, new goals of care shall be developed in collaboration with the patient and family. When goals of care are agreed upon and it is clinically appropriate to do so, medically non-beneficial treatment may be limited or withdrawn. (link to DNR policy)
2. Conduct a meeting when goals of care cannot be agreed upon including but not limited to key members of the health care team, consulting physicians, the patient's primary care community physician, the patient and/or decision maker and other family members and support persons as requested by the family. The purpose of the conference is to facilitate open and productive communication so that all involved clearly understand the same information. The conference should be patient-centered and should include the following:
    - a discussion of patient and family values and goals, medical status and prognosis, treatment options, the goals of medical care and the definition and implications of CPR and a DNR order.
    - A consultation to the Palliative Care Team may be helpful in managing these situations and should be considered.
    - A second medical opinion may also be helpful. Christiana Care will assist the patient and/or decision maker in securing a second medical opinion if requested. If the second physician finds that the patient and/or decision maker

requested treatment is appropriate, it shall be continued and transfer to another physician or health care facility may be arranged. If the second physician concurs that the requested treatment is medically non-beneficial, that opinion will be communicated to the decision maker.

3. Consult the Ethics Committee if the patient and/or decision maker continues to request non-beneficial treatment and conflict persists. (Link to ethics consultation policy) In its advisory capacity, the Ethics Committee will make every reasonable effort to hear all sides of the conflict, identify ethically acceptable options, and facilitate resolution of the conflict. When possible, it is preferable that the attending physician who participates in the ethics consultation should remain the attending of record until the conflict is resolved. The attending physician is responsible to move the process forward and has ultimate responsibility to complete the process.

4. Notify the patient and/or decision maker if the conflict is not resolved after ethics consultation meeting of the next steps by written letter from the attending physician. The letter may be personally delivered where feasible but may be sent via delivery service. The letter shall include the following information:
    a. Summary of the Ethics Consultation Meeting
    b. Notification of their right to transfer the patient to another health care facility. If this is desired, plans should be made by the patient and/or decision maker at this time. Christiana Care will assist the patient and/or decision maker if requested. If transfer to another health care facility is arranged, life sustaining treatment would be continued until such transfer can be affected. The letter should provide a date of 10 days from the date of the letter for transfer to be arranged.
    c. A liaison will be offered to assist and support the patient and family. The liaison may be from social work, patient relations, pastoral services or other department as identified by the ethics committee. The liaison shall assist the patient and/or decision maker by facilitating communication and coordinating necessary support. The letter should include the liaisons' name and contact information.
    d. Notification of the plan to move forward by convening an ad hoc Non-Beneficial Treatment Review committee meeting in at least 15 days from date of letter.
    e. Document in patient record the method of delivery and date the letter was sent.

5. Inform the department chair if not already involved.

6. Activate an ad hoc Non-Beneficial Treatment Review Committee via assessment by the Chief Operating Officer (COO) or designee and chairperson of the ethics committee or designee. The ad hoc committee will be chaired by the Chief Medical Officer (CMO) or designee and will include:
    a. CMO or designee

b. Department Chair or designee
c. COO or designee
d. Chair of the Ethics Committee or designee who has been involved in the case
e. Director of Risk Management and/or Hospital Attorney or designee
f. Director of Pastoral Care or designee.

The following shall present to the committee:

- The attending physician will present the medical information.
- The patient or decision maker along with their support persons as approved by the ad hoc committee shall be provided an opportunity to be heard by the ad hoc committee.
- The ad hoc committee may also request to hear from other health care team members as deemed necessary.

After review and deliberation, the ad hoc committee prepares a written statement and explanation of its determination, and delivers it to both the provider and the patient and/or decision maker.

- If the committee determines that the requested intervention should be provided or continued, the requested treatment shall be continued. Transfer to another physician shall be considered.
- If the committee determines that the requested intervention should not be provided or continued, based upon ethical and medical considerations, then neither Christiana Care nor the health care provider is obligated to provide it. In this case, the patient or decision maker will be provided 10 days to petition the appropriate court to enjoin the health care provider and the system from carrying out the ad hoc committee's determination. If after 10 days neither the patient nor decision maker has taken action, treatment that is medically non-beneficial may then be withheld or withdrawn by order of the attending physician with Christiana Care Health System support and without the patient's or decision maker's consent.

Appendix 1

Sample letter to family notifying about ad hoc committee

Dear (Decision Maker):

It is our understanding that those of us caring for your loved one here at Christiana Care have concerns regarding our efforts to provide beneficial and effective care to (Mr/Ms. Patient's name). We have reviewed his/her case on several occasions (provide dates) and we have more recently asked the Ethics Committee to advise us in our efforts.

(Summary of Ethics Consultation Meeting)

We have been unable to fully agree on the path forward and for this reason we feel at this time it would be proper for us to proceed with a course outlined through our policies and procedures. A liaison has been assigned to assist you and your family through this process. (name, phone number) This liaison will, if needed, clarify communications and provide support as you see necessary.

A group of Christiana Care physicians and administrators will form a committee to proceed with the process. You will have an opportunity to address the members of this committee which will meet after (date 15 days from date of this letter). If you wish to bring persons to support you through this meeting, please discuss this with your liaison to determine what their participation may be. We have enclosed for you the time line that will be followed (include time line). We hope this information will be useful to you and your family.

It has been our privilege to care for (Mr./Ms Patient's name) and we regret that we do not feel that we are able to restore him/her to reasonable health.

Please feel free to contact me at any time and to avail yourselves of any services we can provide.

Sincerely,

(Attending Physician, MD)

cc: Community Primary Care Physician

Appendix 2

Medically Non-Beneficial Treatment Policy Checklist

Instructions: This checklist is meant to serve as an additional tool in navigating the policy. It is not mandatory and is not a part of the patients medical record. Progress to the next step when the current step is not effective in resolving the conflict.

[ ] Establish and update goals of care including the patient/family.

[ ] Conduct a family meeting to facilitate open and productive communication so that all involved understand the same information.

[ ] Offer a second medical opinion

[ ] Consider Consulting Pain and Palliative Care Service

[ ] Consult Ethics Committee Date_____

[ ] Notify Decision Maker in Writing Date_____

[ ] Offer Family Liaison in above letter

[ ] Notify medical director of department involved and COO of situation.

[ ] Encourage family to seek transfer of care to another facility. Date _____ (10 days from letter)

[ ] Ad hoc committee meets 15 days from letter, makes recommendations for next steps, notifies family in writing and health care team of decision.