

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2197

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED MAY 12, 2011

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Senators Vitale, Cunningham, Gordon, Beck and Greenstein

SYNOPSIS

“Physician Orders for Life-Sustaining Treatment Act”; provides for use of Physician Orders for Life-Sustaining Treatment forms and requires physicians and advanced practice nurses to pursue continuing education in end-of-life care.

CURRENT VERSION OF TEXT

As amended on September 26, 2011 by the Senate pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 12/16/2011)

1 AN ACT providing for the use of Physician Orders for Life-
2 Sustaining Treatment forms and supplementing Titles 26, 30, and
3 45 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Sections 1 through 13 of this act shall be known and may be
9 cited as the “Physician Orders for Life-Sustaining Treatment Act.”
10

11 2. The Legislature finds and declares that:

12 a. Pursuant to the “New Jersey Advance Directives for Health
13 Care Act,” P.L.1991, c.201 (C.26:2H-53 et seq.), this State has
14 statutorily recognized the right of an adult with decision-making
15 capacity to plan ahead for health care decisions through the
16 execution of advance directives and designate a surrogate decision-
17 maker, and to have the wishes expressed in those documents
18 respected, subject to certain limitations, in order to ensure that the
19 right to control decisions about one's own health care is not lost if a
20 patient loses decision-making capacity and is no longer able to
21 participate actively in making his own health care decisions;

22 b. The Physician Orders for Life-Sustaining Treatment, or
23 POLST, form complements an advance directive by converting a
24 person's wishes regarding life-sustaining treatment, such as those
25 set forth in an advance directive, into a medical order;

26 c. The POLST form: contains immediately actionable, signed
27 medical orders on a standardized form; includes medical orders that
28 address a range of life-sustaining interventions as well as the
29 patient's preferred intensity of treatment for each intervention; is
30 typically a brightly colored, clearly identifiable form; and is
31 recognized and honored across various health care settings;

32 d. The use of a POLST form is particularly appropriate for
33 persons who have a compromised medical condition or a terminal
34 illness, and the experience in other states has shown that the use of
35 the POLST form helps these patients to have their health care
36 preferences honored by health care providers;

37 e. The use of POLST forms can overcome many of the
38 problems associated with advance directives, which in many cases
39 are designed simply to name an individual to make health care
40 decisions for the patient if the latter becomes incapacitated or
41 otherwise lack specificity in regard to the patient's health care
42 preferences, and are often locked away in file drawers or safe

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 27, 2011.

² Senate amendments adopted in accordance with Governor's
recommendations September 26, 2011.

1 deposit boxes and unavailable to health care providers when the
2 need arises to ensure that the patient's wishes are followed;

3 f. A completed POLST form is signed by, and more readily
4 available than an advance directive to, the patient's attending
5 physician or advanced practice nurse, and provides a specific and
6 detailed set of instructions for a health care professional or health
7 care institution to follow in regard to the patient's preference for the
8 use of various medical interventions;

9 g. To date, at least the following states, or communities within
10 these states, have established programs providing for the use of the
11 POLST form that have been endorsed by the National POLST
12 Paradigm Task Force or are in the process of developing such
13 programs: Alaska, California, Colorado, Florida, Georgia, Hawaii,
14 Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts,
15 Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New
16 Hampshire, New York, North Carolina, North Dakota, Ohio,
17 Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West
18 Virginia, Wisconsin, and Wyoming; and

19 h. The right and preference of New Jerseyans to have their
20 health care preferences respected would be better served by the use
21 of the POLST form in this State to augment the use of advance
22 directives, and the enactment of this act will conduce to that end.

23

24 3. As used in sections 1 through 12 of this act:

25 "Advance directive" means an advance directive for health care
26 as defined in section 3 of P.L.1991, c.201 (C.26:2H-55).

27 "Advanced practice nurse" or "APN" means a person who is
28 certified as an advanced practice nurse pursuant to P.L.1991, c.377
29 (C.45:11-45 et seq.).

30 "Commissioner" means the Commissioner of Health and Senior
31 Services.

32 "Decision-making capacity" means a patient's ability to
33 understand and appreciate the nature and consequences of a
34 particular health care decision, including the benefits and risks of
35 that decision, and alternatives to any proposed health care, and to
36 reach an informed decision.

