

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 Surrogate List is Available

Under the Family Health Care Decisions Act, life-sustaining treatment may be withheld from a patient in a hospital or nursing home who does not have a health care proxy or a surrogate, only if a court makes the decision or two physicians authorized by the facility concur that the patient would die imminently, even if the patient received the treatment, and that provision of the treatment would violate accepted medical standards.

Complete each step and check the appropriate lines as indicated.

Step 1: Assess health status and prognosis. ___

Step 2: Check all advance directives known to have been completed.

___ Health Care Proxy ___ Living Will ___ Organ Donation ___ Documentation of Oral Advance Directive
(If there is a health care proxy and the health care agent can make the decision, stop filling out this checklist. Use Checklist #2 for adults with a health care proxy.)

Step 3: If there is no health care proxy, assess capacity to complete a health care proxy.

A patient who lacks the capacity to consent to medical orders for life-sustaining treatment may still have the capacity to choose a health care agent and complete a health care proxy. Any patient with that capacity should be counseled to complete a health care proxy, if he/she has not already completed one.

Document the result of patient counseling, if applicable. **Check one.**

- ___ Patient retains the capacity to choose a health care agent and completes a health care proxy. (If the patient completes a health care proxy, use Checklist #2 for adults with a health care proxy).
- ___ Patient retains the capacity to choose a health care agent, but chooses not to complete a health care proxy.
- ___ Patient lacks capacity to choose a health care agent.

Step 4: Determine the patient's medical decision-making capacity. **Check appropriate lines under (A) and (B) (if a required item cannot be checked because the patient has capacity, use Checklist #1 for patients with capacity.):**

(A) Attending Physician Determination (check both)

- ___ The attending physician has determined in writing to a reasonable degree of medical certainty that the patient lacks the ability to understand and appreciate the nature and consequences of *DNR and Life-Sustaining Treatment* orders, including benefits and burdens of and alternatives to such orders, and to reach an informed decision regarding the orders.
- ___ The determination contains the attending physician's assessment the cause and extent of the patient's incapacity and the likelihood that the patient will regain medical decision-making capacity. The determination is documented in the patient's medical record.

(B) Assessment for Mental Illness and Concurring Determination Check (i) or (ii) and all line(s) underneath:

- ___ (i) The attending physician has determined that the patient's lack of medical decision-making capacity is *not due* to mental illness; and

- ___ A health or social services practitioner employed by, or formally affiliated with, the facility has independently determined that the patient lacks medical decision-making capacity. The concurring determination includes an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain medical decision-making capacity. Such determination is also included in the patient's medical record.
- ___ (ii) The attending physician has determined that the lack of medical decision-making capacity *is due* to mental illness (this does not include dementia); and **Check both:**
 - ___ A health or social services practitioner employed by, or formally affiliated with, the facility has independently determined that the patient lacks medical decision-making capacity. The concurring determination includes an assessment of the cause and extent of the patient's incapacity and the likelihood that the patient will regain medical decision-making capacity. Such determination is also included in the patient's medical record.
 - ___ Either the attending physician or the health or social services practitioner who determined that the patient lacks medical decision-making capacity is a qualified psychiatrist. The determination by the qualified psychiatrist is documented in the medical record.

Step 5: Notify the Patient. Check one:

- ___ Notice of the determination that the patient lacks medical decision-making capacity has been given to the patient (the patient may be able to comprehend such notice).
- ___ Notice of the determination that the patient lacks medical decision-making capacity has not been given to the patient, because there is no indication of the patient's ability to comprehend the information

Step 6: Determine that there is no Public Health Law Surrogate. Check both:

- ___ The attending physician, or someone acting on behalf of the attending physician or the hospital or nursing home, made diligent efforts to contact a surrogate from the list below:
 - a. Patient's guardian authorized to decide about health care pursuant to Mental Hygiene Law Article 81
 - b. Patient's spouse, if not legally separated from the patient, or the domestic partner
 - c. Patient's son or daughter, age 18 or older
 - d. Patient's parent
 - e. Patient's brother or sister, age 18 or older
 - f. Patient's close friend, age 18 or older
- ___ No surrogate was reasonably available, willing and competent to make medical decisions for the patient.

Step 7: Document where the MOLST form is being completed. Check one:

- ___ Hospital (see Glossary for definition)
- ___ Nursing Home (see Glossary for definition)

Step 8: Be sure you have selected the appropriate legal requirements checklist, based on who makes the decision and the setting. *Check one:*

This is Checklist #4 for 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 surrogate list is available. If this is the appropriate checklist, proceed to Step 9 below. If this is the wrong checklist, stop filling out this checklist; find and complete the correct checklist. All checklists can be found on the Department of Health's website at http://www.nyhealth.gov/professionals/patients/patient_rights/molst/.

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

Step 9: Identify patient goals for care based on patient's wishes, if known, or patient's best interests ___

Step 10: If the decision is to withhold or withdraw life sustaining treatment, the following standards and procedures are implemented to ensure that patient-centered goals of care are met. *Check A or B:*

- ___ (A) A court of competent jurisdiction is the decision-maker: The court has determined that the medical orders meet the patient-centered and clinical standards set forth in the Family Health Care Decisions Act.
- ___ (B) The attending physician is the decision-maker: *Check all:*
 - ___ The facility has identified, to the extent reasonably possible, the patient's wishes and preferences, including the patient's religious and moral beliefs, about pending medical decisions and has recorded such findings in the medical record.
 - ___ The decision is patient-centered and is not based on the financial interests of the facility or any other health care provider. The decision is in accordance with the patient's wishes, including the patient's religious and moral beliefs; or if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the patient's best interests. The assessment of the patient's best interests included consideration of:
 - the dignity and uniqueness of every person;
 - the possibility and extent of preserving the patient's life;

- the preservation, improvement or restoration of the patient's health or functioning;
 - the relief of the patient's suffering; and
 - any medical condition and such other concerns and values as a reasonable person in the patient's circumstances would wish to consider.
- ___ The attending physician has determined to a reasonable degree of medical certainty that:
- the life-sustaining treatment being withheld offers the patient no medical benefit because the patient will die imminently, even if the treatment is provided; **and**
 - the provision of the life-sustaining treatment would violate accepted medical standards.
- ___ A second physician designated by the facility has concurred in this determination, and the concurrence is documented in the medical record.

Step II: Physician signature

- ___ The attending physician has signed the MOLST form.

Step I2: Notify director of mental hygiene facility and Mental Hygiene Legal Services (MHLS).

- ___ For patients who are residents in, or are transferred from, a mental hygiene facility, the attending physician has notified the director of the facility and MHLS of the determination that the resident lacks medical decision-making capacity and, that there is no surrogate or health care proxy and that the resident has MOLST orders.

Step I3: Notify director of correctional facility.

- ___ For adult patients who are inmates in, or are transferred from, a correctional facility, the attending physician has notified the director of the correctional facility of the determination that the inmate lacks medical decision-making capacity, that there is no surrogate or health care proxy and that the inmate has MOLST orders.