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National Healthcare Decisions Day New York State Coalition Conference Call

Date: Wednesday, July 14, 2010

Time: 1:00 p.m. – 2:30 p.m.

[Conference Call Instructions](#)

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

Passcode: 2384514

**Please MUTE your phone when calling in.
Many attendees could not participate due to back ground noise and elevator music.
Thank you for your assistance.**

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 MOLST and Family Healthcare Decisions Act (FHCA).

1. Welcome and Introductions:

- Pat opened the meeting stating there is no formal agenda today; she reviewed the coalition and meeting goals. In addition, she thanked everyone who reviewed the MOLST Checklists for Adult Patients, identifying revisions that would simplify and make the checklists more user-friendly. She welcomed additional feedback from the participants on the call.
- Pat informed the coalition that we are beginning to review the 2010 NHDD data and craft the 2010 NHDD Annual Report. Once completed, the report will be shared with Nathan Kottkamp, leader, NHDD National Coalition and posted on CompassionAndSupport.org.

2. Questions and Answers Regarding MOLST & FHCA:

- **Q – Is it possible to have all checklists in a chart format?**
A – (Pat Bomba) – The [MOLST General Instructions and Glossary and the Legal Requirements Checklists for Adult Patients](#) integrate clinical steps and legal requirements. With FHCA, decision-making standards, procedures and statutory witness requirements for decisions to withhold or withdraw life-sustaining treatment, including DNR, vary depending on who makes the decision and where the decision is made. Accordingly, there are five different checklists for different types of decision-makers and settings. Optional MOLST Chart Documentation Forms align with the checklists.
- **Q – Is it possible to walk me through the [MOLST General Instructions and Glossary and the Legal Requirements Checklists for Adult Patients](#), as well as the [Checklists for Patients with Developmental Disabilities who Lack Medical Decision-Making Capacity](#)?**
A – (Pat Bomba) – There are 5 different checklists for adult patients:
Checklist #1 - Adult patients with medical decision-making capacity (any setting)
Checklist #2 - Adult patients without medical decision-making capacity who have a health care proxy (any setting)

Checklist #3 - Adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy, and decision-maker is Public Health Law Surrogate (surrogate selected from the FHCDA surrogate list)

Checklist #4 - Adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy and for whom no surrogate from the list is available

Checklist #5 - Adult patients without medical decision-making capacity who do not have a health care proxy, and the MOLST form is being completed in the community

The checklists do not need to travel with the patient, except as noted on the revised DOH-5003 MOLST form, "If the patient has a developmental disability and does not have ability to decide, the doctor must follow special procedures and attach the appropriate legal requirements checklist". If the optional MOLST Chart Documentation Forms are used, the forms should remain in the medical record.

NYS OMRDD and OMH have not yet finalized approval of the new DOH-5033 MOLST form. [MOLST Instructions and Legal Requirement checklists for Patients with Developmental Disabilities who Lack Medical Decision-Making Capacity](#) and [MOLST General Instructions for Patients with Mental Illness in a Mental Hygiene Facility](#) are under development and also awaiting approval.

- **Q – So then we use what we have for the time being?**

A – (Pat Bomba) – Always start with identifying which patients with developmental disabilities can complete the MOLST. Patients with DD who have medical decision-making capacity can complete a MOLST form. If the patient with DD lacks medical decision-making capacity, they may retain the capacity to choose a health care agent and should be counseled regarding a health care proxy. If a health care proxy is completed, the health care agent can complete the MOLST form. In all other cases, seek legal counsel for special populations (minors, DD and/or MI population.)

- **Q – Am I correct to think that I utilize the checklist with the FHCDA/HANYS form?**

A – (Pat Bomba) – There are many options for learning legal requirements and forms to use regarding surrogate decision-making under FHCDA. **Checklist #3** (for the adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy, and decision-maker is Public Health Law Surrogate selected from the FHCDA surrogate list) & **Checklist #4** (for the adult hospital or nursing home patients without medical decision-making capacity who do not have a health care proxy and for whom no surrogate from the list is available) incorporates FHCDA requirements.

Checklists #1, #2 & #5 outline legal requirements for completion of MOLST by the patient, the health care agent and in the community when the incapacitated patient has "clear and convincing evidence of wishes", as FHCDA does not apply in the community. Remember that these checklists are not mandatory, but is up to each facility as to how they want their staff to document and ensure all steps are taken. Remember that FHCDA does **NOT** apply in the community.

- **Q –Can a resident physician, who is a licensed physician in NYS, determine capacity in a hospital or nursing home setting? How is this identified in the facilities policies & procedures?**

A – (Pat Bomba & Donnie R.) – Under FHCDA, a "physician" means a licensed physician, so a resident becomes a "physician" when the resident physician becomes licensed. However, because the statute states that something can be done by a "physician", that does not allow the physician to do things that they are not competent to do.

(David Levin) – Concur and shares that in a NH/hospital it can be a health or social service practitioner as long as it's in accordance to the FHCDA requirements.

(Pat Bomba) – Under NYS Health Care Proxy Law, two physicians must determine capacity. Under FHCDA, the concurring capacity determination can be by a health or social service practitioner, as defined in the MOLST General Instructions and Glossary: "Health or social service practitioner" means a registered professional nurse, nurse practitioner, physician, physician assistant, psychologist or licensed clinical social worker, licensed or certified pursuant to the education law acting within his or her scope of practice. A health or social service practitioner who determines that

a patient lacks medical decision-making capacity must be competent to do so, based on his/her experience and training.

