



## ***Rhode Island Department of Health***

### **NOTICE OF PUBLIC HEARING**

The Director of the Rhode Island Department of Health has under consideration proposed promulgation of the [Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment \[R23-4.11-MOLST\]](#) pursuant to the authority conferred under Chapters 23-4.11 and 42-35 of the Rhode Island General Laws, as amended. The purpose of the proposed regulations is to establish the procedures for Medical Orders for Life Sustaining Treatment (MOLST) and the structure and content of Medical Orders for Life Sustaining Treatment forms.

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that the Director will hold a public hearing on the above mentioned matter, in the **AUDITORIUM** of the Rhode Island Department of Health (on the lower level of the Cannon Building), Three Capitol Hill, Providence, Rhode Island on **FRIDAY, 16 AUGUST 2013 AT 2:30 PM.** at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach, duplication, or overlap was identified based upon available information.

For the sake of accuracy, it is requested that statements to be made relative to any aspect of the regulations, including alternative approaches or overlap, be submitted in writing at the time of the hearing or in electronic format prior to the hearing date to: James V. McDonald, MD, MPH, Chief Administrative Officer, Board of Medical Licensure and Discipline: by e-mail to [James.McDonald@health.ri.gov](mailto:James.McDonald@health.ri.gov). or by calling 401-222-1016.

Copies of the regulations are available for public inspection in the Cannon Building, Room #201, Rhode Island Department of Health, 3 Capitol Hill, Providence, Rhode Island, on the Secretary of State's website: <http://www.sos.ri.gov/ProposedRules/>, by calling 401-222-7767 or by e-mail to [Bill.Dundulis@health.ri.gov](mailto:Bill.Dundulis@health.ri.gov).

*The Department of Health is accessible to the handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-222-7767 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.*

Signed this 16<sup>th</sup> day of July 2013

*Original signed by Michael Fine, MD*

Michael Fine, M.D., Director of Health

**RULES AND REGULATIONS PERTAINING TO  
MEDICAL ORDERS FOR LIFE SUSTAINING TREATMENT**

[R23-4.11-MOLST]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

**August 2013 (Proposed)**

**COMPILER'S NOTES:**

Proposed Additions: The proposed regulations are new in their entirety. Therefore, changes are not specifically indicated.

***INTRODUCTION***

These *Rules and Regulations Pertaining to Medical Orders for Life Sustaining Treatment* [R23-4.11-MOLST] are promulgated pursuant to the authority set forth in Chapter 23-4.11 of the General Laws of Rhode Island, as amended, and establish the procedures for Medical Orders for Life Sustaining Treatment (MOLST) and the structure and content of Medical Orders for Life Sustaining Treatment forms.

Pursuant to the provisions of §42-35-3(a)(3) and §42-35.1-4 of the General Laws of Rhode Island, as amended, consideration was given to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) significant economic impact on small business. Based on the available information, no known alternative approach, duplication or overlap was identified.

*TABLE OF CONTENTS*

	<i>Page</i>
<b>INTRODUCTION</b>	i
<b>1.0 DEFINITIONS</b>	1
<b>2.0 SCOPE AND APPLICABILITY</b>	2
2.1 Scope	2
2.2	3
2.3	3
2.4	3
<b>3.0 MEDICAL ORDERS FOR LIFE SUSTAINING TREATMENT</b>	3
3.1 Treatment of Qualified Patients	3
3.2 Medical Orders for Life Sustaining Treatment	3
3.3 MOLST Form	4
3.4 Validity of MOLST Form	5
3.5 Revocation of a MOLST Form	5
3.6 Resolving Conflicts Between MOLST Forms	6
3.7 Reproduction and Alteration of the MOLST Form	6
3.8 Voiding a MOLST Form	6
<b>4.0 SEVERABILITY</b>	6

PUBLIC HEARING DRAFT2 – REVISED 16 JULY 2013

SECTION 1.0 DEFINITIONS

Wherever used in these Regulations, the following terms shall be construed as follows:

