



## SENATE OF PENNSYLVANIA BILL SUMMARY

### Senate Bill 623 Printer's No. 1229

Prime Sponsor: Yaw  
Committee: Health and Human Services

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#### **SYNOPSIS:**

Amends Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes to codify Pennsylvania Orders for Life Sustaining Treatment (POLST) and to clarify certain provisions regarding Out-Of-Hospital Do Not Resuscitate (OOH-DNR) orders and preventing the use of new OOH-DNR orders executed after the date that the Department of Health (the "department") adopts an initial POLST form.

#### **SUMMARY:**

##### **Applicability**

Provides that this chapter of Title 20 applies not only to health care directives and OOH-DNRs, but to a newly defined POLST.

##### **Criminal Penalties**

Current law provides that a person is subject to prosecution for criminal homicide if he or she intends to cause the withholding or withdrawal of life-sustaining treatment contrary to the wishes of a patient and directly causes such treatment to be withheld or withdrawn hastening death and falsifies or forges an advance health care directive, OOH-DNR order, bracelet or necklace. SB 623 adds that an individual is subject to prosecution for criminal homicide for falsification or forgery of a POLST as well.

Current law also provides that a person is guilty of a felony of the third degree if he or she commits certain enumerated fraudulent acts with respect to an advanced health care directive, an OOH-DNR order, bracelet or necklace. SB 623 adds that an individual is guilty of a felony of the third degree if he or she commits enumerated fraudulent acts with respect to a POLST as well.

##### **Clarifications**

Makes technical changes to Sections 5432, 5445(b), 5483, 5484(a) and (b), 5485, 5486 and 5487 of Title 20. Among other modifications, these changes provide that references to "orders" throughout these sections (unless otherwise provided) refer to OOH-DNR orders

##### **Advisory Committee**

Abolishes the "Advisory Committee." This Committee was originally established to assist the Department of Health to determine the advisability of using a standardized form containing orders by a qualified physician that details the scope of medical treatment for a patients' life-sustaining wishes.

## Discontinuance

Provides that an OOH-DNR order may not be executed after the date the department adopts an initial POLST form. Also clarifies, however, that OOH-DNR orders executed prior to the date the department adopts an initial POLST form will continue to be enforced.

## POLST

Findings. Contains a number of legislative findings and statements of intent for the legislation including that a POLST is appropriate for an individual with serious illnesses or frailty if that individual's health care practitioner would not be surprised if they died within the next year and the individual's current health status, diagnosis and prognosis indicates that standing medical orders concerning treatment options and other care are appropriate.

Definitions. Contains a number of definitions including:

- Committee is defined as the POLST Advisory Committee
- Health Care Facility is a facility that is licensed as a health care facility under Chapter 8 of the Health Care Facilities Act, or is licensed or approved under Article IX or X of the Human Services Code, or is licensed as a prescribed pediatric extended care center under the Prescribed Pediatric Extended Care Centers Act.
- Health Care Insurer is defined as any person, corporation or other entity that offers administrative, indemnity or payment services under a program of health care or disability benefits including, without limitation, an insurance company, a health maintenance organization, a hospital plan corporation, a professional health services corporation, or a self-insured employee welfare benefit plan (and its third party administrator).
- Health Care Practitioner is a physician, physician assistant, or certified registered nurse practitioner acting in accordance with applicable law.
- Patient Life-Sustaining Wishes Committee (PLSWC) is a Committee that assists in determining the advisability of using a standardized form containing orders by a physician that detail the scope of medical treatment for patients' life-sustaining wishes.
- POLST are orders issued for the care of an individual regarding cardiopulmonary resuscitation or other medical interventions that are entered in accordance with section 5498.2.
- POLST form is the form for a POLST adopted under section 5498.
- A surrogate decision maker is a health care agent, health care representative, guardian, or parent legally authorized to make a health care decision for a patient.

Prohibition. Nothing shall be construed to advance or support euthanasia, suicide, or health care practitioner-assisted suicide.

### Voluntary Consent.

- No POLST is valid without the voluntary consent of the patient or a surrogate decision maker.
- A health care insurer may not require consent as a condition to insurance, may not charge a different rate, may not require a health care provider to offer a POLST, may not provide a financial incentive for having a POLST policy or penalize a health care provider for failing to achieve a target for POLST completions.
- A health care provider or facility cannot make having a POLST a condition of admission or provide an in-kind or financial incentive for having a POLST.

POLST Advisory Committee. A POLST Advisory Committee is created to advise the department on issues such as the format and content of the POLST form. The makeup of the Committee is dictated by the legislation and consists of members of various stakeholder groups as well as individuals with specified backgrounds and/or expertise. The Secretary of the department is permitted to appoint additional individuals in an effort to provide further expertise and a broad representation of interests.

Administration. The department shall perform the following functions in consultation with the POLST Advisory Committee:

- Adopt a POLST form
- Develop education materials
- Make the POLST form and educational materials available on the department's website

The POLST form and educational materials shall be in plain language and the department shall coordinate its efforts with other State agencies to address individuals with disabilities and older persons.

POLST form. The department and the POLST Advisory Committee shall develop a standard POLST form. The POLST form:

- Shall include options for cardiopulmonary resuscitation and other medical interventions
- Shall be outcome neutral
- May include options for nutrition and hydration

No medical order section, except for the section regarding cardiopulmonary resuscitation, need be completed for the POLST to be valid

The POLST form must state that the POLST may only be issued with the voluntary consent of the patient or the patient's authorized surrogate and may not be compelled by a health care provider or health care insurer.

The POLST form may include other notices which the department in conjunction with the POLST Advisory Committee deem appropriate.