37 "Department" means the Department of Health and Senior
38 Services.

39 "Emergency care" means the use of resuscitative measures and
40 other immediate treatment provided in response to a sudden, acute,
41 and unanticipated medical crisis in order to avoid injury,
42 impairment, or death.

43 "Emergency care provider" means an emergency medical
44 technician, paramedic, or member of a first aid, ambulance, or
45 rescue squad.

46 "Health care decision" means a decision to accept, withdraw, or
47 refuse a treatment, service, or procedure used to diagnose, treat, or

1 care for a person's physical or mental condition, including life-
2 sustaining treatment.

3 "Health care institution" means a health care facility licensed
4 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a psychiatric
5 facility as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), or
6 a State developmental center listed in R.S.30:1-7.

7 "Health care professional" means a health care professional who
8 is licensed or otherwise authorized to practice a health care
9 profession pursuant to Titles 45 or 52 of the Revised Statutes and is
10 currently engaged in that practice.

11 "Life-sustaining treatment" means the use of any medical device
12 or procedure, artificially provided fluids and nutrition, drugs,
13 surgery, or therapy that uses mechanical or other artificial means to
14 sustain, restore, or supplant a vital bodily function, and thereby
15 increase the expected life span of a patient.

16 "Patient" means a person who is under the care of a physician ¹or
17 APN¹.

18 "Patient's representative" means an individual who is designated
19 by a patient or otherwise authorized under law to make health care
20 decisions on the patient's behalf if the patient lacks decision-
21 making capacity.

22 "Physician" means a person who is licensed to practice medicine
23 and surgery pursuant to chapter 9 of Title 45 of the Revised
24 Statutes.

25 "Physician Orders for Life-Sustaining Treatment form" or
26 "POLST form" means a standardized printed document that is
27 uniquely identifiable and has a uniform color, which:

28 a. is recommended for use on a voluntary basis by patients who
29 have advanced chronic progressive illness or a life expectancy of
30 less than five years, or who otherwise wish to further define their
31 preferences for health care;

32 b. does not qualify as an advance directive;

33 c. is not valid unless it meets the requirements for a completed
34 POLST form as set forth in this act;

35 d. provides a means by which to indicate whether the patient
36 has made an anatomical gift pursuant to P.L.2008, c.50 (C.26:6-77
37 et seq.);

38 e. is intended to provide direction to emergency care personnel
39 regarding the use of emergency care, and to a health care
40 professional regarding the use of life-sustaining treatment, with
41 respect to the patient, by indicating the patient's preference
42 concerning the use of specified interventions and the intensity of
43 treatment for each intervention;

44 f. is intended to accompany the patient, and to be honored by
45 all personnel attending the patient, across the full range of possible
46 health care settings, including the patient's home, a health care
47 institution, or otherwise at the scene of a medical emergency; and

1 g. may be modified or revoked at any time by a patient with
2 decision-making capacity or the patient's representative in
3 accordance with the provisions of section 7 of this act.

4 "Resuscitative measures" means cardiopulmonary resuscitation
5 provided in the event that a patient suffers a cardiac or respiratory
6 arrest.

7
8 4. It shall be the public policy of this State to encourage public
9 awareness and understanding of the Physician Orders for Life-
10 Sustaining Treatment form as a means of enabling patients in this
11 State to indicate their preferences for health care through the use of
12 a completed POLST form as a complementary measure to the use of
13 an advance directive, or in lieu of an advance directive if the patient
14 has not executed such a document, in accordance with the
15 provisions of this act.

