

OHIO SB 165

Proponents Talking Points & Responses to Talking Points Regarding MOLST

S.B. 165 would establish procedures for the use of the MOLST form in Ohio.

MOLST refers to medical orders for life-sustaining treatment. In some states, it is called by different names such as POLST, POST, MOLST, MOST, etc.

The MOLST is generally a one page, two-sided uniquely identifiable form. It is printed on brightly colored heavy paper – fluorescent pink, bright yellow, or lime green. It is placed in the front of a patient's medical chart and accompanies the patient when hospitalized, transferred to another facility or discharged.

The form has boxes to check, indicating whether the patient should or should not have cardio-pulmonary resuscitation (CPR), antibiotics, food and fluids, tube feeding, and other medical interventions.

It is a portable medical order that transfers from one setting to another with the patient and is intended to give health care providers immediate information about what interventions should or should not be undertaken.

Proponents of S.B. 165 have posted talking points promoting the proposed law.¹ Those talking points are below in *italics*. A response follows each talking point.

According to its proponents, S.B. 165 will:

“Create a uniform MOLST form to be utilized for medical orders statewide that apply to patients who are frail or have progressing terminal conditions. When the use of a MOLST becomes appropriate, where death is likely within 12 to 24 months, it is intended to help make the patient’s wishes known, and honor those wishes throughout the continuum of care.”

RESPONSES:

There is nothing in S.B. 165 limiting application of the MOLST form only to those whose death is likely within 12 to 24 months.

- The bill states that MOLST form is suggested “**usually** for individuals who are frail or experiencing advanced or progressing illness.”² Such categories could include individuals who are elderly, newly diagnosed with conditions such as emphysema, Parkinson's disease, etc. and who could live for many years.
- In practice, there would be virtually no limit to the categories of individuals who would be considered eligible for MOLST.

There would be no limit to the types of treatments or procedures that could be addressed in a MOLST form.

- According to the bill, a medical practitioner could sign a MOLST form for a patient at any time and “once completed and signed...a MOLST form is valid and the instructions in it become operative and govern how the patient who is the subject of the form is to be treated with respect to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care, administration of CPR and **any other medical treatment** specified on the form.”³

According to its proponents, S.B. 165 will:

“Be a medical order issued by a physician after communication with and approval by the patient or by his/her representative.”

RESPONSES:

The MOLST form need not be signed by a physician.

- The proposed law would permit an “issuing practitioner” to sign the form. “Issuing practitioner” includes not only a physician but also a physician assistant, certified nurse practitioner or clinical nurse specialist.⁴
- Nothing in the proposed legislation requires that the MOLST form be issued after communication with a physician or other issuing practitioner. All such communication can be carried out by a “form preparer” who “completes the form pursuant to a practitioner’s delegation and for the practitioner’s signature.”⁵
- Form preparers who actually discuss MOLST with patients and check the boxes on the form could include chaplains, social workers, volunteers, etc. All that is required is that the form preparer be delegated that role by the issuing practitioner. (In some jurisdictions, the form preparer is referred to as a “facilitator.”)

Examples from other states present a cautionary note.

- In some states, training programs for facilitators on how to “have the conversation” are carried out in a number of locations. Such training is open to healthcare providers, caregivers, and interested community members.⁶
- The Respecting Choices program at Wisconsin’s Gundersen Health System is a national center for training and certification of facilitators. A one-day program, if successfully completed, qualifies a person to be a certified facilitator. An additional day, qualifies one to instruct others to be facilitators. Although a program spokesperson said it is helpful if facilitators have a nursing or social work background, there are no educational or professional prerequisites for such certification.⁷
- One facility in California carried out a novel program. To increase the number of patients who had documented their preferences – including having a POLST that would be scanned into the patients’ medical records – a cash incentive was provided to medical residents. If the residents recorded the information for at least 75 percent of discharged patients, they received a cash bonus. Within months, 90 percent of patients’ preferences had been documented.⁸

Information on the MOLST form could inaccurately reflect a patient’s wishes.

- Accuracy of the MOLST form depends upon how the “form preparer” conveys information and fills out the form.
- Do the preferences reflect those of the person filling out the form or those of the patient?
- Was the patient steered toward a particular preference?
- Did the person who checked the boxes correctly interpret the patient’s wishes?
- Did the person providing information about the available options explain them accurately and in a manner that the patient understood?