(Pat Bomba & Donnie R.) – Regarding policies and procedures, variation may exist. Until training is done, many larger facilities are maintaining two physicians determine capacity. Smaller facilities are looking to implement the changes from FHCDA sooner, maintaining the difference when the decision-maker is a health care agent vs. a surrogate. We are working on revising the 2009 version of PowerPoint presentation on capacity determination. Once updated, this will be posted on CompassionAndSupport.org at http://www.compassionandsupport.org/index.php/for_professionals/molst/capacity_determination.

- **Q – Have policies and procedures regarding MOLST & FHCDA been finalized?**

A – (Donnie R.) – These are currently a work in progress and are waiting attorney approval at many hospitals and nursing homes.

(Pat B.) – Once developed we will post the links on CompassionAndSupport.org for these as and educational tool for others to utilize across NYS.

Follow Up – Team: Send an email to Patricia.Bomba@lifethc.com if your organization has developed policies and procedures regarding MOLST & FHCDA and your organization provides permission to post on CompassionAndSupport.org.

- **Q – Has anyone used the new PowerPoint slides (MOLST & FHCDA) for training?**

A – Yes, a modified version was well received by staff.

Follow Up – Team: Send an email to Patricia.Bomba@lifethc.com for feedback on the PowerPoint. Continue to educate, advocate & encourage completion of Health Care Proxies and Living Wills. FHCDA should be viewed as a PHL of last resort.

- **Q – What if you need a psychiatrist to do a concurrent capacity determination and one is not available?**

A – (Pat B.) – Since a concurrent capacity determination for a person with mental illness by a psychiatrist was required for DNR decisions by surrogates prior to FHCDA, consider the policies and procedures your facility has used in the past when this need arose.

- **Q – On page (2) of the MOLST form if someone wants antibiotics, IV fluids while requesting DNR/DNI and then in the future changes their mind and requests comfort care only, then do we complete a new MOLST form?**

A – (Pat B.) – Yes. The MOLST form should be reviewed and renewed as the law requires, and:

- If the patient moves from one location to another to receive care; or
- If the patient has a major change in health status (for better or worse); or
- If the patient or other decision-maker changes his or her mind about treatment.

If the patient's goals of care change due to change in health status and the patient or other decision-maker changes his or her mind about treatment, the form should be voided and a new form should be completed. To void the form, the physician should identify on page (3) that the form is being voided and a new one completed. Place a line through each page and write VOID. Keep as part of the patient's medical chart. Complete a new MOLST form consistent with the patient's current goals of care and place a copy in the chart, keeping the original with the patient.

- **Q – Since FHCDA does not apply in the community, will a MOLST form completed by a surrogate, while a patient is in a hospital, be honored in the community (e.g. at home and in an assisted living facility)?**

- A – (Pat B.) – Yes. New Article 29-CCC clarifies that home care services agencies and hospices must honor them, as well as EMS

- **Q – Can a MOLST be initiated in the community by a surrogate on behalf of a patient who lacks medical decision-making capacity?**

A – (Pat B.) – While FHCDA does not apply in the community, **Checklist #5** outlines legal requirements for adult patients without medical decision-making capacity who do not have a health care proxy, and the MOLST form is being completed in the community. This can only be done when “clear and convincing evidence” exists, as defined in MOLST General Instructions.

In this scenario, the FHCDA surrogate makes decisions for DNR/DNI, under rules governing Nonhospital DNR Orders:

- New Article 29-CCC clarifies that home care services agencies and hospices must honor them, as well as EMS
- Surrogates can consent to them under FHCDA rules
- Consent must be orally to the attending physician or in writing
- Department authorized use of a new “alternative form” (MOLST form) that complies with FHCDA: DOH-5033 Medical Orders for Life-Sustaining Treatment (MOLST) Form
- MOLST is a bright pink form that may include Do Not Intubate (DNI) order in addition to DNR order

MOLST Orders

- Under the statute (now PHL § 2994-dd(6)), The Department of Health “may authorize the use of . . . alternative forms for issuing a nonhospital order not to resuscitate. . . . Such alternative form or forms may also be used to issue a non-hospital do not intubate order.”
- What about other MOLST orders besides DNR and DNI?

MOLST orders in addition to DNR and DNI

- The courts have said that all individuals have a constitutional right to refuse medical treatment.
 - Before a patient’s right of self-determination can be enforced, however, his or her wishes must be ascertained.
 - If the patient cannot presently express those wishes, they will be enforced if established by “clear and convincing evidence.”
- **Q – Pat to group: Would a webinar on MOLST and FHCDA be helpful?**
A – There was consistent agreement that a webinar (or series of webinars) would be helpful. Comments included: “We don’t know what we don’t know.” “Start with a general overview.” “Focus on the needs of long term care facilities.”

Follow Up – Pat B. & Penny W. – Per team’s request, schedule a series of Webinars, beginning with the September NHDD NYS Coalition meeting.

3. **Future 2010 Conference** Calls/Webinar to continue x1 per month for 1 ½ hours per request of the coalition. Next call will be a webinar on MOLST and FHCDA on Thursday, September 23, 2010, 1:00pm -2:30pm. Meeting Minutes and call in instructions for the webinar will be posted [HERE](#).

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