The POLST form must provide the identification (as well as the signatures) of the patient, the surrogate and the health care practitioner who authorizes the POLST.

Publication. Prior to adopting the initial POLST form, the department is required to submit for publication notice of the proposed form in the Pennsylvania Bulletin and provide a 60 day comment period. The department shall also provide a copy of the form to the Senate Health & Human Services Committee and the House Health Committee. Within 60 days of the close of the comment period, the department shall publish a notice responding to each comment the department received. The department shall then publish the final version of the POLST form.

The department shall follow the same process for POLST form updates.  
POLST forms executed prior to the effective date of the law shall be recognized as valid.

Education. In consultation with the POLST Advisory Committee, the department shall develop and update POLST educational materials. The materials shall be accessible to persons with disabilities and shall provide guidance on:

- The definition of POLST
- How POLST is an immediately actionable medical order
- When a POLST may or may not be appropriate
- The difference between a POLST and an advance health care directive
- The voluntary consent requirement
- The importance of shared decision making
- When a POLST should be reviewed
- The obligation of health care providers to comply with a POLST
- Legal requirements for surrogate decision making
- Appropriate inclusion of patients making when decisions are made by surrogates

Training must include training for health care practitioners and others who educate patients about POLST.

Valid POLST. To be valid, a POLST shall require:

- Use of the POLST form
- Completion of the cardiopulmonary resuscitation section
- Date and signature of the health care practitioner, patient or surrogate

Verbal POLST order and verbal consents from a surrogate decision maker can be effective under certain circumstances and within certain time periods.

A POLST is effective on the date that it meets the requirements of the law.

Portability. A POLST executed in accordance with the provisions of the bill is valid anywhere in the Commonwealth and is valid in a health care facility regardless of whether the health care practitioner who signed the order has clinical privileges with the health care facility.

Signatures. The bill allows for various methods of signature including electronic signatures.

Surrogate Decision Makers. A surrogate decision maker is required to comply with all legal requirements for health care decision making by a surrogate decision maker, including certain

specific provisions of Subchapter C (relating to health care agents and representatives) and Chapter 55 (relating to incapacitated persons).

Revocation. A patient or surrogate may revoke consent at any time and in any manner that communicates an intent to revoke. A health care professional or surrogate must communicate that revocation to any attending health care professional and to any health care facility.

Transfer of Patient. A health care facility that transfers a patient with a POLST to another health care facility must provide the POLST to the receiving health care facility.

Review of POLST. In the event a patient with a POLST is transferred, the new treating health care professional shall review the POLST as soon as feasible. The department in consultation with the POLST Advisory Committee shall also develop recommendations for other situations in which the POLST should be reviewed with the patient.

### **Compliance**

Notification. If an attending health care provider cannot in good conscience comply with a POLST, or if the policies of a health care provider preclude compliance, the attending physician or the health care provider shall so notify the patient or the surrogate who consented to the order. The attending physician or health care provider shall thereafter make every reasonable effort to assist in the transfer of the patient to another physician or health care provider who will comply.

Liability. If the transfer is impossible, the provision of life sustaining care shall not subject the physician or health care provider to criminal or civil liability.

Policies. Health care facilities must have policies and procedures for implementation of a POLST.

### **Emergency Medical Services**

Instructions. Notwithstanding the absence of a do not resuscitate order in a POLST, emergency medical service providers shall comply with the instructions of an authorized medical command physician.

Effect of POLST. Emergency medical service providers must comply with a do not resuscitate order in a POLST if made aware of the order. Emergency medical service providers shall, however, provide other medical interventions necessary and appropriate to provide comfort and alleviate pain.

Uncertainty. Emergency medical service providers who in good faith are uncertain about the validity of a do not resuscitate order in a POLST shall, without criminal or civil liability, render care in accordance with their level of certification. Emergency medical service providers may, but are not required to, contact their medical command physician prior to complying with a POLST.

## **Immunity**

**Compliance.** A health care provider or other person may not be subject to civil or criminal liability or to discipline for unprofessional conduct for complying with a POLST based upon a good faith assumption that the orders therein were valid.

**Noncompliance.** A health care provider or other person may not be subject to civil or criminal liability or to discipline for unprofessional conduct for refusing to comply with a POLST on the good faith belief that:

- The POLST was not valid
- Compliance would be unethical or result in medical care having no medical basis in addressing any medical need or condition

## **Conflict**

**Advanced Health Care Directive.** If a POLST conflicts with an advanced health care directive, the provision of the document dated the latest shall prevail.

**POLST.** A POLST executed on a form that was valid when executed shall remain valid even if a revised form is later adopted.

**PLSWC.** A POLST executed on a PLSWC form prior to the adoption of POLST under the provisions of this bill is effective to the same extent as if it had been executed on a POLST form. Emergency medical service providers may contact their medical command physician prior to complying with a POLST on a PLSWC form.

## **Other Jurisdictions**

**Validity.** A health care provider may comply with a POLST from another state if the POLST meets certain standards and the health care provider consults with the patient or surrogate regarding continued compliance (unless the order directs procedures or withholding of procedures inconsistent with Pennsylvania law).

## **Study**

**Registry.** The department shall study the feasibility and cost of creating an Internet-based registry allowing health care providers to obtain a current POLST. The results of the study shall be provided to the Senate Health & Human Services Committee and the House Health Committee.

Effective Date:

The addition of Section 5496 regarding the creation of the POLST Advisory Committee shall take effect immediately.

The remainder of the Act shall take effect in 90 days.

**BILL HISTORY:**

Referred to HEALTH AND HUMAN SERVICES, Oct. 5, 2017

Prepared by: Cortez 12/8/2017