

**The Unbefriended Must
Not Be Unprotected:
Organizational & Clinical
Management of Patients
without Surrogates**

ASBH Annual Meeting, Houston, TX
October 22, 2015

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Hamline University Health Law Institute

3 panelists

**1. Problem
nature &
scope**

2. **Solution:** University Hospitals

Barbara J. Daly Ph.D., R.N., F.A.A.N

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3. **Solution:** Cleveland Clinic

Martin Smith, STD

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Terminology

6

Unbefriended
Unrepresented
Adult orphan

7

Patient w/o proxy
Incapacitated &
alone

8

Definition

9

3 conditions

10

1

11

Lack
capacity

12

2

13

No available,
applicable
AD or POLST

3

15

No reasonably
available
authorized
surrogate

16

No AD / DPAHC
appointed

Or named agent
not **available**

17

Nobody available
on default
surrogate
priority list

18

No reasonably
available
guardian /
conservator

19

Nobody to
consent to
treatment

20

**Big
problem**

21

3 - 4%
nursing
home
population

Incapacitated and Alone:
Health Care Decision-Making
for the Unbefriended Elderly

Naomi Karp and Erica Wood



American Bar Association
Commission on Law and Aging

July 2003

22

> 50,000

23

**16% ICU
admits**

Decisions to limit life-sustaining treatment for critically ill patients who lack both decision-making capacity and surrogate decision-makers²⁷

Douglas B. White, MD; J. Randall Curtis, MD, MPH; Bernard Lo, MD; John M. Luce, MD

5% ICU deaths

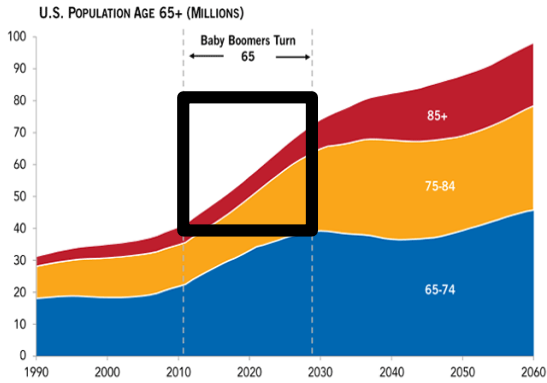
ARTICLE | Annals of Internal Medicine
Life Support for Patients without a Surrogate Decision Maker: Who Decides?
Douglas B. White, MD, MAs, J. Randall Curtis, MD, MPH; Leslie E. Wolf, JD, MPH; Thomas J. Prendergast, MD; Darren B. Tachman, MD, PhD; Gary Komiyoshi, MD; Frank Acosta, DO; Bernard Lo, MD; and John A. Lurie, MD

