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National Healthcare Decisions Day New York State Coalition Conference Call

Date: Thursday, June 24, 2010

Time: 1:00 p.m. – 2:30 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

Meeting Goals:

- Consensus of Coalition was to focus on and review MOLST Instructions and Legal Requirements Checklist for Adults.

1. Welcome and Introductions:

- Pat opened the meeting mentioning an additional Web pages dedicated to this [MOLST Instructions and Legal Requirements Checklists for Adults](#) (there are a total of five checklists for adults found on this Web page) and the [Checklist for Minors](#), [Developmental Disability Population who Lack Medical Decision Making Capacity](#) and for [Patients with Mental Illness in a Mental Hygiene Facility](#).
- The 2008 Supplemental MOLST Supplemental forms (B-1621 & B-1622) are obsolete and should not be used, given the changes in the New York State (NYS) Public Health Law (PHL).
- The newly revised [2010 MOLST form \(DOH-5003\)](#) is clean and clear in plain language. To order, click [HERE](#).
- A [MOLST Statewide Implementation Team](#) has been developed. Six workgroups were identified during this initial meeting. The Workgroups are ([can be found HERE](#)):
 - Communication & Education Workgroup
 - Consultation Workgroup
 - EMS Workgroup
 - eMOLST Workgroup
 - Quality Improvement & Research Workgroup
 - Special Populations Workgroup, and a proposed
 - VA Workgroup

2. Facts regarding the MOLST Instructions and Legal Requirements Checklists for Adults:

- MOLST Instructions and Legal Requirements Checklists for Adult Patients were developed as a teaching tool. The document should be read.
- Eliminating Supplemental Forms is an effort to make the process more user-friendly.
- However, with extracting the legal requirements from the MOLST form and eliminating the Supplemental form, a clinical and legal roadmap is needed.

- The MOLST [8-Step Protocol](#) is integrated into the Checklists. Physicians and health care professionals who have these conversations need to be prepared to ensure shared, informed medical decision-making as part of a MOLST discussion.
- A review of the "Checklists for Adults" and the "MOLST Chart Documentation Forms" illustrates that the best option is to do MOLST early when people have capacity and invest in getting health care proxies.
- Documentation of the conversation, the process and legal requirements is needed. The "MOLST Chart Documentation Forms" are one option for chart documentation, but not mandatory.
- **Checklist #1 and #2** are relatively short and legal requirements have not changed.
- **Checklist #3 and #4** are more complicated, as the law provides more legal requirements to protect patients (as well as surrogates and providers) when FHCDA is used.
- **Checklist #5** provides guidance for use of the MOLST in the community when the patient lacks medical decision-making capacity but has a living will. FHCDA applies in the hospital and nursing home and affirms that patients who have made prior decisions ("clear and convincing" evidence) should have preferences honored.
- Checklists will be helpful to providers who want to do a good job.
- Checklists will ensure consistent interpretation of the law by health law and elder law attorneys who provide counsel to health care facilities and patients.
- Checklists will ensure nursing homes meet legal requirements and prevent deficiencies with NYSDOH survey.

