

VETO MESSAGE:

Yes

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

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LAW/KR

Title 26.
Chapter 2H.
VII - (New)
Physician Orders
for Life-
Sustaining
Treatment.
§§1-12 -
C.26:2H-129 to
26:2H-140 &
Note to
C.26:2H-53
§13 - C.30:4-7.10
§14 - C.45:9-7.7
§15 –
C.45:11-47.1

P.L.2011, CHAPTER 145, *approved December 20, 2011*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 2197

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

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 person's wishes regarding life-sustaining treatment, such as those
2 set forth in an advance directive, into a medical order;

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

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

14 e. The use of POLST forms can overcome many of the
15 problems associated with advance directives, which in many cases
16 are designed simply to name an individual to make health care
17 decisions for the patient if the latter becomes incapacitated or
18 otherwise lack specificity in regard to the patient's health care
19 preferences, and are often locked away in file drawers or safe
20 deposit boxes and unavailable to health care providers when the
21 need arises to ensure that the patient's wishes are followed;

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

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

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

42

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

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

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

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

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

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

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

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

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

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

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

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

37 “Patient” means a person who is under the care of a physician ¹or
38 APN¹.

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

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

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

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

8 b. does not qualify as an advance directive;

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

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

14 e. is intended to provide direction to emergency care personnel
15 regarding the use of emergency care, and to a health care
16 professional regarding the use of life-sustaining treatment, with
17 respect to the patient, by indicating the patient’s preference
18 concerning the use of specified interventions and the intensity of
19 treatment for each intervention;

20 f. is intended to accompany the patient, and to be honored by
21 all personnel attending the patient, across the full range of possible
22 health care settings, including the patient’s home, a health care
23 institution, or otherwise at the scene of a medical emergency; and

24 g. may be modified or revoked at any time by a patient with
25 decision-making capacity or the patient’s representative in
26 accordance with the provisions of section 7 of this act.

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

30
31 4. It shall be the public policy of this State to encourage public
32 awareness and understanding of the Physician Orders for Life-
33 Sustaining Treatment form as a means of enabling patients in this
34 State to indicate their preferences for health care through the use of
35 a completed POLST form as a complementary measure to the use of
36 an advance directive, or in lieu of an advance directive if the patient
37 has not executed such a document, in accordance with the
38 provisions of this act.

39
40 5. The Commissioner of Health and Senior Services shall
41 designate a patient safety organization (PSO) operating in this State
42 pursuant to the federal “Patient Safety and Quality Improvement
43 Act of 2005,” Pub.L.109-41, to carry out the following
44 responsibilities, by mutual written agreement of the commissioner
45 and that PSO:

46 a. prescribe a POLST form and the procedures for completion,
47 modification, and revocation of the form;

- 1 b. seek to promote awareness among health care professionals,
2 emergency care providers, and the general public in this State about
3 the option to complete a POLST form;
- 4 c. provide ongoing training of health care professionals and
5 emergency care providers about the use of the POLST form, in
6 consultation with organizations representing, and educational
7 programs serving, health care professionals and emergency care
8 providers, respectively, in this State;
- 9 d. prescribe additional requirements for the completion of a
10 POLST form that may be applicable in the case of a patient with
11 mental illness or a developmental disability in consultation with
12 organizations that represent persons with mental illness and
13 development disabilities, respectively;
- 14 e. provide for ongoing evaluation of the design and use of
15 POLST forms through the use of such data as the PSO determines
16 reasonably necessary for that purpose, subject to the
17 commissioner's written approval; and
- 18 f. seek to minimize any record-keeping burden imposed on a
19 health care institution pursuant to this act and take such actions as
20 are necessary to ensure the confidentiality of any such data
21 furnished to the PSO that may contain patient-specific information.
22
- 23 6. a. A health care professional, health care institution, or
24 emergency care provider shall treat a patient who has a completed
25 POLST form in accordance with the information contained therein,
26 except as otherwise provided in this act.
- 27 b. A POLST form shall be deemed to be completed, and
28 therefore valid for the purposes of this act if it:
- 29 (1) contains information indicating a patient's health care
30 preferences;
- 31 (2) has been voluntarily signed by a patient with decision-
32 making capacity, or by the patient's representative in accordance
33 with the patient's known preferences or in the best interests of the
34 patient;
- 35 (3) includes the signature of the patient's attending physician or
36 APN and the date of that signature; and
- 37 (4) meets any other requirements to be deemed valid for the
38 purposes of this act.
- 39 c. A document executed in another state, which meets the
40 requirements of this act for a POLST form, shall be deemed to be
41 completed and valid for the purposes of this act to the same extent
42 as a POLST form completed in this State.
43
- 44 7. a. If the goals of care of a patient with a completed POLST
45 form change, the patient's attending physician or APN may, after
46 conducting an evaluation of the patient and²【, to the maximum
47 extent practicable, acting in consultation with】 after obtaining

1 informed consent from² the patient or², if the patient has lost
2 decision-making capacity,² the patient's representative ²in
3 accordance with subsection d. of this section², issue a new order
4 that modifies or supersedes the completed POLST form consistent
5 with the most current information available about the patient's
6 health status and goals of care.