- Was the patient told that the form would be immediately implemented and, even if the patient could recover, treatments limited by checked boxes would not be provided and the patient could die as a result?
- Was the person checking the boxes hurried or not paying close attention?

According to its proponents, S.B. 165:

“Is not an advanced directive and does not alter current law in Ohio concerning advanced directives.”

RESPONSES:

A MOLST form would “trump” a durable power of attorney for health care:

- Proponents of SB 128, appeared before members of the Senate Civil Justice Committee on June 24, 2015. Judith LaMusga, an attorney testifying in favor of the bill, acknowledged that “a MOLST form should trump” the decision of an agent named in a durable power of attorney for health care.⁹

A MOLST form would not carry the same protection for a patient as a durable power of attorney for health care does.

- Ohio law related to a durable power of attorney for health care¹⁰ protects a person by requiring that the individual's signature be witnessed or notarized. No witness is required for the patient's signature on a MOLST form.
- Unlike an advance directive which only goes into effect when a patient is unable to make decisions, MOLST would go into effect **immediately** regardless of the patient's mental capacity or state of health.
- The bill contains no provision to ensure that the patient or the patient's decision maker be consulted before the MOLST form is implemented.

According to its proponents, S.B. 165 will:

“Be patient-centered and patient-driven. The uniform MOLST form will allow the patient to better understand and drive his or her own choices and decisions regarding the administration of life-sustaining treatment.”

RESPONSES:

The intent of those promoting MOLST is, undoubtedly good. But their good intent does not alleviate its problematic content and implementation.

- Rather than being able to consider what he or she wants in light of current circumstances, the patient is asked to make decisions on what may happen in the future with those decisions going into immediate effect.
- Weighing actual medical circumstances at the time a decision is needed, rather than checking boxes on a form (possibly years in advance) to address some future situation is the most patient-centered and patient-driven means of respecting patient choice.

There is only one type of medical order to which health care providers need immediate access.

- The fact that MOLST goes into effect immediately and is placed in the front of the patient's medical record does make it convenient for care givers to have such information at their fingertips. However, there is only one type of order to which health care providers need such immediate access.
- That type of order is a do not resuscitate order (DNR).
- Certainly, a DNR can be a very appropriate order. And, certainly, health care providers should have ready access to it.
- **Ohio law already provides for ready access to DNR orders.**¹¹

The MOLST form would address far more than whether or not the patient wishes to have a DNR order.

- In addition to whether a patient would have a DNR, The MOLST form¹² included in the bill provides boxes to check regarding comfort measures only, limited medical interventions, full intervention and artificially administered nutrition and hydration.
- The definition of "comfort care" contained in the bill¹³ states the category means that nutrition and hydration are permitted only to "diminish pain or discomfort, but not to postpone death."¹⁴ However, the form provided in the bill, does not have any reference to this limit on the provision of food and fluids.¹⁵

According to its proponents, S.B. 165 will:

"Make clear that no one is required to complete a MOLST form. This statement will be included on the form itself. The MOLST form is a way to uniformly document and transfer end-of-life medical orders."

RESPONSES:

Individuals could feel compelled to have a MOLST form.

- The bill states that the MOLST form is "always voluntary."¹⁶ However, nothing in the MOLST form included in the proposal¹⁷ states that signing it is voluntary. Therefore, an individual may be unaware that signing such a form cannot be required.
- From a practical standpoint, patients and, in particular, residents of assisted living facilities and nursing homes are hesitant to show any lack of "cooperation" with requests made of them, and they may be even more reluctant to question the facility's authority to require a MOLST form.

Experience in other states where such forms are used has indicated that patients are often pressured to have them.

- According to John Kelly, Regional Director of the disability advocacy organization NOT DEAD YET and director of Massachusetts Second Thoughts, some members of the disability community have questions whether POLST is being too broadly applied. Rather than giving people more control over end-of-life medical care, they say that "disabled" could be interpreted to mean "on death's door."¹⁸
- Kelly described an instance of the pressure on people with disabilities to have a POLST form. He explained that his nurse brought him the Massachusetts form and told him that she had been told that she was to complete the form for every disabled person she followed.¹⁹

- A survey of nursing homes in Allegheny County, Pennsylvania found that most of the surveyed facilities presented the POLST form to residents as a requirement and to all residents regardless of medical condition. All of the surveyed facilities had short-term rehab units. Even individuals who were only temporarily in the facilities for rehab were told they were required to have a POLST form.²⁰

According to its proponents, S.B. 165 will:

“Permit a MOLST to be revoked by the patient, or if they are incapacitated, their representative acting in the patient's best interest.”

