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[NHDD New York State Coalition](#)

[NHDD NYS Coalition Collaborators](#)

National Healthcare Decisions Day New York State Coalition Conference Call

Date: Tuesday, May 5, 2010

Time: 2:00 p.m. – 3:30 p.m.

[Conference Call Instructions](#)

Dial-in number: 1-800-747-5150

Passcode: 2384514

NHDD NYS Coalition 2010 Goals:

- Increase conversations that lead to completion of health care proxies
- Increase awareness of the MOLST Program in the community
- Ensure that Family Health Care Decisions Act is passed

Meeting Goals:

- Discuss **Family Health Care Decisions Act** (FHCDCA) (effective June 1, 2010) and impact on hospitals and nursing homes, specifically revisions to policies and procedures for medical decisions by surrogates for patient who do not have a health care agent nor have made prior medical decisions.
- Provide updates on revision and redesign of the MOLST form to comply with decision standards and procedures set forth in FHCDCA.

1. Welcome and Introductions

- a. Pat opened the meeting, reviewed the goals of the NHDD NYS Coalition and goals for today's meeting.

2. Summary of MOLST revisions (presented by Pat Bomba):

- a. Pat summarized the changes to the MOLST form that align with FHCDCA requirements, building on last year's work to integrate legal requirements for special populations (i.e. OMH/OMRDD).
- b. The MOLST form is being redesigned using "plain language" to make it more user-friendly and to ensure better shared informed medical decisions-making. Input from professionals across NYS has been sought and integrated into the new MOLST form. Revision is still underway.
- c. Pat noted importance of capacity determination for the general population and special populations. Lack of medical decision-making capacity for life-sustaining treatment does not automatically mean lack of capacity to appoint a Health Care Agent and complete a Health Care Proxy.
- d. Pat has been working with OMRDD and NYSARC to expand use of MOLST and align with current §1750-b processes. Pat thanked those who provided memoranda of support.
- e. The MOLST Statewide Implementation Team (with representatives from statewide professional organizations and agencies and regional representatives) is being formed and is meeting next week to oversee to:
 - i. To oversee effective statewide implementation of the MOLST Program
 - ii. To support NYSDOH implementation of the FHCDCA and revision of the MOLST form to conform to the procedures and decision-making standards set forth in FHCDCA
- f. Pat acknowledged the Monroe and Onondaga Counties MOLST Community Implementation Team for its help in shepherding the MOLST community pilot and statewide work since 2005.

3. Family Health Care Decisions Act (FHCDA) – (summary presented by Robert Swindler, Esq. with Northeast Health. Answers during Q & A provided mainly by Robert S., Johnathan Karmel, Esq. with NYSDOH and Pat Bomba):

- a. Robert reminded the group that FHCDA applies when the patient does not have a Health Care Proxy nor “Clear and Convincing Evidence” of prior medical decisions.
- b. Robert and Tracey Miller drafted **model** policies, procedures and forms for hospitals and nursing homes use for FHCDA (per request of HANYS, GNYHA, NYSFHA and NYAHS.) They submitted their work to the associations last week and are waiting to hear from them.
- c. Robert indicated that these models and FHCDA do not conflict with the MOLST Program or form. The model forms for FHCDA (submitted last week) are for DNR and Life-Sustaining Treatment. They complement the MOLST form.
- d. Robert has received several requests for revisions of FHCDA and clearly states he is not the ultimate decision maker, however, is glad to provide feedback to those that do have this power.

Follow Up – Team – If you have suggestions for revisions of FHCDA, Robert will gladly share your request to those who make the decisions. Note: The requests for revisions must be related to technical issues that you are not finding consistent with, NOT substantive issues. Please contact Robert via email, SwidlerR@nehealth.com.

- e. Pat highly recommends hospitals or nursing home that has not yet implemented the MOLST Program and is planning on doing so in the near future; wait for approval of the 2010 revised MOLST forms.
- f. Donnie asked about what is being done with new requirements for Ethics Committees.
 - i. Robert indicated model policies have been drafted as part of the work he and Tracy Miller have done; he highly recommends training for members of the Ethics Committee in light of FHCDA and the increase in responsibility.
- g. Gail W. asked when the Dear CEO letter will be available. Per Robert, once the Dear CEO and DAL letter are available it will be made known and available through HAYNS.
- h. Jonathan reports that the NYSDOH is developing a document that outlines patient and surrogate rights under FHCDA. Updated EMS policies are being developed.
- i. Pat reported that MOLST instructions and legal requirement checklists are being developed along with MOLST use cases.
- j. Jonathan and Robert state that there will probably be less of a need to have the Ethics Committee answer questions since surrogates will now be able to make decisions.

Follow Up – Robert – will provide the file and/or links for the model policies, procedures and forms once released by the associations to Pat to post on CompassionAndSupport.org.