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

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

17 d. ²[If a] The POLST form shall provide the patient with the
18 choice to authorize the patient's representative to revoke or modify
19 the patient's completed POLST form if the² patient ²[who has
20 a completed POLST form has lost] loses² decision-making
21 capacity²[,]. If the patient so authorizes the patient's
22 representative,² the patient's representative may, at any time²[,]
23 after the patient loses decision-making capacity and² after
24 consultation with the patient's attending physician or APN, request
25 the physician or APN to modify or revoke the completed POLST
26 form, or otherwise request alternative treatment to the treatment that
27 was ordered on the form, as the patient's representative deems
28 necessary to reflect the patient's health status or goals of care. ²If
29 the patient does not authorize the patient's representative to revoke
30 or modify the patient's completed POLST form, the patient's
31 representative may not revoke or modify the patient's completed
32 POLST form.²

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

39
40 8. a. In the event of a disagreement among the patient, the
41 patient's representative, and the patient's attending physician or
42 APN concerning the patient's decision-making capacity or the
43 appropriate interpretation and application of the terms of a
44 completed POLST form to the patient's course of treatment, the
45 parties:

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

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

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

16

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

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

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

24 c. impair the legal validity of a written order not to attempt
25 cardiopulmonary resuscitation on a patient in the event that the
26 patient suffers a cardiac or respiratory arrest, which is not part of a
27 completed POLST form, if the order was signed by a physician
28 prior to or after the effective date of this act and would be deemed
29 valid under State law or regulation in effect prior to the date of
30 enactment of this act;

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

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

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

45 (2) if its institutional policies and practices appear to conflict
46 with the patient's legal rights, attempt to resolve the conflict and, if
47 a mutually satisfactory accommodation cannot be reached, take all

1 reasonable steps to effect the appropriate, timely, and respectful
2 transfer of the patient to the care of another health care institution
3 appropriate to the patient's needs, and assure that the patient is not
4 abandoned or treated disrespectfully; or

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

8

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

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

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

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

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

34

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

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

1 c. An emergency care provider subject to regulation by the
2 Department of Health and Senior Services who intentionally fails to
3 act in accordance with the requirements of this act is subject to such
4 disciplinary measures as the commissioner deems necessary and
5 within his statutory authority to impose.

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

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

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

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

15 (4) requiring or prohibiting the completion of a POLST form or
16 a modification or revocation thereof as a condition of coverage
17 under any policy of health or life insurance or an annuity, or a
18 public benefits program, or as a condition of the provision of health
19 care.

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

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

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

35
36 13. The Commissioner of Human Services may take such
37 actions to ensure compliance with the provisions of sections 1
38 through 11 of P.L. , c. (C.) (pending before the Legislature
39 as this bill) by any State or county psychiatric facility or State
40 developmental center as the commissioner deems necessary and
41 within his statutory authority to effectuate the purposes of that act.

42
43 14. a. The State Board of Medical Examiners shall require that
44 the number of credits of continuing medical education required of
45 each person licensed as a physician, as a condition of biennial
46 registration pursuant to section 1 of P.L.1971, c.236 (C.45:9-6.1),
47 include two credits of educational programs or topics related to end-

1 of-life care, subject to the provisions of section 10 of P.L.2001,
2 c.307 (C.45:9-7.1), including, but not limited to, its authority to
3 waive the provisions of this section for a specific individual if the
4 board deems it appropriate to do so.

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

9
10 15. a. The New Jersey State Board of Nursing shall require that
11 a person certified as an advanced practice nurse pursuant to
12 P.L.1991, c.377 (C.45:11-45 et seq.), as a condition of such
13 continued certification, complete two credits of educational
14 programs or topics related to end-of-life care as part of the total
15 number of continuing education credits required by the board;
16 except that the board may waive the provisions of this section for a
17 specific individual if the board deems it appropriate to do so.

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

22
23 16. a. Sections 1 through 13 of this act shall take effect on the
24 first day of the seventh month after the date of enactment.

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

31

32

33

34

35 _____
36 "Physician Orders for Life-Sustaining Treatment Act"; provides
37 for use of Physician Orders for Life-Sustaining Treatment forms
38 and requires physicians and advanced practice nurses to pursue
continuing education in end-of-life care.