RESPONSE:

Errors in completion and/or revocation of a MOLST form may lead to tragic results.

- Even if the patient or the patient's representative revokes the MOLST form, the proposed law states, “A revoked MOLST form shall be retained in the patient's medical record.”
- Experience in other states have shown that MOLST-type forms have had problems leading to errors. For example, in Oregon where the POLST form was developed in the mid 1990s, the state has recently launched a digital system for the form. The reason given for the change to a digital system: “The old system, which involved lots of scribbling, faxing and scanning of pink sheets of paper and then typing them into the registry, was prone to error.”
- According to Dr. Susan Tolle, director of OHSU's Center for Ethics in Health care, nearly 20 percent of the POLST paper forms have not been immediately entered into the registry because of human error. “Not everyone gets fixed,” Tolle said. “And even if we get it corrected, it might not have been corrected soon enough.”

¹ http://www.midwestcarealliance.org/aws/MCA/pt/sd/news_article/106601/_self/layout_details/false

² Sec. 2133.31 (Overview) and Sec. 2133.33 (which refers to “progressive” illness, rather than “progressing illness.” (Emphasis added.)

³ Sec. 2133.33.

⁴ Sec. 2133.30 (N).

⁵ Sec. 2133.30 (K).

⁶ See, for example, the information on Facilitator Certification from Wisconsin's Gundersen Health System, (<http://www.gundersenhealth.org/respecting-choices/certification>). Last accessed March 3, 2014.

See also:

Minnesota's Twin Cities Medical Society information regarding Advance Care Planning Facilitator Training, (<http://www.metrodoctors.com/dev/index.php/honoring-choices-mn/hcm-events-trainings/132-advance-care-planning-facilitator-training>). Last accessed March 3, 2014.

⁷ Telephone confirmation of requirements of Respecting Choices program for those seeking facilitator certification, March 3, 2014.

⁸ Paula Span, “A Novel Way to Document End-of-Life Preferences,” *New York Times*, July 25, 2013 (http://newoldage.blogs.nytimes.com/2013/07/25/a-novel-way-to-document-end-of-life-preferences/?_r=1). Last accessed March 5, 2014.

⁹ *The Hannah Report*, June 24, 2015 (<http://www.hannah.com/DesktopDefaultPublic.aspx?type=cr&date=06/24/2015&id=21126>) Last accessed June 24, 2015.

¹⁰ ORC 1337.11 – 1337.17.

¹¹ ORC 2133.21 – 2133.26.

¹² Sec. 2133.33. (Emphasis added.)

¹³ Sec. 2133.30 (E).

¹⁴ Sec. 2133.30 (E).

¹⁵ Sec. 2133.31.

¹⁶ Sec. 2133.31. This information is included in the "Ohio MOLST Form Informational Supplement: Overview,"

¹⁷ Sec. 2133.31.

¹⁸ Nancy Shute, NPR, "After Cranberries and Pie, Let's Talk About Death," November 28, 2013 (<http://www.npr.org/blogs/health/2013/11/28/247332918/after-the-cranberries-and-pie-lets-talk-about-death>). Last accessed December 4, 2013.

¹⁹ Not Dead Yet, "John Kelly's Response to IOM Online Survey or 'We Love Our Tubes,'" November 7, 2013, (www.notdeadyet.org/2013/11/john-kellys-response-to-iom-online-survey-or-we-love-our-tubes.html). Last accessed December 4, 2013.

²⁰ Jason W. Manne, "Physician Orders for Life Sustaining Treatment (POLST): How Do Nursing Facilities Implement the POLST Program?" (2012), p. 77 and 82.

(http://d-scholarship.pitt.edu/16924/1/mannej_etd2012.pdf) Last accessed June 22, 2015.

²¹ Sec. 2133.38.

²² Lynne Terry, "OHSU starts online system for end-of-life care instructions," *Washington Times*, June 16, 2015

(<http://www.washingtontimes.com/news/2015/jun/16/ohsu-starts-online-system-for-end-of-life-care-ins/>). Last accessed June 25, 2015.



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