



## **Policy on Allow Natural Death/Do Not Resuscitate (AND/DNR) or Other End-of-life Care Orders for Children Under Guardianship of the Commissioner**

### **Overview**

This policy outlines the procedures for a responsible social services agency to request the commissioner's consent for an Allow Natural Death/Do Not Resuscitate (AND/DNR) order, or other end-of-life medical care plan, for a child under guardianship of the commissioner of the Minnesota Department of Human Services (commissioner). The procedures further address the Department of Human Services (department) staff response to such a request.

### **Reason for Policy**

These procedures are to assure that decisions related to end-of-life medical care planning for a child under guardianship of the commissioner are made in a child's best interests and consistent with community ethical standards. In addition, the procedures establish a mechanism for timely department response to requests for such an order, including communicating decisions to the responsible social services agency and all medical providers.

### **Applicability**

This policy is applicable to any child under guardianship of the commissioner for whom a responsible social services agency requests the commissioner's consent for a medical care plan for the treatment of a child at imminent risk of death or who has a chronic disease that, in a physician's judgment, will result in the child's death in the near future.

### **Policy**

For any child who is under the guardianship of the commissioner, the commissioner has the exclusive right to consent to the medical care plan for the treatment of a child who is at imminent risk of death or who has a chronic disease that, in a physician's judgment, will result in the child's death in the near future, including a physician's order not to resuscitate or intubate the child.

*[Minn. Stat., section 260C.615, subd. 1 (a)]*

### **Procedures**

1. Physician determines that a child under guardianship of the commissioner is at imminent risk of death or has a chronic disease that will result in the child's death in the near future, and is recommending an AND/DNR order or other end-of-life medical care plan.
  - A. Physician consults with the agency social worker responsible for care of the child.
  - B. Physician and agency social worker initiate an ethics review.
  - C. Agency social worker confers with agency administration to determine the agency's position.
  - D. Responsible social services agency submits to the department information/documentation required to determine if the commissioner's consent for an AND/DNR order or other end-of-life medical care plan will be issued.

2. Agency gathers required documentation and writes recommendation letter to the department. The letter and documentation packet must include information outlined in **Procedures 2.A** and **2.B**, as follows:
  - A. Required information in letter, including:
    - a. Child's full name and date of birth
    - b. Whether or not child is eligible under the Indian Child Welfare Act (ICWA)
    - c. Date guardianship of the child was transferred to the commissioner and type of permanency court order issued
    - d. Brief summary of child's background and history
    - e. Recommendation explaining why the commissioner should consent to an AND/DNR order or related medical care plan, and explanation regarding how the recommendation is in the child's best interests
    - f. Names of participating members of the agency team that made the recommendation
    - g. Contact information for child's primary care physician (name, hospital, phone number, fax number and email address)
    - h. Contact information for child's attending/treating physician, if different (name, hospital, phone number, fax number and email address)
    - i. Contact information for the responsible agency social worker (name, agency, address, phone number, fax number and email address)
  - B. Required documentation with letter:
    - a. Letter from the child's physician(s) recommending an AND/DNR order or other end-of-life care medical care plan, including:
      - Child's diagnosis
      - Child's current medical condition
      - Child's prognosis
      - Physician's specific recommendation regarding AND/DNR order or other end-of-life care medical care plan, and why the recommendation is in the child's best interests.
    - b. Documentation of outcome of a formal ethics review process of the child's case, including:
      - Date, time and location of ethics review
      - Information about each attendee/participant of the ethics review (name, title, agency, relationship/responsibility to child, phone number and email address)
      - Information about each person invited to, but unable to attend, ethics review (name, title, agency, relationship/responsibility to child, phone number and email address)
      - Summary of care alternatives presented and discussion of aggregate balance of harm and benefits to the child
      - Nature of agreement or disagreement by participants
      - Recommended option (e.g., specific details regarding not providing care, not escalating care, or removing care)
      - If no formal ethics review was done, specific reason why not.