SENATE, No. 2197

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JULY 19, 2010

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex and Union)

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senators Vitale and Cunningham

SYNOPSIS

“Physician Orders for Life-Sustaining Treatment Act”; provides for use of Physician Orders for Life-Sustaining Treatment forms and establishes registry.

CURRENT VERSION OF TEXT

As introduced.



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

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

7
8 1. This act shall be known and may be cited as the “Physician
9 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 competent adults to plan ahead
15 for health care decisions through the execution of advance
16 directives, and to have the wishes expressed in those documents
17 respected, subject to certain limitations, in order to ensure that the
18 right to control decisions about one's own health care is not lost if a
19 patient loses decision-making capacity and is no longer able to
20 participate actively in making his own health care decisions;

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

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

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

37 e. The use of POLST forms can overcome many of the problems
38 associated with advance directives, which in many cases are
39 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
43 deposit boxes and unavailable to health care providers when the
44 need arises to ensure that the patient's wishes are followed;

45 f. A completed POLST form is signed by, and more readily
46 available than an advance directive to, the patient's attending
47 physician, and provides a specific and detailed set of instructions
48 for a health care professional or health care institution to follow in

1 regard to the patient's preference for the use of various medical
2 interventions;

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

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

17

18 3. As used in this part:

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

21 "Commissioner" means the Commissioner of Health and Senior
22 Services.

23 "Department" means the Department of Health and Senior
24 Services.

25 "Decision-making capacity" means a patient's ability to
26 understand and appreciate the nature and consequences of a
27 particular health care decision, including the benefits and risks of
28 that decision, and alternatives to any proposed health care, and to
29 reach an informed decision.

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

34 "Health care decision" means a decision to accept or refuse a
35 treatment, service, or procedure used to diagnose, treat, or care for a
36 person's physical or mental condition, including life-sustaining
37 treatment.

38 "Health care institution" means an institution, facility, or agency
39 authorized by State law to administer health care in the ordinary
40 course of business, including, but not limited to: a hospital, nursing
41 home, residential health care facility, home health care agency,
42 hospice care program; inpatient or residential facility serving
43 persons with mental illness; or inpatient or residential facility
44 serving persons with a developmental disability.

45 "Health care professional" means a physician, nurse, or
46 physician assistant licensed to practice in this State.

47 "Life-sustaining treatment" means the use of any medical device
48 or procedure, artificially provided fluids and nutrition, drugs,

1 surgery, or therapy that uses mechanical or other artificial means to
2 sustain, restore, or supplant a vital bodily function, and thereby
3 increase the expected life span of a patient.

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

5 “Patient’s representative” means an individual who is authorized
6 under law to make health care decisions on the patient’s behalf if
7 the patient lacks decision-making capacity.

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

11 a. is recommended for use on a voluntary basis by patients who
12 have advanced chronic progressive illness or a life expectancy of
13 less than one year, or who otherwise wish to further define their
14 preferences for health care;

15 b. does not qualify as an advance directive;

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

18 d. is intended to provide direction to emergency care personnel
19 regarding the use of emergency care, and to a health care
20 professional regarding the use of life-sustaining treatment, with
21 respect to the patient, by indicating the patient’s preference
22 concerning the use of specified interventions and the intensity of
23 treatment for each intervention;

24 e. is intended to accompany the patient, and to be honored by all
25 personnel attending the patient, across the full range of possible
26 health care settings, including the patient’s home, a health care
27 institution, or otherwise at the scene of a medical emergency; and

28 f. may be modified or revoked at any time, in a manner
29 prescribed by regulation of the commissioner, by a patient with
30 decision-making capacity or the patient’s representative.

31 “Program” means the POLST Paradigm program established
32 pursuant to this act.

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

36

37 4. There is established the POLST Paradigm program in the
38 Department of Health and Senior Services for the purpose of
39 enabling patients in this State to indicate their preferences for health
40 care through the use of a completed POLST form as a
41 complementary measure to the use of an advance directive, or in
42 lieu of an advance directive if the patient has not executed such a
43 document, in accordance with the provisions of this act and the
44 rules and regulations adopted pursuant thereto.