> 25,000

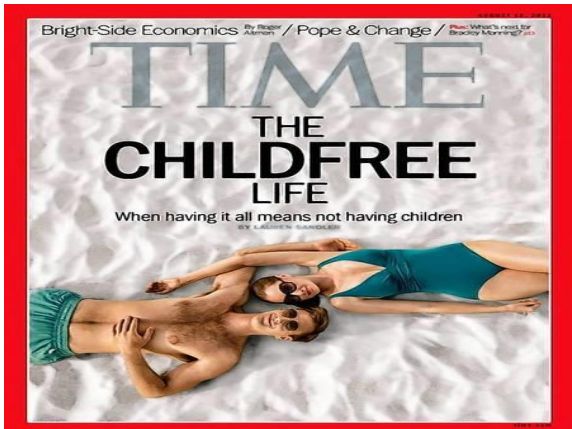
26

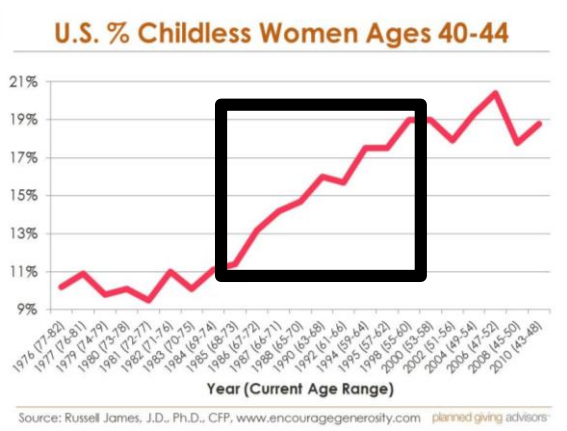
Growing problem

27



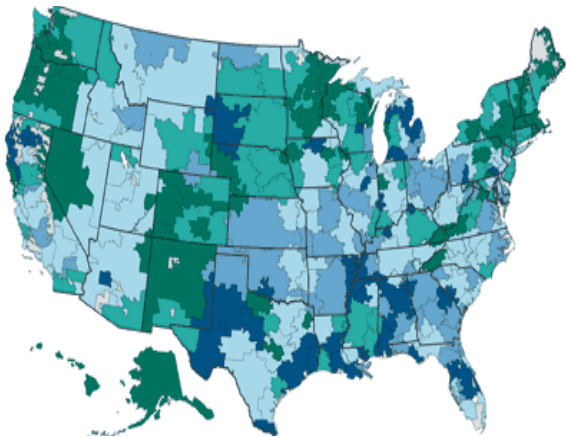
SOURCE: U.S. Census Bureau, National Intersectal Estimates, and 2014 National Population Projections, December 2014. Compiled by PCPF.
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Source: Russell James, J.D., Ph.D., CFP, www.encouragegenerosity.com planned giving advisors

Law as causal factor



Scope of default surrogate lists

Spouse
Adult child
Parent
Adult sibling
Grandparent / adult grandchild
Aunt /uncle, niece / nephew
Adult cousin
Close friend

Existence of
public guardian
system

35

Slow
Expensive

36

Ethical Problems

Nobody to authorize treatment

3 ways to respond

1

40

No
treatment

41

Wait until
emergency
(implied
consent)

42

2

43

Physician acts
without
consent

44

Most
common
approach

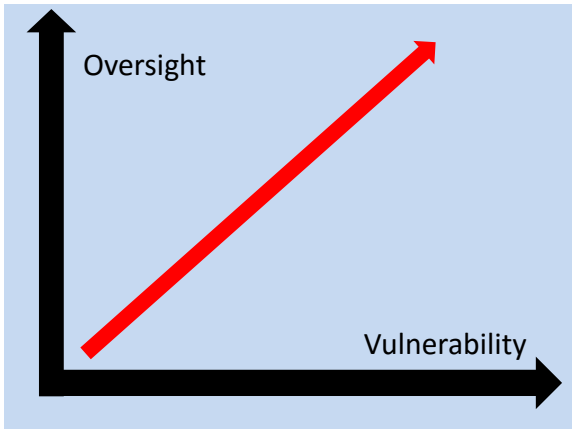
45

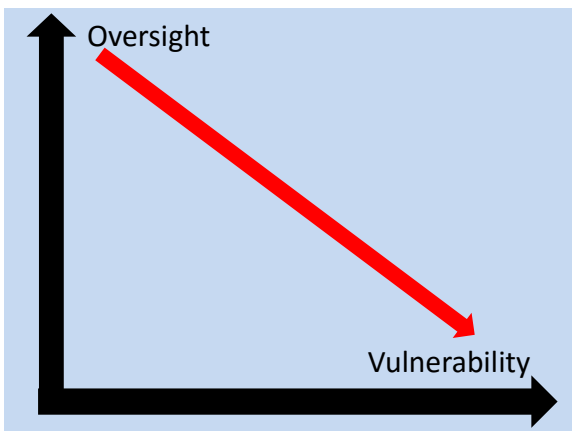
Bias

COI

Careless

46





3

49

~~Under treatment~~

~~Solo physician~~

Scrutiny

Vetting

51



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References

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