- c. Letters from others who are involved in the care or planning for the child, if they have information they want considered as part of the agency's request, including:
      - Foster/pre-adoptive parent or residential staff
      - Guardian ad litem
      - Tribal representative, if child is ICWA-eligible
      - Child's attorney.
    - d. If any of the persons listed in **Procedure 2.B.c** choose not to submit a letter, or cannot respond within a reasonable time frame conducive to responding to an imminent medical crisis, the agency may instead provide documentation of written, dated notice to each person explaining the agency's recommendation regarding an AND/DNR order or related medical care plan and offering an opportunity to submit an opinion as to the recommendation.
3. Consultation on end-of-life medical care planning issues and requests for the commissioner's consent for an AND/DNR or similar order should be directed to the following staff at the department:

Heidi Ombisa Skallet, agency policy specialist  
[heidi.ombisa.skallet@state.mn.us](mailto:heidi.ombisa.skallet@state.mn.us) (send via email only if security is assured)  
651-431-5889 (office)  
651-431-4682 (unit receptionist)  
651-431-7491 (fax)

  - A. If Heidi Ombisa Skallet is not available, the department's Permanency Support Unit has established a line of succession.
4. Department Permanency Support Unit program staff receives and reviews the agency social worker's request regarding the commissioner's consent for an AND/DNR order or other end-of-life medical care plan for a child under guardianship of the commissioner. The department ensures all required information/documentation needed to make a decision (**Procedure 2**) has been received. Permanency Support Unit staff will:
  - A. Contact the agency social worker, or other involved person, to obtain additional information, if needed.
  - B. Forward all case information/documentation to appropriate state medical director for consultation, preferably via email attachment.
5. The department has established a line of succession to provide medical consultation.
6. State medical director reviews information/documentation regarding request. State medical director will:
  - A. Specifically review the child's medical information—diagnosis, current condition, prognosis—to ensure the recommendation includes data from a minimum of four sources:
    - a. Primary physician
    - b. Treating/attending physician
    - c. Head nurse or equivalent
    - d. Ethics review.
  - B. Contact the child's physician(s), nursing care staff, or ethics review staff to request additional and/or clarifying information, if needed.

7. An ethics review will be required when an AND/DNR order or other end-of-life medical care plan is requested for any child under guardianship of the commissioner.
  - A. If documentation indicates that no formal ethics review was completed, the state medical director will request such a review of the child's case.
  - B. If a formal ethics review is not possible in the child's hospital/health care facility, or if an ethics review was done but there was not agreement among participants as to the course of treatment that is in the child's best interest, the state medical director will contact an ethics expert from Children's Hospital, Gillette Children's Specialty Healthcare, Mayo Clinic or University of Minnesota Hospital to request a consultation on the child's case. Prior to any ethics expert consultation, the department must sign a waiver providing the expert immunity from civil or criminal liability for advice or opinions given regarding the care of the child, if the expert acts in good faith and in accordance with applicable medical standards of care.
8. State medical director contacts Permanency Support Unit program staff to discuss case information and develop consensus on recommendation for the commissioner to consent to or deny request for an AND/DNR order or other end-of-life medical care plan. If recommending approval, consensus will also be reached regarding the recommended length of time such a medical care plan will be authorized by the commissioner.
  - A. AND/DNR order or other end-of-life medical care plan may be authorized for a period of 30-180 days.
  - B. Recommended period of authorization will be based on child's diagnosis, current medical condition and prognosis, and will consider the opinions of the child's medical care providers.
  - C. State medical director emails notification to the Permanency Support Unit program staff of their recommendation on the request for an AND/DNR order or other end-of-life medical care plan.
  - D. Permanency Support Unit program staff sends case information to the department's Children and Family Services Administration (CFS) assistant commissioner with a copy to the department's Child Safety and Permanency Division (CSP) director, preferably via email attachment. Case information includes:
    - a. Relevant case details summarized by Permanency Support Unit program staff
    - b. Attachments of all documents collected and reviewed by department staff that contributed to the recommendation
    - c. Recommendation for the commissioner to either approve or deny the request for an AND/DNR order or other end-of-life medical care plan
    - d. Prepared letter for commissioner (or successor) to sign that either consents to or denies the agency's request for an AND/DNR order or other end-of-life medical care plan.
9. The department has identified senior management staff who must be involved in a request for an AND/DNR order or other end-of-life medical care plan.
10. Department senior management will review information and request additional information from Permanency Support Unit program staff or state medical director, if needed.