16
17 5. The Commissioner of Health and Senior Services shall
18 designate a patient safety organization (PSO) operating in this State
19 pursuant to the federal "Patient Safety and Quality Improvement
20 Act of 2005," Pub.L.109-41, to carry out the following
21 responsibilities, by mutual written agreement of the commissioner
22 and that PSO:

23 a. prescribe a POLST form and the procedures for completion,
24 modification, and revocation of the form;

25 b. seek to promote awareness among health care professionals,
26 emergency care providers, and the general public in this State about
27 the option to complete a POLST form;

28 c. provide ongoing training of health care professionals and
29 emergency care providers about the use of the POLST form, in
30 consultation with organizations representing, and educational
31 programs serving, health care professionals and emergency care
32 providers, respectively, in this State;

33 d. prescribe additional requirements for the completion of a
34 POLST form that may be applicable in the case of a patient with
35 mental illness or a developmental disability in consultation with
36 organizations that represent persons with mental illness and
37 development disabilities, respectively;

38 e. provide for ongoing evaluation of the design and use of
39 POLST forms through the use of such data as the PSO determines
40 reasonably necessary for that purpose, subject to the
41 commissioner's written approval; and

42 f. seek to minimize any record-keeping burden imposed on a
43 health care institution pursuant to this act and take such actions as
44 are necessary to ensure the confidentiality of any such data
45 furnished to the PSO that may contain patient-specific information.

1 6. a. A health care professional, health care institution, or
2 emergency care provider shall treat a patient who has a completed
3 POLST form in accordance with the information contained therein,
4 except as otherwise provided in this act.

5 b. A POLST form shall be deemed to be completed, and
6 therefore valid for the purposes of this act if it:

7 (1) contains information indicating a patient's health care
8 preferences;

9 (2) has been voluntarily signed by a patient with decision-
10 making capacity, or by the patient's representative in accordance
11 with the patient's known preferences or in the best interests of the
12 patient;

13 (3) includes the signature of the patient's attending physician or
14 APN and the date of that signature; and

15 (4) meets any other requirements to be deemed valid for the
16 purposes of this act.

17 c. A document executed in another state, which meets the
18 requirements of this act for a POLST form, shall be deemed to be
19 completed and valid for the purposes of this act to the same extent
20 as a POLST form completed in this State.

21
22 7. a. If the goals of care of a patient with a completed POLST
23 form change, the patient's attending physician or APN may, after
24 conducting an evaluation of the patient and²[, to the maximum
25 extent practicable, acting in consultation with] after obtaining
26 informed consent from² the patient or², if the patient has lost
27 decision-making capacity,² the patient's representative ²in
28 accordance with subsection d. of this section², issue a new order
29 that modifies or supersedes the completed POLST form consistent
30 with the most current information available about the patient's
31 health status and goals of care.

32 b. A patient with decision-making capacity, may, at any time,
33 modify or revoke the patient's completed POLST form or otherwise
34 request alternative treatment to the treatment that was ordered on
35 the form.

36 c. If the orders in a patient's completed POLST form regarding
37 the use of any intervention specified therein conflict with the
38 patient's more recent verbal or written directive to the patient's
39 attending physician or APN, the physician or APN shall honor the
40 more recent directive from the patient in accordance with the
41 provisions of subsection e. of this section.

42 d. ²[If a] The POLST form shall provide the patient with the
43 choice to authorize the patient's representative to revoke or modify
44 the patient's completed POLST form if the² patient ²[who has
45 a completed POLST form has lost] loses² decision-making
46 capacity²[,]. If the patient so authorizes the patient's

1 representative.² the patient's representative may, at any time²[,]
2 after the patient loses decision-making capacity and² after
3 consultation with the patient's attending physician or APN, request
4 the physician or APN to modify or revoke the completed POLST
5 form, or otherwise request alternative treatment to the treatment that
6 was ordered on the form, as the patient's representative deems
7 necessary to reflect the patient's health status or goals of care. ²If
8 the patient does not authorize the patient's representative to revoke
9 or modify the patient's completed POLST form, the patient's
10 representative may not revoke or modify the patient's completed
11 POLST form.²

12 e. A verbal or written request by a patient or the patient's
13 representative to modify or revoke a patient's completed POLST
14 form, in accordance with the provisions of this section, shall be
15 effectuated once the patient's attending physician or APN has
16 signed the POLST form attesting to that request for modification or
17 revocation.
18

19 8. a. In the event of a disagreement among the patient, the
20 patient's representative, and the patient's attending physician or
21 APN concerning the patient's decision-making capacity or the
22 appropriate interpretation and application of the terms of a
23 completed POLST form to the patient's course of treatment, the
24 parties:

25 (1) ²~~[shall]~~ may² seek to resolve the disagreement by means of
26 procedures and practices established by the health care institution,
27 including, but not limited to, consultation with an institutional
28 ethics committee, or with a person designated by the health care
29 institution for this purpose; ²~~[and]~~ or²

30 (2) ²~~[upon a failure to resolve the disagreement in the manner~~
31 ~~set forth in paragraph (1) of this subsection,]~~² may seek resolution
32 by a court of competent jurisdiction.