- k. Pat noted that FHCDA clarifies, for patients in all settings, providing nutrition and hydration orally is not considered medical treatment. Careful hand feeding is an effective option.
- l. Lois noted the legal authority of domestic partner in recognized in FHCDA.
- m. Robert and Pat reminded all of the vital importance of completing a health care proxy and having antecedent conversation. Jonathan reiterated this point, mentioning the Terry Schiavo and that a valid health care proxy would have prevented the dispute.
- n. Donnie referred to 2994a, subdivision 7 of the Domestic partner section of the FHCDS asking if they have the right to make burial decisions. The answer is yes.
- o. Pat reminded all that President Obama signed a bill on the eve of NHDD April 16, 2010 ensuring domestic partners access to hospital visitation. The bill extends beyond domestic partners.
- p. Gail requested suggestions of implementation of the FHCDA. Robert/Jonathan suggested identify policies that will need revisions, what education will be needed and then identify how to operationalize.

Follow Up – All Nursing Home and Hospitals – Per Jonathan, make certain your facility knows that therapeutic exception has been eliminated from the law and should be taken out of your policy.

- q. Robert mentions that Saint Peters may replace the Ethic Committee Policy with the model policy, not yet being sure if they are going to replace it or modify the current one.
- r. Sue questioned if capacity determination now differs, specifically:
 - i. Making certain a capacity evaluation is completed prior to allowing a surrogate to make medical decisions.

- ii. The concurring capacity determination may be a health or social service practitioner (e.g. –registered professional nurse, nurse practitioner, physician, physician assistant, psychologist or licensed clinical social worker, as defined in FHCDA).
- iii. Per Jonathan, the NYS Department of Education may need to clarify and determine the scope of practice for each professional mentioned in the FHCDA (who is a non-physician and can be the concurring practitioner in determining a patient’s capacity.) Training is highly recommended for these practitioners.
- iv. Robert reiterates and agrees with Jonathan’s comments
- s. Denise supports social workers ability to provide concurrent capacity determination in nursing homes. Robert indicated the model policies did not clarify if this would defer to the NYS Department of Education.
- t. Pat raised issue of the need for two physicians to determine lack of utility for a DNR decision for a patient who lacks capacity, has no Health Care Proxy and has not made prior treatment decisions, and a surrogate is making the decision. Robert and Jonathan agreed.
- u. Robert addressed the difference between sound medical/ethical decisions and sound legal decisions. There are facility policies and procedures and there is NYS law. If a facility does not follow either, there is always a risk of receiving a deficiency from NYSDOH.
- v. Mary Beth questions the standards under the new law and notes the change regarding “suffering” as being too stringent.
- w. Robert commented that he does not believe it is increasingly stringent since it applies to more than just DNR and the most important issue to address here is how to avoid such a situation by having conversations with the patient, family and health care professionals and have the patient complete a Health Care Proxy, Living Will and/or MOLST when the patient retains capacity.
- x. Sue questioned how we ensure a surrogate is making medical decisions on the patient’s behalf. Jonathan, states there are no current requirements and recommends that substitutive judgment be used. In clinical practice, clinicians assess and make that judgment.
- y. Sue mentioned a positive outcome of FHCDA in that other disciplines now have a voice and legal standing if their assessment differs from the physicians. Any person can now refer concerns re medical decisions under FHCDA to the Ethics Committee.
- z. Pat mentioned the 8-Step MOLST Protocol and Advance Directive/MOLST Documentation form helps professionals through a process of ensuring the patient, family, health care agent, and/or surrogate is making informed decisions; effective communication strategies are included.

Follow Up – Penny – provide links to the [8 Step MOLST Protocol](#) and the [MOLST/Advance Directive Discussion Documentation Form](#).

4. Review of MOLST Revisions

- a. Pat addressed issue of when will the revised MOLST form be available
 - i. Pat will provide notice to the NHDD NYS Coalition when the revised MOLST form is approved.
 - ii. If you’d like to place your order now for the 2010 newly revised MOLST forms (even though they are **not ready**) please thoroughly complete this [ORDER FORM](#) and write on the top, “Please order when the new MOLST forms are available” and we will place it as soon as they are available.
 - iii. Periodic MOLST updates will be provided when MOLST forms and other MOLST material are available (MOLST FAQs, MOLST Trainers Resources, and a Web page on CompassionAndSupport.org dedicated to MOLST for special populations, etc.) via, Facebook, Twitter, home page of www.CompassionAndSupport.org, electronic Bomba Letter and electronic MOLST Updates.
- b. Sue questions the requirement for two signatures by a witness in Section B of the MOLST form (B-1620). Pat indicated the physician who signs the orders may be a witness.

5. Future 2010 Conference Calls to continue x1 per month for 1 ½ hours per the request of this coalition:

- a. Wednesday, June 2, 2010 from 1:00 – 2:30 p.m.

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