

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2197**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

ADOPTED MAY 12, 2011

**Sponsored by:**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Union)**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Assemblywoman ANNETTE QUIJANO**

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**District 21 (Essex, Morris, Somerset and Union)**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Co-Sponsored by:**

**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:

<sup>1</sup> Senate floor amendments adopted June 27, 2011.

<sup>2</sup> 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 <sup>1</sup>or  
17 APN<sup>1</sup>.

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 and<sup>2</sup>[, to the maximum  
25 extent practicable, acting in consultation with] after obtaining  
26 informed consent from<sup>2</sup> the patient or<sup>2</sup>, if the patient has lost  
27 decision-making capacity,<sup>2</sup> the patient's representative <sup>2</sup>in  
28 accordance with subsection d. of this section<sup>2</sup>, 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. <sup>2</sup>[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 the<sup>2</sup> patient <sup>2</sup>[who has  
45 a completed POLST form has lost] loses<sup>2</sup> decision-making  
46 capacity<sup>2</sup>[,]. If the patient so authorizes the patient's

1 representative,<sup>2</sup> the patient's representative may, at any time<sup>2</sup>**[,]**  
2 after the patient loses decision-making capacity and<sup>2</sup> 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. <sup>2</sup>**If**  
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.<sup>2</sup>

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) <sup>2</sup>**[shall]** may<sup>2</sup> 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; <sup>2</sup>**[and]** or<sup>2</sup>

30 (2) <sup>2</sup>**[upon a failure to resolve the disagreement in the manner**  
31 **set forth in paragraph (1) of this subsection,]**<sup>2</sup> 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 **'[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.