33 b. A health care professional involved in the patient's care,
34 other than the attending physician or APN, or an administrator of a
35 health care institution may also seek to resolve a disagreement
36 concerning the patient's decision-making capacity or the appropriate
37 interpretation and application of the terms of a completed POLST
38 form to the patient's course of treatment in the same manner as set
39 forth in subsection a. of this section.
40

41 9. Nothing in this act shall be construed to:

42 a. abridge a patient's right to refuse treatment under either the
43 United States Constitution or the Constitution of the State of New
44 Jersey;

45 b. impair the obligations of a health care professional to
46 provide for the care and comfort of the patient and to alleviate pain,
47 in accordance with accepted medical and nursing standards;

1 c. impair the legal validity of a written order not to attempt
2 cardiopulmonary resuscitation on a patient in the event that the
3 patient suffers a cardiac or respiratory arrest, which is not part of a
4 completed POLST form, if the order was signed by a physician
5 prior to or after the effective date of this act and would be deemed
6 valid under State law or regulation in effect prior to the date of
7 enactment of this act;

8 d. require a health care professional, health care institution, or
9 emergency care provider to participate in the beginning, continuing,
10 withholding, or withdrawing of health care in a manner contrary to
11 law or accepted medical standards;

12 e. require a private, religiously-affiliated health care institution
13 to participate in the withholding or withdrawing of specified
14 measures utilized to sustain life in a manner contrary to any of its
15 written institutional policies and practices, except that the health
16 care institution shall, with respect to a patient with a completed
17 POLST form:

18 (1) properly communicate its institutional policies and practices
19 to the patient, or to the patient's representative as applicable, prior
20 to or upon the patient's admission, or as soon after admission as is
21 practicable; and

22 (2) if its institutional policies and practices appear to conflict
23 with the patient's legal rights, attempt to resolve the conflict and, if
24 a mutually satisfactory accommodation cannot be reached, take all
25 reasonable steps to effect the appropriate, timely, and respectful
26 transfer of the patient to the care of another health care institution
27 appropriate to the patient's needs, and assure that the patient is not
28 abandoned or treated disrespectfully; or

29 f. revoke, restrict, or otherwise alter a patient's documented
30 designation as a donor pursuant to P.L.2008, c.50 (C.26:6-77 et
31 seq.).

32
33 10. a. A patient's representative shall not be subject to criminal
34 or civil liability for any action taken by that individual to carry out
35 the terms of a completed POLST form that is performed in good
36 faith and in accordance with the provisions of this act.

37 b. A health care professional shall not be subject to criminal or
38 civil liability or to discipline by a health care institution or the
39 applicable State licensing board for professional misconduct for any
40 action taken by the health care professional to carry out the terms of
41 a completed POLST form that is performed in good faith and in
42 accordance with the provisions of this act.

43 c. A health care institution shall not be subject to criminal or
44 civil liability for any action taken by the institution to carry out the
45 terms of a completed POLST form that is performed in good faith
46 and in accordance with the provisions of this act.

1 d. An emergency care provider shall not be subject to criminal
2 or civil liability or to discipline by a health care institution or any
3 other entity for professional misconduct for any action taken by the
4 provider to carry out the terms of a completed POLST form that is
5 performed in good faith and in accordance with the provisions of
6 this act.

7 e. The withholding or withdrawing of life-sustaining treatment
8 pursuant to a completed POLST form, when performed in good
9 faith and in accordance with the terms of that form and the
10 provisions of this act, shall not constitute homicide, suicide,
11 assisted suicide, or active euthanasia.

12
13 11. a. A health care professional who intentionally fails to act in
14 accordance with the requirements of this act is subject to discipline
15 for professional misconduct pursuant to section 8 of P.L.1978, c.73
16 (C.45:1-21).

