

## **Checklist #6: Minor Patients for Whom Decisions are Being Made Under the FHCD**

The MOLST form must be completed based on the minor patient's current medical condition, values, and wishes. The parent or guardian of a minor patient has the authority to make decisions on behalf of the minor about life-sustaining treatment, including decisions to withhold or withdraw life-sustaining treatment. The minor patient must also consent if the minor patient has medical decision-making capacity.

Minors, over the age of 16, who are living independently or have a child of their own, may be considered "emancipated." Special considerations and requirements apply to decisions about life-sustaining treatment made by emancipated minors.

Minors with intellectual or developmental disabilities, regardless of their residential setting, must complete the OPWDD MOLST Legal Requirements checklist, which must remain attached to the MOLST form for it to be valid. The OPWDD MOLST checklist can be found at: <https://opwdd.ny.gov/providers/health-care-decisions>

**Complete each step and check the appropriate lines as indicated.**

**Step 1: Assess health status and prognosis. \_\_\_\_**

**Step 2: Identify the decision-maker. Check one**

- \_\_\_\_ Minor patient's parent or guardian. It has been determined that the parent or guardian has legal authority to make medical decisions for the minor patient. (*Seek legal advice if the decision-maker's authority is unclear.*)
- \_\_\_\_ Emancipated Minor Patient. A minor patient who is the parent of a child, or who is sixteen years of age or older and living independently from their parents or guardian, or who has otherwise been emancipated by a court of competent jurisdiction. (*Consult with legal counsel concerning MOLST orders for emancipated minors.*)

**Step 3: Assess minor patient's capacity and secure minor's informed consent if he/she has capacity. Check (i) or (ii) and any applicable lines underneath**

- \_\_\_\_ **(i) Patient has capacity to make medical decisions. Check both**
  - \_\_\_\_ The attending practitioner, in consultation with the minor patient's parent or guardian, has determined that the patient has the ability to understand and appreciate the nature and consequences of DNR and life-sustaining treatment orders. These include the benefits and burdens of, and alternatives to, such orders, and to reach an informed decision regarding the orders.
  - \_\_\_\_ The minor patient has been fully informed about his/her medical condition and the risks, benefits, burdens, and alternatives of possible life-sustaining treatment. The minor patient has consented to the withholding, withdrawal, or delivery of certain life-sustaining treatment, for which medical orders are written.
- \_\_\_\_ **(ii) Patient lacks capacity to make medical decisions.** The attending practitioner, in consultation with the minor patient's parent or guardian, has determined that the patient lacks the ability to understand and appreciate the nature and consequences of DNR and life-sustaining treatment orders. These include the benefits and burdens of, and alternatives to, such orders, and to reach an informed decision regarding the orders.

#### Step 4: Notify minor patient of capacity determination.

- \_\_\_ Notice of the determination that the minor patient lacks medical decision-making capacity has been given to the minor patient because the patient may be able to comprehend such notice. *(Since the patient always has the authority to object to this determination, notice should generally be provided, even where there may be doubt about the patient's ability to understand such notice);*

#### Step 5: Document where the MOLST form is being completed. Check one:

- \_\_\_ Hospital (including any setting where hospice services are being provided)  
\_\_\_ Nursing Home  
\_\_\_ Community

#### Step 6: Discuss goals for care with the parent, guardian or emancipated minor who will make the decision, and the minor patient who has medical decision-making capacity. If decision is being made by an emancipated minor, proceed to Step 11.

#### Step 7: Parent or legal guardian has given informed consent to the treatment decision. Check all:

- \_\_\_ Parent or legal guardian has been fully informed about the patient's medical condition and the risks, benefits, and burdens of, and alternatives to, possible life-sustaining treatment.
- \_\_\_ Parent or legal guardian has consented to the withholding, withdrawal, or delivery of certain life-sustaining treatment, for which medical orders are written.
- \_\_\_ Parent's or legal guardian's decision is patient-centered, 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 parent's or legal guardian's assessment is based on the patient's wishes and best interests, not the parent's or guardian's, and includes 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.

#### Step 8: If the decision is to withhold or withdraw life sustaining treatment, the parent's or legal guardian's decision complies with the following clinical standards, as determined by the attending practitioner with the concurrence of another independent practitioner and, where applicable, by an ethics review committee. Check (i) and/or (ii) (and any applicable lines underneath) and (iii):

- \_\_\_ (i) Treatment would be an extraordinary burden to the patient, and an attending practitioner determines, with the independent concurrence of another practitioner, that, to a reasonable degree of medical certainty and in accord with accepted medical standards,
- the patient has an illness or injury which can be expected to cause death within six months, whether or not treatment is provided; or
  - the patient is permanently unconscious.
- \_\_\_ (ii) The provision of treatment would involve such pain, suffering or other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances; and the patient has an irreversible or incurable condition, as determined by an attending practitioner with the independent concurrence of another practitioner to a reasonable degree of medical certainty and in accord with accepted medical standards.