- 1.1 “*Act*” means RIGL Chapter 23-4.11 entitled “Rights of the Terminally Ill Act”.
- 1.2 “*Advance directive protocol*” means a standardized, state-wide method developed for emergency medical services personnel by the department of health and approved by the ambulance service advisory board, of providing palliative care to, and withholding life-sustaining procedures from, a qualified patient.
- 1.3 “*Advance health care directive*” means a written document that states an individual’s choices for health care or names someone to express those choices the individual if the individual become unable to make health care decisions for themselves. An advance directive may be known as a Living Will, Durable Power of Attorney for Health Care, or health care proxy.
- 1.4 “*Artificial feeding*” means the provision of nutrition or hydration by parenteral, nasogastric, gastric or any means other than through per oral voluntary sustenance.
- 1.5 “*Attending physician*” means the physician who has primary responsibility for the treatment and care of the patient.
- 1.6 “*Declaration*” means a witnessed document executed in accordance with the requirements of RIGL §23-4.11-3 or §23-4.11-3.1.
- 1.7 “*Department*” means the Rhode Island Department of Health.
- 1.8 “*Director*” means the means the Director of the Rhode Island Department of Health.
- 1.9 “*Emergency medical services personnel*” means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.
- 1.10 “*Health care decision maker*” means a person authorized by law or by the qualified patient to make health care decisions for the qualified patient. The qualified patient may revoke at any time and in any manner the appointment of a health care decision maker.
- 1.11 “*Health care facility*” means any institutional health service provider, facility or institution, place, building, agency, or portion thereof, whether a partnership or corporation, whether public or private, whether organized for profit or not, used, operated, or engaged in providing health care services, as defined in RIGL §23-17-2(6).
- 1.12 “*Health care provider*” means a person who is licensed, certified, or otherwise authorized by the law of Rhode Island to administer health care in the ordinary course of business or practice of a profession.
- 1.13 “*Life sustaining procedure*” means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process. “Life sustaining procedure” shall not include any medical procedure or intervention considered necessary by the attending physician to provide comfort and care or alleviate pain.
- 1.14 “*Medical orders for life sustaining treatment*” or “*MOLST*” means a voluntary request that directs a health care provider regarding resuscitative and life-sustaining measures.
- 1.15 “*Medical orders for life sustaining treatment form*” or “*MOLST Form*” means a

**PUBLIC HEARING DRAFT2 – REVISED 16 JULY 2013**

document which directs health care providers regarding resuscitative and life-sustaining measures.

- 1.16 “***MOLST qualified health care provider***” means the physician, registered nurse practitioner, or physician assistant who is authorized by the patient to sign a MOLST form.
- 1.17 “***Physician assistant***” means a person licensed as a physician assistant under RIGL, Chapter 5-54.
- 1.18 “***Person***” means an individual, corporation, business trust, estate, trust, partnership, association, government, governmental subdivision or agency, or any other legal entity.
- 1.19 “***Physician***” means an individual licensed to practice medicine under RIGL Chapter 5-37.
- 1.20 “***Qualified patient***” means a patient who has executed a declaration in accordance with the Act and these Regulations, and who has been determined by the attending physician to be in a terminal condition.
- 1.21 “***Registered nurse practitioner***” means a person licensed as such under RIGL Chapter 5-34.
- 1.22 “***Reliable documentation***” means a standardized, state-wide form of identification such as a nontransferable necklace or bracelet of uniform design, adopted by the director of health, with consultation from the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.
- 1.23 “***Request regarding resuscitative and life sustaining measures***” means a written document, signed by:
  - (a) A qualified patient with capacity, or a recognized health care decision maker; and
  - (b) The MOLST qualified health care provider, which directs a health care provider regarding resuscitative and life sustaining measures. Such a request regarding resuscitative and life sustaining measures is a medical order.
- 1.24 “***RIGL***” means the General Laws of Rhode Island, as amended.
- 1.25 “***Terminal condition***” means an incurable or irreversible condition that, without the administration of life sustaining procedures, will, in the opinion of the attending physician, result in death.
- 1.26 “***These Regulations***” mean all parts of Rhode Island *Rules and Regulations Pertaining to Medical Orders For Life Sustaining Treatment* [R23-4.11-MOLST]
- 1.27 “***Updating a MOLST form***” means to revise an existing MOLST form by voiding the existing form and completing a new MOLST form in accordance these Regulations.

