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
District 20 (Union)
Assemblywoman NANCY F. MUNOZ
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)
AN ACT providing for the use of Physician Orders for Life-Sustaining Treatment forms and supplementing Titles 26, 30, and 45 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

2. The Legislature finds and declares that:
   a. Pursuant to the “New Jersey Advance Directives for Health Care Act,” P.L.1991, c.201 (C.26:2H-53 et seq.), this State has statutorily recognized the right of an adult with decision-making capacity to plan ahead for health care decisions through the execution of advance directives and designate a surrogate decision-maker, and to have the wishes expressed in those documents respected, subject to certain limitations, in order to ensure that the right to control decisions about one's own health care is not lost if a patient loses decision-making capacity and is no longer able to participate actively in making his own health care decisions;
   b. The Physician Orders for Life-Sustaining Treatment, or POLST, form complements an advance directive by converting a person’s wishes regarding life-sustaining treatment, such as those set forth in an advance directive, into a medical order;
   c. The POLST form: contains immediately actionable, signed medical orders on a standardized form; includes medical orders that address a range of life-sustaining interventions as well as the patient’s preferred intensity of treatment for each intervention; is typically a brightly colored, clearly identifiable form; and is recognized and honored across various health care settings;
   d. The use of a POLST form is particularly appropriate for persons who have a compromised medical condition or a terminal illness, and the experience in other states has shown that the use of the POLST form helps these patients to have their health care preferences honored by health care providers;
   e. The use of POLST forms can overcome many of the problems associated with advance directives, which in many cases are designed simply to name an individual to make health care decisions for the patient if the latter becomes incapacitated or otherwise lack specificity in regard to the patient’s health care 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.
deposit boxes and unavailable to health care providers when the
need arises to ensure that the patient's wishes are followed;

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

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

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

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

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

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

“Commissioner” means the Commissioner of Health and Senior
Services.

“Decision-making capacity” means a patient’s ability to
understand and appreciate the nature and consequences of a
particular health care decision, including the benefits and risks of
that decision, and alternatives to any proposed health care, and to
reach an informed decision.

“Department” means the Department of Health and Senior
Services.

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

“Emergency care provider” means an emergency medical
technician, paramedic, or member of a first aid, ambulance, or
rescue squad.

“Health care decision” means a decision to accept, withdraw, or
refuse a treatment, service, or procedure used to diagnose, treat, or
care for a person’s physical or mental condition, including life-
sustaining treatment.

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

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

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

“Patient” means a person who is under the care of a physician or
APN.

“Patient’s representative” means an individual who is designated
by a patient or otherwise authorized under law to make health care
decisions on the patient’s behalf if the patient lacks decision-
making capacity.

“Physician” means a person who is licensed to practice medicine
and surgery pursuant to chapter 9 of Title 45 of the Revised
Statutes.

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

a. is recommended for use on a voluntary basis by patients who
have advanced chronic progressive illness or a life expectancy of
less than five years, or who otherwise wish to further define their
preferences for health care;
b. does not qualify as an advance directive;
c. is not valid unless it meets the requirements for a completed
POLST form as set forth in this act;
d. provides a means by which to indicate whether the patient
has made an anatomical gift pursuant to P.L.2008, c.50 (C.26:6-77
et seq.);
e. is intended to provide direction to emergency care personnel
regarding the use of emergency care, and to a health care
professional regarding the use of life-sustaining treatment, with
respect to the patient, by indicating the patient’s preference
concerning the use of specified interventions and the intensity of
treatment for each intervention;
f. is intended to accompany the patient, and to be honored by
all personnel attending the patient, across the full range of possible
health care settings, including the patient’s home, a health care
institution, or otherwise at the scene of a medical emergency; and
g. may be modified or revoked at any time by a patient with
decision-making capacity or the patient’s representative in
accordance with the provisions of section 7 of this act.

“Resuscitative measures” means cardiopulmonary resuscitation
provided in the event that a patient suffers a cardiac or respiratory
arrest.

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

5. The Commissioner of Health and Senior Services shall
designate a patient safety organization (PSO) operating in this State
pursuant to the federal “Patient Safety and Quality Improvement
Act of 2005,” Pub.L.109-41, to carry out the following
responsibilities, by mutual written agreement of the commissioner
and that PSO:
   a. prescribe a POLST form and the procedures for completion,
    modification, and revocation of the form;
   b. seek to promote awareness among health care professionals,
emergency care providers, and the general public in this State about
   the option to complete a POLST form;
   c. provide ongoing training of health care professionals and
   emergency care providers about the use of the POLST form, in
consultation with organizations representing, and educational
programs serving, health care professionals and emergency care
providers, respectively, in this State;
   d. prescribe additional requirements for the completion of a
   POLST form that may be applicable in the case of a patient with
mental illness or a developmental disability in consultation with
organizations that represent persons with mental illness and
developmental disabilities, respectively;
   e. provide for ongoing evaluation of the design and use of
   POLST forms through the use of such data as the PSO determines
reasonably necessary for that purpose, subject to the
commissioner’s written approval; and
   f. seek to minimize any record-keeping burden imposed on a
health care institution pursuant to this act and take such actions as
are necessary to ensure the confidentiality of any such data
furnished to the PSO that may contain patient-specific information.
6. a. A health care professional, health care institution, or emergency care provider shall treat a patient who has a completed POLST form in accordance with the information contained therein, except as otherwise provided in this act.

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

(1) contains information indicating a patient’s health care preferences;
(2) has been voluntarily signed by a patient with decision-making capacity, or by the patient’s representative in accordance with the patient’s known preferences or in the best interests of the patient;
(3) includes the signature of the patient’s attending physician or APN and the date of that signature; and
(4) meets any other requirements to be deemed valid for the purposes of this act.

