

**State Advisory Council on Quality Care at the End of Life
Minutes from January 26, 2011 Meeting**

Meeting time and place: January 26, 2011, 10:00 a.m., Department of Aging, 301 West Preston Street, Room 1308.

Council members present: Ted Meyerson, Chair; Melinda Sauders; Catherine Stavely; Timothy Keay; Paul Ballard (Attorney General's designee); George Failla (Secretary of Disabilities' designee); Karen Kauffman; Gail Mansell; Karren Pope-Onwukwe (via speakerphone).

Others Present: Lya Karm; Hope Kirk; Ronak Patel.

Ted Meyerson convened the meeting at 10:00 AM and welcomed Council members and guests.

Paul Ballard reported on a conference held at the University of Maryland regarding medical futility. He noted that concerns were expressed at the conference regarding the level of understanding of the concepts of medical ineffectiveness in Maryland. There was general agreement among conference participants that the Health Care Decisions Act's provisions regarding the transfer of a patient for whom a life-sustaining treatment has been found to be medically ineffective made it practically impossible in some cases to withdraw or withhold such treatment. Conference participants discussed the Texas law that authorizes the withholding of medically ineffective treatment based on the recommendations of an institutional ethics committee unless a transfer to another health care provider takes place or a court order is obtained within 10 days after the ethics committee makes its recommendation.

Mr. Ballard discussed the possibility of seeking legislation to amend the relevant provisions of the Health Care Decisions Act and suggested that the Council may wish to consider forming a subcommittee to study the issue. Timothy Keay stated that there needs to be a new process because attorneys have felt uncomfortable supporting physicians' decisions regarding medical ineffectiveness. Dr. Keay stated his understanding that University of Maryland has a workgroup that may possibly be drafting legislation and suggested that the Council review their efforts. Mr. Meyerson asked that the Council participate in the formulation of any draft laws. Mr. Ballard offered to follow up with the University of Maryland workgroup to find out more information about their plans.

Mr. Ballard mentioned that the Centers for Medicare and Medicaid Services abandoned its efforts to adopt regulations to authorize the reimbursement of more end-of-life counseling sessions. He noted that this lack of additional funding for these conversations make even more important the Council's efforts to promote an educational campaign to promote these conversations between health care providers and patients.

Mr. Ballard then discussed the legislation that would authorize a “Medical Orders for Life-Sustaining Treatment” (MOLST) form and mandate its use in certain types of health care facilities. This legislation is contained in House Bill 82 sponsored by Delegates Morhaim and Kipke. The MOLST form is modeled on the “Physician’s Orders for Life-Sustaining Treatment” form used in a number of states. The Council’s subcommittee met with many organizations to address their concerns prior to the introduction of House Bill 82 and is continuing to meet with these groups. Mr. Ballard further reported that the response to House Bill 82 has generally been positive.

House Bill 82 would mandate the use of the MOLST form in hospitals, nursing homes, assisted living programs, home health agencies, kidney dialysis centers, and hospices. The MOLST form would contain a set of orders regarding life-sustaining treatments that would travel with the patient and be accepted across health care settings. It is hoped that the training of health care providers in the use of the MOLST form will increase rates of compliance with patient’s preferences for their care at the end of life. Dr. Keay noted that the MOLST form is also modeled on the existing emergency medical services “do not resuscitate order” form and “Instructions on Current Life-Sustaining Treatment Options” form. Mr. Meyerson stated that the form may be changed in the future without requiring legislation.

Karen Kauffman asked what would happen if a receiving facility felt uncomfortable in carrying out an order in the MOLST form. Mr. Ballard responded that the MOLST legislation would not change the existing provisions in the Health Care Decisions Act regarding a practitioner’s determination that a medical treatment would be ethically inappropriate. He further noted that the MOLST legislation is not intended to change the existing substantive provisions of the Health Care Decisions Act. Mr. Meyerson suggested that the MOLST form may need to contain a disclaimer that not every order contained therein may be honored. Ms. Kauffman agreed that might be an important notice to include. Dr. Keay noted that the MOLST form will standardize and simplify orders regarding life-sustaining treatments but will not solve all the existing problems with the Health Care Decisions Act.

A question was raised whether the MOLST form would be honored across states. Mr. Ballard responded that House Bill 82 contained a reciprocity provision but that Maryland has no control over whether other states will honor the MOLST form. Dr. Keay stated that it is standard medical practice to honor other states’ “do not resuscitate order” forms.

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Mr. Meyerson asked the Council if it wished to take a position on the medical marijuana bill in the legislature. After a brief discussion, Mr. Meyerson asked that the bill be put on the agenda for the next Council meeting. Dr. Keay stated his belief that other medications were suitable for palliative care and asked that Council Member Lynn McPherson be present at the meeting when the issue is discussed so that the Council may benefit from her expertise.

Mr. Meyerson then discussed the Council’s proposed educational campaign regarding a patient’s choices for treatment and services that are available at the end of life. He

brought the revised educational cards and card holder stands that could be put in physicians' offices. The Council reviewed the cards. Mr. Meyerson suggested that the cards be sent to a test sample of physicians for their review. If there is a good response from the test sample group, then the Council would try to find the money to send them out on a state-wide basis. Dr. Keay agreed that feedback would be helpful. Melinda Sauders offered to give them to physicians at Mercy Hospital for their feedback. Ms. Kauffman also offered to give them to physicians to review. Mr. Meyerson suggested a test sample group of approximately 10 physicians. Gail Mansell recommended that the cards be put on the Council's website. That way, providers would bear the cost of printing them. Ms. Kauffman suggested that references to "physician" in the card be changed to "health care provider" and the Council agreed to her suggestion.

Mr. Meyerson discussed the advance directive registry authorized by the legislature in 2006 but never funded in the State budget. He stated that the Council originally had opposed the creation of the registry. He asked the Council to reconsider its position and support funding the registry. Dr. Keay discussed a troubling experience he had with an out-of-state private registry that would not release an advance directive without first receiving a renewal fee and noted that perhaps the Council's focus should instead be on regulating private registries. Dr. Keay also stated the concern that the registry may not have the patient's most current advance directive. Ms. Mansell stated she has had positive experiences dealing with private registries. Mr. Ballard noted that the advance directive registry is currently in law but has never been funded. The Council agreed with Mr. Meyerson that the advance directive registry should be funded.

Finally, Mr. Ballard asked the Council members to review a chart of laws supporting the patient's rights discussed in the educational materials prepared for the educational campaign. He asked the Council to review whether the chart should be included on the Council's website.

No further items of business having been presented, Mr. Meyerson adjourned the meeting at noon.