

## **Health Care Proxy vs. MOLST: Do I Need Both?**

Remember the Obamacare "death panels?" In the months leading to the passage of the Affordable Care Act, Sarah Palin coined the term "death panel" to describe a provision that allowed Medicare to reimburse doctors for end-of-life discussions with their patients. It was successful public relations ploy to turn the American public against the Act, painting it as the work of a nefarious bureaucracy out to kill off the old and sick to save a buck. The offending provision was removed before Congress passed the Affordable Care Act.

The tides have changed. Medicare is soon to announce that end-of-life, or "advance planning," conversations will be reimbursed. The proposed regulation was introduced in July of this year by the Centers for Medicare and Medicaid Services, and, with little to no opposition, is expected to take effect in January 2016.

### **What does an advance planning conversation sound like?**

A doctor (or nurse practitioner or physician's assistant) should get a sense of what her patient's wishes are regarding resuscitation, intubation, life support, and palliative care, wishes that can be documented in a Medical Orders for Life Sustaining Treatment (MOLST) form. In addition, the medical professional should encourage her patient to consider who she trusts to make medical decisions for her should she become incapacitated. That trusted individual can be named in a Health Care Proxy. Both of these documents, the MOLST and Health Care Proxy, are vital, but different, aspects of advance planning.

### **MOLST**

The Massachusetts Medical Orders for Life Sustaining Treatment form is a medical document, signed by the patient and a medical professional. This document contains medical orders, similar to a prescription, to withhold or provide different treatments, such as CPR, intubation, and sustained ventilation. Many people are familiar with DNRs, or Do Not Resuscitate orders. The MOLST is similar, but broader, and can include a DNR order. One can have both a DNR and a MOLST, but if the situation calls for resuscitation, the most recently signed form will take precedence. If the emergency requires consideration of other treatments, the MOLST will apply. The MOLST form is valid whether the individual has the capacity to make decisions or not. If she is able, she can change her mind and request or refuse treatment in opposition to her MOLST form.

This document is often printed on bright pink paper and kept near to the individual--on a bedside table or refrigerator, and travels with her--and is an alert to emergency responders to follow the medical orders outlined. MOLST forms are not recommended for everyone, but for individuals who have a serious illness or injury. Anyone can sign a MOLST; for those patients under age 18, a guardian's signature is valid.

### **Health Care Proxy**

A Health Care Proxy, in contrast, is a legal document, signed by the individual, witnessed, and notarized. This document appoints a health care agent--someone the individual trusts to make medical decisions if and only if she is incapacitated and unable to make decisions herself. Many hospitals have basic health care proxy forms available for individuals admitted for care. These forms, while in some cases helpful in the short term, are bare bones. Very often there is space

to name only one agent. In the event that the named agent is unwilling or unavailable to make decisions in a crisis, such forms do not provide a back-up proxy.

Additionally, these basic forms do not include guidance for the health care agent. While there is no living will statute in Massachusetts, some attorneys integrate living will language into the Health Care Proxy. This allows the individual to express her wishes regarding end-of-life care, e.g., a desire not to be kept alive artificially if there is no chance for recovery, to donate organs, or to be cremated. Even if the individual has had this conversation with her named agent, in a highly emotional medical crisis, written wishes serve as a powerful and comforting guide.

Health Care Proxies are a good idea for all individuals, healthy and ailing, but can only be signed by those over age 18. Without a Health Care Proxy, family or friends may be forced to petition the court for guardianship in order to receive medical information and make medical decisions for a loved one.

**How are the MOLST and Health Care Proxy different, and are they both necessary?**

For those who are not suffering from a serious illness or injury, a Health Care Proxy alone should be sufficient. A document naming a trusted agent and a back-up (or two!), with language expressing the individual's end-of-life wishes, is valuable for all. The Health Care Proxy is a legal form, and while it provides the necessary appointment of an agent and expression of wishes, it carries little weight with emergency responders. In a life-threatening emergency, responders will not abide by a Health Care Proxy, but will treat and transport the patient to the hospital. It is there and then that the Health Care Proxy can be invoked if the patient is incapacitated.

For those who have been seriously injured or diagnosed with a life-threatening condition, both a Health Care Proxy *and* a MOLST are recommended.

*Valerie Vignaux, Esq.*

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