
**LEGAL AND
RELATED
REFERENCES**

Title IV-B, subpart 1, section 422, and Title IV-E, sections 475 and 477 of the Social Security Act, [42 USC 670 et seq.]; the Patient Protection and Affordable Care Act (P.L. 111-148); the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

The president signed the Patient Protection and Affordable Care Act (P.L. 111-148) on March 23, 2010. This act amended three sections of Titles IV-B and IV-E of the Social Security Act. The law is specific to youth receiving independent living services and/or **education and training vouchers and those who are aging out of foster care**. It requires that youth receive information and education about the importance of having a health care power of attorney or health care proxy and to provide the youth with the option to execute such a document.

Title IV-E, Section 477 - New Certification for the Chafee Foster Care Independence Program Youth in Transition (YIT); see FOM 950.

Adolescents participating in the program under this section are provided with education about the importance of designating another individual to make health care treatment decisions on their behalf if the adolescent becomes unable to participate in such decisions. In the event the adolescent does not have or does not want a relative who would otherwise be authorized under state law to make such decisions, a health care power of attorney, health care proxy, or other similar document recognized under state law should be explored, including how to execute such a document if the adolescent wants to do so [Section 477(b)(3)(K)].

DEFINITIONS**Aging Out**

Aging out is defined as reaching the maximum age of court or Michigan Children's Institute jurisdiction.

**Durable Power of
Attorney for Health
Care**

A durable power of attorney for health care is a document that lists the medical choices of individuals, which are to be followed if they become temporarily or permanently ill and/or injured, including mental health treatment. There are multiple versions of this document, some more comprehensive than others. The individual establishing the durable power of attorney for health care chooses the version that will be used. Other names for this document include health care proxy, patient advocate designation, health care power of attorney and medical power of attorney.

Patient Advocate

A patient advocate is an individual 18 or older chosen by the person establishing the durable power of attorney for health care to make the medical decisions listed on the document. This individual accepts the responsibility, as the patient advocate, by signing the document. There can be two patient advocates chosen; a second individual is listed in the event the first individual is not available when needed.

Youth maintain all decision-making power regarding their health. The patient advocate is only consulted when youth cannot make their own medical choices due to illness and/or injury. Caseworkers are prohibited from being patient advocates; see AHP-603, Conflict of Interest and Disclosure.

Witnesses

Two witnesses must sign the durable power of attorney for health care. The following are legally prohibited from being witnesses:

- The patient advocate.
- Family members.
- The youth's doctor(s).
- Employee(s) of doctor's office(s) or other medical facilities the youth uses.

THE IMPORTANCE OF A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

A durable power of attorney for health care allows youth to be in control of their health in the absence of being able to make decisions about their health care treatment. Youth have the ability to choose someone they trust to make such decisions on their behalf. **All youth age 18 and older who are still under the care and supervision of the Michigan Department of Human Services and are aging out of care can establish a durable power of attorney for health care.** This includes both current and former foster youth and those who are receiving education and training vouchers or Independent Living Services. All must be notified of their right to establish this document. Once a durable power of attorney for health care is established, it supersedes the department's responsibility to make health care decisions on behalf of the youth.

CASEWORKER ROLE

Foster care workers must inform each foster youth of the durable power of attorney for health care and offer the option to establish it. If the youth chooses to establish a durable power of attorney for health care, the worker must assist the youth in obtaining the form of the youth's choice and provide instructions on the steps needed to establish it.

To begin a discussion about the durable power of attorney for health care, the foster care worker will:

- Provide a copy of DHS Publication 161, A Foster Youth's Guide to Preparing for Health Care Emergencies, Durable Power of Attorney for Health Care, and discuss the purpose of establishing the document.
- Explain that there are multiple versions of the durable power of attorney for health care and identify the various names used, see definitions.

If the youth chooses to establish a durable power of attorney for health care, the foster care worker will:

- Explain that the youth's current Medicaid Health Plan (MHP) may have a version of the document and provide contact information for the MHP. This can be found on the Foster Youth in Transition (FYIT) website, www.michigan.gov/fyit, under the Health & Wellness - Insurance section.
- Provide the names of local hospitals that offer durable power of attorney for health care forms. See listing on the FYIT website, under the durable power of attorney for health care page.
- Explain the steps the youth must take to establish the document, see foster youth role.
- Assist the youth in obtaining a durable power of attorney for health care form.