- A. After consultation, senior management or state medical director will email all case information to the commissioner for a decision. Case information will include:
  - a. Relevant case details summarized by Permanency Support Unit program staff
  - b. Attachments of all documents collected and reviewed by department staff that contributed to the recommendation
  - c. Recommendation for the commissioner to either approve or deny the request for an AND/DNR order or other end-of-life medical care plan
  - d. Prepared letter for commissioner (or successor) to sign that either consents to, or denies, the agency's request for an AND/DNR order, or other end-of-life medical care plan.
11. The department has established a line of succession for consenting authority should the commissioner be unavailable to respond.
12. Commissioner will make a decision and issue consent **or** denial of consent for an AND/DNR order or other end-of-life medical care plan.
  - A. If consent is issued, it will also include a specific period of authorization for an AND/DNR order or other end-of-life medical care plan. The period of authorization may be 30-180 days.
  - B. Commissioner will send consent or denial to assistant commissioner, state medical director, and Permanency Support Unit program staff involved in the request.
13. The department will issue a formal response to a request for an AND/DNR order or other end-of-life medical care plan.
  - A. Permanency Support Unit program staff will send the commissioner's response to the responsible agency social worker. Response may be sent by fax or email, if email security can be assured.
  - B. State medical director will send the commissioner's response to the child's physician. Response may be sent by fax or email, if email security can be assured.
14. Responsible social services agency is required to notify all appropriate persons of the commissioner's decision and any AND/DNR order or other end-of-life medical care plan that is established on behalf of a child.
  - A. The responsible agency social worker, in consultation with agency social service administration and legal representation, must determine the appropriate person(s) to notify.
  - B. Potentially appropriate persons for notification include: child's foster/pre-adoptive parent(s), facility staff, court, guardian ad litem, tribe, attorney, siblings, birth parents, and other birth relatives.
  - C. Though a parent whose parental rights were terminated is not legally entitled to be involved in this decision-making process, or to receive notification of an AND/DNR or similar order for their child, the responsible social services agency may determine on a case-by-case basis, and when the child has had approved ongoing contact with their parent(s), that involvement of or notification to the parent(s) is in the child's best interest.
15. During the period of authorization, if a child's medical condition or prognosis changes to the extent that the AND/DNR order or other end-of-life medical care plan is medically or ethically advised to be modified or expanded, the responsible agency and/or child's

physician must submit applicable documentation to the state medical director or Permanency Support Unit program staff to determine if the commissioner will consent to an amended order.

- A. The required documentation to request such an amendment must comply with **Procedures 2.B.a** and **2.B.b**.
  - B. The state medical director and Permanency Support Unit program staff will consult on any subsequent medical documentation or request received for an amended AND/DNR order or other end-of-life medical care plan.
16. At the end of the period of authorization, if continuation of an AND/DNR order or other end-of-life medical care plan is medically and ethically warranted, the responsible social services agency must submit a letter to the department with applicable documentation explaining why extending the previous order continues to be in the child's best interests.
- A. A letter and required documentation must comply with **Procedures 1, 2, and 3**.
  - B. If continuation of an AND/DNR or other end-of-life care order is approved, it may again be approved for a period of 30-180 days. The department will respond to a request for continuation or extension according to **Procedure 13**.
  - C. The steps in **Procedure 16** must be repeated at the end of each period of authorization, if the responsible social services agency continues to request the commissioner's consent for such an order.
17. Permanency Support Unit program staff will ensure that all pertinent documentation regarding the request for an AND/DNR or similar order is scanned into a child's permanent department electronic case file.
- A. Pertinent documentation includes:
    - a. Agency's letter with child's identifying information, background history summary, team decision makers, and recommendation
    - b. Medical documentation including child's diagnosis, current condition and prognosis, and reason for recommendation
    - c. Summary of ethics review or consultation, including names of participants, discussion of aggregate balance of harm and benefits to the child, consideration of care options and recommendation
    - d. Letters from others who know the child and who expressed an opinion about the request
    - e. Internal department documents, including summary of consultations and discussions
    - f. Commissioner's response to request.

**Form(s) that apply**

*Documentation Required/Checklist of Information Received – Allow Natural Death/Do Not Resuscitate (AND/DNR) Orders for Children Under Guardianship of the Commissioner*

**Related Policies and References**

None

**Training**

None

**Legal Authority**

Minn. Stat., section 260C.615, subd. 1 (a)(1)  
Minn. Rules, part 9560.0450, subpart 2 (H)

**Standards**

None

**Definitions**

**Child under guardianship of the commissioner:** An individual under age 18 years who is under guardianship of the commissioner of the Minnesota Department of Human Services by court order, pursuant to Minn. Stat., section 260C.325.

**Responsible social services agency:** The local social services agency that has legal and financial responsibility for care, custody and control of a child.

**Policy Contacts**

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**Policy History**

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This policy and its procedures remain in effect until rescinded or updated.