*Note: The following special requirements only apply if only clinical standard (ii) above is applicable (irreversible and incurable condition). They do not apply to a decision for a patient receiving hospice services outside of a general hospital or to a decision to withhold or withdraw life-sustaining treatment under clinical standard (i) above (death is expected within 6 months with or without treatment, or patient is permanently unconscious).*

- \_\_\_ (a) The patient is in a general hospital (not a setting where only hospice services are provided), the medical order involves the withdrawal or withholding of nutrition or hydration provided by means of medical treatment, and the attending physician, nurse practitioner, or physician assistant objects to the order:
  - \_\_\_ An ethics review committee, (including a physician, nurse practitioner, or physician assistant who is not directly responsible for the patient's care), or an appropriate court has determined that the medical orders meet the patient-centered and clinical standards.
- \_\_\_ (b) The patient is in a nursing home or in the community, and the MOLST contains orders other than a DNR:
  - \_\_\_ An ethics review committee, (including at least one physician, nurse practitioner, or physician assistant who is not directly responsible for the patient's care), or an appropriate court has determined that the medical orders meet the patient-centered and clinical standards.
- \_\_\_ (iii) The concurring physician's, nurse practitioner's, or physician assistant's determination is documented in the medical record.

**Step 9: Notify the parent or guardian other than the one who consented in Step 7. Check one (and any applicable lines underneath).**

- \_\_\_ There is a parent or guardian other than the one who consented in Step 7, and that parent or guardian has been informed of the decision.
- \_\_\_ There is no reason to believe that the minor patient has a parent or guardian other than the one who consented in Step 7.
- \_\_\_ There is reason to believe that the minor patient has a parent or guardian other than the one who consented in Step 7, and that parent or guardian, (including a non-custodial parent or guardian), has not been informed of the decision. Reasonable efforts have been made to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the minor; and: **Check (i) or (ii)**
  - \_\_\_ (i) It has been determined that the uninformed parent or guardian has not maintained substantial and continuous contact with the minor.
  - \_\_\_ (ii) It has been determined that the uninformed parent or guardian has maintained substantial and continuous contact with the minor. The other parent or guardian could not be notified after diligent efforts were made to do so.

**Step 10: Participation in the decision by another parent or guardian other than the one who consented in Step 7. (If a parent or guardian objects to a decision, stop filling out the form and refer to the ethics review committee or consult with legal counsel.) Check one**

- \_\_\_ The parent or guardian other than the one who consented in Step 7 has been informed of the decision, has been given the opportunity to object to the decision, and has not objected to the decision.
- \_\_\_ No parent or guardian other than the one who consented in Step 7 has been notified of the decision. (There is no reason to believe that the minor patient has another parent or guardian, or it has been determined that the uninformed parent or guardian has not maintained substantial and continuous contact with the minor, or another parent or guardian could not be notified after diligent efforts were made to do so.)

### **Step 11: Decision making standards and procedures for emancipated minor patient**

- \_\_\_ The attending practitioner has determined that the patient is an emancipated minor with decision making capacity.
- \_\_\_ If the decision involves the withholding or withdrawal of life sustaining treatment, the ethics committee has determined that the decision accords with the standards for adults, and the ethics committee has approved the decision.
- \_\_\_ If the hospital can with reasonable efforts ascertain the identity of a parent or guardian of an emancipated minor patient, the hospital has notified such person prior to implementing the emancipated minor's decision to withhold or withdraw life sustaining treatment.

### **Step 12: Witness Requirements Check one:**

**Witnesses are not always required, depending on the circumstances. If the parent/patient consents in writing, no witnesses are required. If the parent/patient consents verbally, the attending practitioner must witness the consent. Having two witnesses to the discussion and consent is not always required by law, but it is always recommended, and some hospitals, nursing homes, or community-based practitioners may still require it. Printing a witness's name is sufficient, witness signature is not required.**

- \_\_\_ The parent or guardian and minor patient with capacity, (if applicable); or emancipated minor consented in writing.
- \_\_\_ The parent or guardian and minor patient with capacity, (if applicable); or emancipated minor consented verbally, and the attending practitioner witnessed the discussion and consent.

### **Step 13: Physician, Nurse Practitioner, or Physician Assistant Signature**

- \_\_\_ The attending practitioner signed the MOLST form.