

Policy on Allow Natural Death/Do Not Resuscitate (AND/DNR) or other end-of-life care orders for children under guardianship of the commissioner

This policy outlines the procedures for a responsible social services agency (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 ensure 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 (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.

[Minnesota Statutes, section 260C.615, subdivision 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 case manager responsible for care of the child.
 - B. Physician and agency case manager initiate an ethics review.
 - C. Agency case manager confers with agency administration to determine the agency's position.
 - D. Agency and physician should develop consensus on the specific recommendation for an AND/DNR order or other end-of-life medical care plan for the child.
2. **Agency gathers required documentation and writes recommendation letter to the department.** The letter and documentation packet must include information as follows. These items are also on the [Documentation and information checklist](#).
 - A. Required information in letter:
 - 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, including what led to the court ordering the child under guardianship of the commissioner
 - e. Recommendation explaining why the commissioner should consent to an AND/DNR order or related medical care plan, how the recommendation is in the child's best interests, and, if applicable, why agency's recommendation is not consistent with physician's recommendation
 - 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 case manager (name, agency, address, phone number, fax number and email address)
 - j. Known information regarding whereabouts of birth parents, any former adoptive parents, and other birth/former adoptive family members
- B. Required documentation with letter:
- a. Letter from the child's physician(s) recommending an AND/DNR order or other end-of-life medical care plan, including:
 - i. Child's diagnosis
 - ii. Child's current medical condition
 - iii. Child's prognosis
 - iv. Physician's specific recommendation regarding AND/DNR order or other end-of-life 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:
 - i. Date, time and location of ethics review
 - ii. Information about each attendee/participant of the ethics review (name, title, agency, relationship/responsibility to child, phone number and email address)
 - iii. Information about each person invited to, but unable to attend, ethics review (name, title, agency, relationship/responsibility to child, phone number and email address)
 - iv. Summary of care alternatives presented and discussion of aggregate balance of harm, including unneeded harm (e.g., medical futility), and benefits to the child
 - v. Nature of agreement or disagreement by participants
 - vi. Recommended option (e.g., specific details regarding not providing care, not escalating care, or removing care)
 - vii. If no formal ethics review was done, specific reason why not.
- C. Other documentation that may be submitted with letter
- a. When appropriate or required by the commissioner, 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:
 - i. Foster/pre-adoptive parent or residential staff

- ii. Relatives who continue to be engaged in the care or planning for the child
- iii. Guardian ad litem
- iv. Tribal representative, if applicable
- v. Child's attorney.

- b. If any of the persons listed in Procedure 2.C.a 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. 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.

- A. Consultation on end-of-life medical care planning issues and requests for the commissioner's consent for an AND/DNR or similar order is directed to the following staff at the department:

Kathleen Hiniker, Permanency Unit Supervisor

Kathleen.A.Hiniker@state.mn.us (send via email only if security is ensured)

651-431-5890 (office)

651-728-2233 (cell)

651-431-7627 (fax)

If Kathleen Hiniker is not available, the department's Permanency Support Unit has established a line of succession, beginning with:

Mical Peterson, Permanency Unit Supervisor

Mical.Peterson@state.mn.us (send via email only if security is ensured)

651-431-4728 (office)

651-431-7627 (fax)

- 4. **The department's Permanency Support Unit staff receives and reviews the agency case manager'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, ensuring that all required information/ documentation needed to make a decision has been received.** Permanency Support Unit staff will:
 - A. Contact the agency case manager, 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. **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.

- a. An ethics review is required when an AND/DNR order or other end-of-life medical care plan is requested for any child under guardianship of the commissioner.
 - b. If documentation indicates that no formal ethics review was completed, the state medical director will request such a review of the child's case.
 - c. 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 may 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, if requested by the ethics expert, the commissioner may sign a waiver of the department's civil liability, after internal consultation. The Minnesota Government Data Practices act, Health Insurance Portability and Accountability Act (HIPAA), and other applicable laws and regulations continue to apply regarding any ethics consultation(s).
- 6. State medical director contacts Permanency Support Unit staff to discuss case information and 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 consent, 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.
- 7. If requested, Permanency Support Unit staff sends case information to the department's Children and Family Services Administration (CFS) assistant commissioner and a copy to the department's Child Safety and Permanency Division (CSP) director, preferably via email attachment.**
 - A. 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.
 - B. Department senior management may review information and request additional information from Permanency Support Unit staff or state medical director, if needed.
 - C. 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.
- 8. Permanency Support Unit staff or state medical director will email all case information indicated in Procedure 7.A to the commissioner for a decision.**
 - A. The department has established a line of succession for consenting authority should the commissioner be unavailable to respond.
- 9. 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 staff involved in the request.

10. Permanency Support Unit staff will send the commissioner's response to the agency case manager. Response may be sent by fax or email, if email security can be assured.

- A. 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 ensured.

11. 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. Agency case manager, in consultation with agency social service administration and legal representation, must determine the appropriate person(s) to notify.
- B. Commissioner may request the agency notify other individuals not identified by the agency in (A).
- C. Potentially appropriate persons for notification include: child's foster/pre-adoptive parent(s), facility staff, court, guardian ad litem, tribe, attorney, siblings, birth/former adoptive parents, other birth/former adoptive relatives, and kin.
- D. 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 agency may determine on a case-by-case basis that involvement of or notification to the parent(s) is in the child's best interest, particularly when the child has had approved ongoing contact with their parent(s).

12. 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 agency and/or child's physician must submit applicable documentation to the state medical director or Permanency Support Unit 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 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.

13. 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 agency must submit a letter to the Permanency Support Unit staff 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, except the agency's letter does not need to include information about the child's history that was previously submitted.
- 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 10.
- C. The steps in this procedure must be repeated at the end of each period of authorization, if the agency continues to request the commissioner's consent for such an order.

14. **Permanency Support Unit 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 and Information Checklist](#) – Policy on Allow Natural Death/Do Not Resuscitate (AND/DNR) or other end-of-life care orders for children under guardianship of the commissioner

Related policies and references

None

Training

None

Legal authority

Minnesota Statutes, section 260C.615, subdivision 1(a)(1)

Minnesota Rules, part 9560.0450, subpart 2(H)

Standards

None

Definitions

Child under guardianship of the commissioner: An individual under age 18 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 responsibility for care, custody and control of a child.

Policy contacts

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Policy history

Issue Date: May 29, 2024

Effective Date: May 29, 2024

Version 4.0:

May 29, 2024 (Revised)

February 14, 2024 (Revised)

July 14, 2021 (Revised)

March 19, 2020 (Revised)

Version 2.0:

August 20, 2018 (Revised)

June 22, 2017 (Revised)

January 27, 2017 (Revised)

August 21, 2015 (Revised)

January 16, 2015 (Revised)

September 1, 2014 (Revised)

August 1, 2012 (Revised)

July 25, 2008 (Revised)

Version 1.0

August 1, 1999 (Reaffirmed)

1993 (Initial Release)

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