17 b. A health care institution that intentionally fails to act in
18 accordance with the requirements of this act shall be liable to a civil
19 penalty of not more than \$1,000 for each offense. For the purposes
20 of this subsection, each violation shall constitute a separate offense.
21 The civil penalty shall be collected in a summary proceeding,
22 brought in the name of the State in a court of competent jurisdiction
23 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
24 c.274 (C.2A:58-10 et seq.).

25 c. An emergency care provider subject to regulation by the
26 Department of Health and Senior Services who intentionally fails to
27 act in accordance with the requirements of this act is subject to such
28 disciplinary measures as the commissioner deems necessary and
29 within his statutory authority to impose.

30 d. A person who commits any of the following acts is guilty of
31 a crime of the fourth degree:

32 (1) willfully concealing, canceling, defacing, obliterating, or
33 withholding personal knowledge of a completed POLST form or a
34 modification or revocation thereof, without the patient's consent;

35 (2) falsifying or forging a completed POLST form or a
36 modification or revocation thereof of another person;

37 (3) coercing or fraudulently inducing the completion of a
38 POLST form or a modification or revocation thereof; or

39 (4) requiring or prohibiting the completion of a POLST form or
40 a modification or revocation thereof as a condition of coverage
41 under any policy of health or life insurance or an annuity, or a
42 public benefits program, or as a condition of the provision of health
43 care.

44 e. The commission of an act identified in paragraphs (1), (2),
45 or (3) of subsection d. of this section, which results in the
46 involuntary earlier death of a patient, shall constitute a crime of the
47 ¹~~fourth~~ first degree.

1 f. The provisions of this section shall not be construed to
2 repeal any sanctions applicable under any other law.

3
4 12. The commissioner may take such actions to ensure
5 compliance with the provisions of sections 1 through 11 of this act
6 by the patient safety organization designated pursuant to section 5
7 of this act, by any health care facility licensed pursuant to P.L.1971,
8 c.136 (C.26:2H-1 et seq.), and by any emergency care provider
9 subject to regulation by the department, as the commissioner deems
10 necessary and within his statutory authority to effectuate the
11 purposes of this act.

12
13 13. The Commissioner of Human Services may take such
14 actions to ensure compliance with the provisions of sections 1
15 through 11 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) by any State or county psychiatric facility or State
17 developmental center as the commissioner deems necessary and
18 within his statutory authority to effectuate the purposes of that act.

19
20 14. a. The State Board of Medical Examiners shall require that
21 the number of credits of continuing medical education required of
22 each person licensed as a physician, as a condition of biennial
23 registration pursuant to section 1 of P.L.1971, c.236 (C.45:9-6.1),
24 include two credits of educational programs or topics related to end-
25 of-life care, subject to the provisions of section 10 of P.L.2001,
26 c.307 (C.45:9-7.1), including, but not limited to, its authority to
27 waive the provisions of this section for a specific individual if the
28 board deems it appropriate to do so.

29 b. The State Board of Medical Examiners, pursuant to the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), shall adopt such rules and regulations as are necessary to
32 effectuate the purposes of this section.

33
34 15. a. The New Jersey State Board of Nursing shall require that
35 a person certified as an advanced practice nurse pursuant to
36 P.L.1991, c.377 (C.45:11-45 et seq.), as a condition of such
37 continued certification, complete two credits of educational
38 programs or topics related to end-of-life care as part of the total
39 number of continuing education credits required by the board;
40 except that the board may waive the provisions of this section for a
41 specific individual if the board deems it appropriate to do so.

42 b. The New Jersey State Board of Nursing, pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), shall adopt such rules and regulations as are necessary to
45 effectuate the purposes of this section.

- 1 16. a. Sections 1 through 13 of this act shall take effect on the
- 2 first day of the seventh month after the date of enactment.
- 3 b. Sections 14 and 15 of this act shall take effect on the first
- 4 day of the 13th month after the date of enactment, but the State
- 5 Board of Medical Examiners and the New Jersey State Board of
- 6 Nursing may take such anticipatory administrative action in
- 7 advance thereof as shall be necessary for the implementation of
- 8 those sections, respectively.