If a youth chooses **not** to establish a durable power of attorney for health care and remains in foster care after the age of 18, the department may make health care decisions for the ward in the case of incapacitation; see FOM 722-11, Authority to Consent: Medical Care.

Legal Advice

Foster care workers cannot provide legal advice; the durable power of attorney for health care is a legal document and any advice on how to complete it is considered legal advice. If a youth is seeking legal advice regarding this information, they can be referred to the State Bar of Michigan at www.michbar.org or www.michbar.org/elderlaw/adpamphlet.cfm. Legal advice includes but is not limited to:

- Recommendations or endorsement of medical situations the youth lists on the durable power of attorney for health care.
- Recommendations or endorsement of patient advocate(s).
- Recommendations or endorsement of witnesses.
- Recommendations or endorsement of the type of durable power of attorney for health care chosen.

TIMEFRAME

Each foster care youth must be educated on the purpose and importance of designating a durable power of attorney for health care and be given the option to establish such a document before reaching age 18. Foster care workers must discuss the durable

power of attorney for health care with all youth. This discussion must take place during each youth's 90-day discharge plan meeting or the annual transition plan meeting. If the discussion does not take place during one of these required meetings, the assigned foster care worker must schedule an appointment to discuss this requirement with each youth. No foster youth is excluded from this requirement; legal status and living arrangement are not exclusionary factors. Every 18-year-old youth under the care and supervision of the Department of Human Services must be given the option to execute a durable power of attorney for health care. Youth receiving education and training vouchers and Independent Living Services must also be given the option to execute this document upon reaching age 18.

The durable power of attorney for health care must be established before a serious illness and/or injury occurs to be effective. It becomes a legally binding document once all signatures are attained.

Delay in Informing Youth by Age 18

Reasons for delays in informing the youth of this information and efforts to meet this requirement must be documented under the reasonable efforts section of the Updated Service Plan/Permanent Ward Service Plan.

FOSTER YOUTH ROLE

These are the steps youth will take to establish a durable power of attorney for health care:

- Get a durable power of attorney for health care form.
- List medical decisions on the document.
- Identify a patient advocate and have the document signed.
- Identify two individuals that will witness the signing of the document by the youth and have them sign the document.
- Give copies to the patient advocate and primary care physician.
- Give a copy to the caseworker for the foster care case record (optional).

- Retain the original copy for their own records.

YOUTH WITH LIMITED MENTAL CAPACITY

Youth with limited mental capacity must be educated on the purpose and benefits of a durable power of attorney for health care; they are not to be excluded from this process. They are to be given the option to establish a durable power of attorney for health care. If it is determined the youth's mental capacity inhibits sound judgement, the youth's diagnosis and inability to establish a durable power of attorney for health care on their own behalf must be supported with documentation from a mental health care professional. The documentation must confirm the youth's limited mental capacity and inability to make legal decisions; it does not need to refer specifically to a durable power of attorney for health care.

Establishing a durable power of attorney for health care is an option; it is not a requirement. Youth have the right to choose not to pursue the establishment of this document. Foster youth who can not establish a durable power of attorney for health care due to limited mental capacity continue to be the responsibility of the Michigan Department of Human Services. Medical decisions will be made as determined by the department. Applicable policy includes but is not limited to **FOM 722-11 Foster Care - Delegation of Parental Consent**, the authority to consent for medical care.

CASE RECORD DOCUMENTATION FOR DHS WORKERS

Document the provision of information and the youth's choice to establish/not establish a durable power of attorney for health care in the following locations:

- The health/medication section of the DHS-901, Annual Transition Plan Report, and the DHS-902, 90-Day Discharge Plan Report.
- The Updated Service Plan (USP) or Permanent Ward Service Plan (PWSP). Document information in the Child Assessment of Needs and Strengths under the explanation section of C1-Medical/Physical Health. This information will populate into the USP/PWSP.

File the durable power of attorney for health care in the legal section of the foster care case record (if applicable).

**CASE RECORD
DOCUMENTATION
FOR PLACEMENT
AGENCY FOSTER
CARE**

A Placement Agency Foster Care worker must document in the following locations:

- The health/medication section of the DHS-901, Annual Transition Plan Report, and the DHS-902, 90-Day Discharge Plan Report.
- Document information in the Child Needs and Strengths and Current Status Section of the USP/PWSP. List C1-Medical/Physical Health as the heading.
- File the durable power of attorney for health care in the legal section of the foster care case record (if applicable).