**SECTION 2.0 SCOPE AND APPLICABILITY**

- 2.1 **Scope.** These Regulations set out the Medical Orders for Life-Sustaining Treatment (MOLST) form, instructions and certain related procedures and requirements developed by the Department pursuant to the Act.
- 2.2 If a qualified patient with a MOLST order is transferred from a hospital, another health care facility, or the community, the MOLST order or plan shall remain effective until a MOLST qualified health care provider first examines the transferred qualified patient, whereupon a MOLST qualified health care provider shall issue appropriate orders to continue the prior order or plan. Such orders may be issued without obtaining another consent to withhold or withdraw life-sustaining treatment pursuant to the Act and these Regulations.
- 2.3 Beginning 1 October 2013, the following health care facilities are required to accept, update if appropriate, and offer each qualified patient the opportunity to complete a MOLST form during the admission process<sup>1</sup>:
- (a) A nursing facility;
  - (b) An assisted living residence;
  - (c) A hospice;
  - (d) A kidney dialysis center; and
  - (e) A home health agency.
- 2.4 Beginning 1 October 2013, a hospital shall:
- (a) Accept and update if appropriate, a completed MOLST form; or
  - (b) Offer each patient the opportunity to complete a MOLST form during the qualified patient's inpatient stay if the patient is to be discharged or transferred to another health care facility.

**SECTION 3.0 MEDICAL ORDERS FOR LIFE SUSTAINING TREATMENT**

- 3.1 **Treatment of Qualified Patients.** A qualified patient has the right to make decisions regarding use of life sustaining procedures as long as the patient is able to do so. If a qualified patient is not able to make those decisions, the declaration governs decisions regarding use of life sustaining procedures.
- 3.2 **Medical Orders for Life Sustaining Treatment.**
- (a) The MOLST is a voluntary option for qualified patients. No patient is required to elect a MOLST.
  - (b) A declaration by a qualified patient may be recorded as a medical order for life-sustaining treatment provided that:

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<sup>1</sup> A nursing home or an assisted living residence shall also offer each patient admitted before 1 October 2013, and who continues to reside in the nursing facility or assisted living residence after 1 October 2013, an opportunity to complete a MOLST form.

**PUBLIC HEARING DRAFT2 – REVISED 16 JULY 2013**

- (1) The medical orders for life-sustaining treatment and medical intervention and procedures are explained by a MOLST qualified health care provider to the qualified patient or recognized health care decision maker. The MOLST qualified health care provider shall further inform the qualified patient of the difference between an advance health care directive and MOLST medical order;
  - (2) A MOLST qualified health care provider has conducted an evaluation of the qualified patient; and
  - (3) A MOLST form documenting the declaration has been completed by a MOLST qualified health care provider based on qualified patient preferences and medical appropriateness, and has been signed by a MOLST qualified health care provider and the qualified patient or his or her recognized health care decision maker.
- (c) A MOLST qualified health care provider may conduct an evaluation of the qualified patient and if necessary, in consultation with the qualified patient or recognized health care decision maker, issue a MOLST consistent with the most current information available about the qualified patient's health status and care preferences.
- (d) A MOLST form shall be completed or updated by a MOLST qualified health care provider in accordance with instructions provided by the Department. Except as otherwise provided by the Act or these Regulations, a MOLST qualified health care provider shall complete or update a MOLST form in a manner that is consistent with:
- (1) The known decisions of:
    - (i) A competent qualified patient; or
    - (ii) A recognized health care decision maker; and
  - (2) Any known advance directive if the qualified patient is incapable of making an informed decision.
- (e) A health care provider shall treat a qualified patient in accordance with the qualified patient's MOLST, subject to the provisions of the Act and these Regulations.
- (f) A request regarding resuscitative measures may also be evidenced by the words "do not resuscitate" or the letters "DNR," in a qualified patient's medical record and/or through a mechanism established by the Department consistent with the provisions of the Act and these Regulations.
- (g) A recognized health care decision maker may execute the MOLST form if the qualified patient lacks capacity, or if the qualified patient has designated that the health care decision maker's authority is valid.