3. Question & Answer:

- **Q** – Can the Checklists be shorter?
A – (Jonathan Karmel) – I'm not sure since there are a lot of legal requirements and not all the checklists are long. The length is justified.
- **Q** – How do the checklists work with the forms developed by HANYS for FHCDA?
A – (Pat Bomba and Jonathan Karmel) – The 2010 MOLST forms (DOH-5003) comply with FHCDA, especially #3, 4 & 5. All legal & clinical requirements are needed. Checklist #3 & 4 provide the same guidance as forms developed for hospitals by HANYS. MOLST continues to transition/travel with the patient. The checklist guides professionals to complete the MOLST form correctly. Remember that the completion of the form is the last step. All legal requirements outlined by HANYS are in bold and underlined. Documentation of the conversation, process and legal requirements is essential; use of the MOLST Chart Documentation Forms is optional. Remember, CMS requires time of visit, length of visit and signature of clinicians involved in the process (e.g. – Social Worker, physician, nurse, etc.).
- **Q** –On Checklist #3 for adults, page 9, Step, Step II, does/can a surrogate appoint a surrogate?
A – (Pat Bomba) – A person designated from the surrogate list class highest in priority may designate another person on the list who is reasonably available, willing and competent to serve as a surrogate decision-maker, as long as no one in a class higher in priority objects
- **Q** – On checklist #5, pg. 14, Step II, and the last paragraph states The attending physician has notified at least one person.....will make health care decisions. Does this literally mean all health care decisions?
A - (Pat Bomba) – Because Checklist #5 applies only to those patients in the community, FHCDA does not apply to the community. However, NYSPHL says that if a patient is in the community and cannot make medical decisions and a surrogate can make DNR and/or DNI decision, specifically for these medical treatments only. We will revise the checklist to clarify.
A – (Jonathan Karmel) – New article [PHL 29-CCC](#) applies to nonhospital DNR order **or** MOLST for DNR and/or DNI order or patient has clear & convincing evidence (e.g. – Living Will or repeated oral expression). **There is still no surrogate selection process in community for life-sustaining treatment beyond DNR and DNI.**
- **Q** – Checklist #5, page 15, Step 16, would you add what constitutes "clear and convincing evidence" in the checklist glossary?
A - Yes.

- Q** – Under FHCDA, when patient is in a hospital or a nursing home, how does a medical professional choose a surrogate among many adult children if this is the class highest in priority? What if family conflicts arise in the family when making this decision?

A - (Pat Bomba) – Regarding managing conflicts among family members, convene a team and family meeting to help identify the source of family conflict and address the causes. Refer to the Ethics Committee if needed.

A - (Jonathan Karmel) – Supports Pat’s answer and adds that is also depends on who is willing, capable, available and competent. [DOH – 1503, Deciding About Health Care, a Guide for Patients and Families](#) also provides the answer.
- Q** – Please clarify the determination of incapacity in a nursing home or hospital under FHCDA?

A – (Pat Bomba) - If a patient is in a nursing home or hospital and a surrogate is making decisions to withdraw or withhold life-sustaining treatment, determination of lack of capacity by two physicians is NO longer required. Under FHCDA, NYS law states that an attending plus a health or social service practitioner is acceptable. The glossary found in at the end of the checklists and the FHCDA defines health or social service practitioner. This process must align with facilities policies and procedures.
- Q** – Is it necessary to complete checklist if the patient has capacity and only wants CPR (after having a conversation and completing the 8-Step MOLST Protocol).

A – No. With that scenario there would not be a need to complete a checklist or MOLST form.
- Q** – If a patient wants a DNR do I complete the MOLST Checklist or the FHCDA form (assuming the patient is in a hospital or nursing home, does not have capacity and a surrogate is making a decision)?

A – Yes, the HANYS can be used once you have consent from the patient and then would complete the MOLST form (DOH-5003).
- Q** – What if the situation calls for two physicians to determine capacity and two physicians are not available?

A - (Jonathan Karmel) – If one physicians determines capacity (or lack there of) and another physician is not available, the initial physician can obtain verbal approval from a 2nd physician over the phone depending on the clinical case. No law states there must be a personal exam.
- Q** – Out of curiosity, why did they eliminate therapeutic exception?

A - (Jonathan Karmel) – This is purely speculation since the NYSDOH did NOT make the change, legislators did. The belief is that too often it may have been abused; that is, sometimes DNR orders were put in place even when the standards for therapeutic exceptions were not met.

Follow Up – Team:

- Send an email to Penny.Weller@Excellus.com if you have not received the 2010 NHDD Survey link.
- Please provide feedback (specifically minor, not revisions to law) to Pat (Patricia.Bomba@lifethc.com) and / or Jonathan (Jbk01@health.state.NY.edu) on the [MOLST Instructions and Legal Requirements Checklists for Adults](#) as soon as possible. These will be shared with NYSDOH.

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

http://www.compassionandsupport.org/index.php/for_patients_families/advance_care_planning/National%20Healthcare%20Decisions%20Day%20-%20New%20York%20State%20Coalition

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