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

7. a. If the goals of care of a patient with a completed POLST form change, the patient’s attending physician or APN may, after conducting an evaluation of the patient and after obtaining informed consent from the patient or, if the patient has lost decision-making capacity, the patient’s representative in accordance with subsection d. of this section, issue a new order that modifies or supersedes the completed POLST form consistent with the most current information available about the patient’s health status and goals of care.

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

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

d. If a patient who has a completed POLST form has lost decision-making capacity, if the patient so authorizes the patient’s representative to revoke or modify the patient’s completed POLST form, then the POLST form shall provide the patient with the choice to authorize the patient’s representative to revoke or modify the patient’s completed POLST form.
representative, the patient’s representative may, at any time after the patient loses decision-making capacity and after consultation with the patient’s attending physician or APN, request the physician or APN to modify or revoke the completed POLST form, or otherwise request alternative treatment to the treatment that was ordered on the form, as the patient’s representative deems necessary to reflect the patient’s health status or goals of care. If the patient does not authorize the patient’s representative to revoke or modify the patient’s completed POLST form, the patient’s representative may not revoke or modify the patient’s completed POLST form.

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

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

(1) may seek to resolve the disagreement by means of procedures and practices established by the health care institution, including, but not limited to, consultation with an institutional ethics committee, or with a person designated by the health care institution for this purpose;

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

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

9. Nothing in this act shall be construed to:

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

b. impair the obligations of a health care professional to provide for the care and comfort of the patient and to alleviate pain, in accordance with accepted medical and nursing standards;
c. impair the legal validity of a written order not to attempt cardiopulmonary resuscitation on a patient in the event that the patient suffers a cardiac or respiratory arrest, which is not part of a completed POLST form, if the order was signed by a physician prior to or after the effective date of this act and would be deemed valid under State law or regulation in effect prior to the date of enactment of this act;

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

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

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

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

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

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

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

   c. A health care institution shall not be subject to criminal or civil liability for any action taken by the institution to carry out the terms of a completed POLST form that is performed in good faith and in accordance with the provisions of this act.
d. An emergency care provider shall not be subject to criminal
or civil liability or to discipline by a health care institution or any
other entity for professional misconduct for any action taken by the
provider to carry out the terms of a completed POLST form that is
performed in good faith and in accordance with the provisions of
this act.
e. The withholding or withdrawing of life-sustaining treatment
pursuant to a completed POLST form, when performed in good
faith and in accordance with the terms of that form and the
provisions of this act, shall not constitute homicide, suicide,
assisted suicide, or active euthanasia.

11. a. A health care professional who intentionally fails to act in
accordance with the requirements of this act is subject to discipline
for professional misconduct pursuant to section 8 of P.L.1978, c.73
(C.45:1-21).
b. A health care institution that intentionally fails to act in
accordance with the requirements of this act shall be liable to a civil
penalty of not more than $1,000 for each offense. For the purposes
of this subsection, each violation shall constitute a separate offense.
The civil penalty shall be collected in a summary proceeding,
brought in the name of the State in a court of competent jurisdiction
pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
c.274 (C.2A:58-10 et seq.).
c. An emergency care provider subject to regulation by the
Department of Health and Senior Services who intentionally fails to
act in accordance with the requirements of this act is subject to such
disciplinary measures as the commissioner deems necessary and
within his statutory authority to impose.
d. A person who commits any of the following acts is guilty of
a crime of the fourth degree:
   (1) willfully concealing, canceling, defacing, obliterating, or
withholding personal knowledge of a completed POLST form or a
modification or revocation thereof, without the patient’s consent;
   (2) falsifying or forging a completed POLST form or a
modification or revocation thereof of another person;
   (3) coercing or fraudulently inducing the completion of a
POLST form or a modification or revocation thereof; or
   (4) requiring or prohibiting the completion of a POLST form or
a modification or revocation thereof as a condition of coverage
under any policy of health or life insurance or an annuity, or a
public benefits program, or as a condition of the provision of health
care.
e. The commission of an act identified in paragraphs (1), (2),
or (3) of subsection d. of this section, which results in the
involuntary earlier death of a patient, shall constitute a crime of the
'fourth' degree.
f. The provisions of this section shall not be construed to
repeal any sanctions applicable under any other law.

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

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

14. a. The State Board of Medical Examiners shall require that
the number of credits of continuing medical education required of
each person licensed as a physician, as a condition of biennial
registration pursuant to section 1 of P.L.1971, c.236 (C.45:9-6.1),
include two credits of educational programs or topics related to end-
of-life care, subject to the provisions of section 10 of P.L.2001,
c.307 (C.45:9-7.1), including, but not limited to, its authority to
waive the provisions of this section for a specific individual if the
board deems it appropriate to do so.
   b. The State Board of Medical Examiners, pursuant to the
seq.), shall adopt such rules and regulations as are necessary to
effectuate the purposes of this section.

15. a. The New Jersey State Board of Nursing shall require that
a person certified as an advanced practice nurse pursuant to
P.L.1991, c.377 (C.45:11-45 et seq.), as a condition of such
continued certification, complete two credits of educational
programs or topics related to end-of-life care as part of the total
number of continuing education credits required by the board;
except that the board may waive the provisions of this section for a
specific individual if the board deems it appropriate to do so.
   b. The New Jersey State Board of Nursing, pursuant to the
seq.), shall adopt such rules and regulations as are necessary to
effectuate the purposes of this section.
16. a. Sections 1 through 13 of this act shall take effect on the first day of the seventh month after the date of enactment.

b. Sections 14 and 15 of this act shall take effect on the first day of the 13th month after the date of enactment, but the State Board of Medical Examiners and the New Jersey State Board of Nursing may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of those sections, respectively.