**3.3 MOLST Form**

- (a) A MOLST shall be documented on an easily identifiable form approved by the Director.
- (b) The MOLST form approved by the Director is the only MOLST form that may be completed and signed within the State of Rhode Island.
- (c) The MOLST form shall contain all other information as required by these Regulations.

**PUBLIC HEARING DRAFT2 – REVISED 16 JULY 2013**

- (d) The MOLST form shall be signed by the qualified patient, or the qualified patient's recognized health care decision maker, and a MOLST qualified health care provider.

**3.4 Validity of MOLST Form.**

- (a) A MOLST form shall apply regardless of whether the qualified patient executes the MOLST form within or outside a hospital or other health care setting.
- (b) The MOLST form is valid within or outside a hospital or other health care setting.

**3.5 Revocation of a MOLST Form.**

- (a) A qualified patient or his/her recognized health care decision maker may, at any time, revoke in any manner that communicates an intent to revoke his/her declaration by informing the MOLST qualified health care providers, other health care providers, or any member of the medical or nursing staff of the revocation of the declaration concerning life-sustaining or resuscitative measures.
- (b) Any member of the medical or nursing staff informed of a revocation shall immediately notify a MOLST qualified health care provider of the revocation.
- (c) The MOLST qualified health care provider informed of a revocation of MOLST made pursuant to these Regulations shall immediately:
  - (1) Record the revocation in the qualified patient's medical record;
  - (2) Cancel any orders implementing the decision to withhold or withdraw treatment; and
  - (3) Notify the health care providers and staff directly responsible for the qualified patient's care of the revocation and any cancellations.
- (d) If a decision to withhold or withdraw life-sustaining treatment has been made by a recognized health care decision maker pursuant to the Act or these Regulations, and the MOLST qualified health care provider determines at any time that the decision is no longer appropriate or authorized because the qualified patient has regained decision-making capacity or because the qualified patient's condition has otherwise improved, the MOLST qualified health care provider shall immediately:
  - (1) Include such determination in the qualified patient's medical record;
  - (2) Cancel any orders or plans of care implementing the decision to withhold or withdraw life-sustaining treatment;
  - (3) Notify the recognized health care decision maker who made the decision to withhold or withdraw treatment; and
  - (4) Notify the other health care providers, including the medical and nursing staff directly responsible for the qualified patient's care, of any cancelled MOLST orders or plans of care.
- (e) A MOLST form shall only be voided by a MOLST qualified health care provider.
- (f) To void a MOLST form, draw a diagonal line through the sheet, write "VOID" in large letters across the page, and sign and date below the line.

## **PUBLIC HEARING DRAFT2 – REVISED 16 JULY 2013**

- 3.6 **Resolving Conflicts Between MOLST Forms.** If the medical records of a qualified patient contain more than one MOLST form, the orders contained in the most recent MOLST form shall be followed unless and until the form is updated.
- 3.7 **Reproduction and Alteration of the MOLST Form.**
- (a) A health care provider may freely copy, store electronically, and subsequently print or otherwise reproduce a MOLST form provided by the Department.
  - (b) A MOLST qualified health care provider may not alter the contents or format of a MOLST form provided by the Department.
- 3.8 **Voiding a MOLST Form.**
- (a) A MOLST qualified health care provider can give a verbal order to void the MOLST form if there is documentation that there was discussion with the qualified patient or the patient's recognized health care decision maker about discontinuing the MOLST order. A nurse can then take the verbal order to VOID the MOLST form. Documentation of the MOLST discussion will be placed in the patients record when the verbal order is verified..
  - (b) The voided MOLST form shall be kept in the patient's active or archived medical record.

### **SECTION 4.0 SEVERABILITY**

- 4.1 If any provisions of these Regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these Regulations which can be given effect, and to this end the provisions of these Regulations are declared to be severable.