45

46 5. The Commissioner of Health and Senior Services shall:

47 a. oversee and direct the development of the program on a
48 Statewide basis in accordance with the recommendations of the

- 1 National POLST Paradigm Task Force, and designate an individual
2 within the department to serve as Statewide coordinator for the
3 program;
- 4 b. prescribe, by regulation, a POLST form for use pursuant to
5 this act, which shall be designed to reflect the considerations for
6 development and revision of a POLST Paradigm form, and the
7 procedures for completion, modification, and revocation of the
8 form;
- 9 c. seek to promote awareness among health care professionals
10 and the general public in this State about the program and the
11 option to complete a POLST form pursuant to this act, including the
12 provision of informational material prepared by the department that
13 explains the difference between an advance directive and a POLST
14 form, which a patient's attending physician shall furnish to the
15 patient or the patient's representative prior to the completion of a
16 POLST form for that patient;
- 17 d. encourage ongoing training of health care professionals about
18 the goals of the program and use of the POLST form, in
19 consultation with organizations representing, and educational
20 programs serving, health care professionals in this State;
- 21 e. prescribe additional requirements for the completion of a
22 POLST form that may be applicable in the case of a patient with
23 mental illness or a developmental disability;
- 24 f. provide for ongoing evaluation of the implementation and
25 operation of the program, for which purpose the commissioner shall
26 provide by regulation for the annual reporting to the department by
27 health care institutions, and the gathering by other means as the
28 commissioner determines necessary, of such data as the
29 commissioner determines reasonably necessary to oversee and
30 evaluate the operation of the program; and
- 31 g. seek to minimize any record-keeping burden imposed on a
32 health care institution pursuant to this act and take such actions as
33 are necessary to ensure the confidentiality of any such data
34 furnished to the department that may contain patient-specific
35 information.
- 36
- 37 6. a. A health care professional or health care institution shall
38 treat a patient who has a completed POLST form in accordance with
39 the information contained therein, except as otherwise provided in
40 this act.
- 41 b. A POLST form shall be deemed to be completed, and
42 therefore valid for the purposes of this act, if it:
- 43 (1) contains information indicating a patient's health care
44 preferences;
- 45 (2) has been voluntarily signed by a patient with decision-
46 making capacity, or by the patient's representative at the patient's
47 direction, after the receipt of informational material pursuant to
48 subsection c. of section 5 of this act;

1 (3) includes the signature of the patient's attending physician
2 and the date of that signature; and

3 (4) meets any other requirements to be deemed valid for the
4 purposes of this act as prescribed by regulation of the
5 commissioner.

6 c. A document executed in another state, which meets the
7 requirements of this act and those prescribed by regulation of the
8 commissioner for a POLST form, shall be deemed to be completed
9 and valid for the purposes of this act to the same extent as a POLST
10 form completed in this State.

11

12 7. a. If the goals of care of a patient with a completed POLST
13 form change, the patient's attending physician may, after
14 conducting an evaluation of the patient and, to the maximum extent
15 practicable, acting in consultation with the patient or the patient's
16 representative, issue a new order that modifies or supersedes the
17 completed POLST form consistent with the most current
18 information available about the patient's health status and goals of
19 care.

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

24 c. If the orders in a patient's completed POLST form regarding
25 the use of any intervention specified therein conflict with the
26 patient's more recent verbal or written directive to the patient's
27 attending physician, the physician shall honor the more recent
28 directive from the patient.

29 d. If a patient who has a completed POLST form has lost
30 decision-making capacity, the patient's representative may, at any
31 time, after consultation with the patient's attending physician,
32 request the physician to modify or revoke the completed POLST
33 form, or otherwise request alternative treatment to the treatment that
34 was ordered on the form, as the patient's representative deems
35 necessary to reflect the patient's health status or goals of care.

36

37 8. a. In the event of a disagreement among the patient, the
38 patient's representative, and the patient's attending physician
39 concerning the patient's decision-making capacity or the appropriate
40 interpretation and application of the terms of a completed POLST
41 form to the patient's course of treatment, the parties may seek to
42 resolve the disagreement by means of procedures and practices
43 established by the health care institution, including, but not limited
44 to, consultation with an institutional ethics committee, or with a
45 person designated by the health care institution for this purpose, or
46 may seek resolution by a court of competent jurisdiction.

47 b. A health care professional involved in the patient's care, other
48 than the attending physician, or an administrator of a health care

1 institution may also invoke the applicable procedures and practices
2 established by the health care institution to seek to resolve a
3 disagreement concerning the patient's decision-making capacity or
4 the appropriate interpretation and application of the terms of a
5 completed POLST form to the patient's course of treatment, or may
6 seek resolution by a court of competent jurisdiction.

7

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

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

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

15 c. impair the legal validity of a written order not to attempt
16 cardiopulmonary resuscitation on a patient in the event that the
17 patient suffers a cardiac or respiratory arrest, which is not part of a
18 completed POLST form, if the order was signed by a physician
19 prior to or after the effective date of this act and would be deemed
20 valid under State law or regulation in effect prior to the date of
21 enactment of this act;

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

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

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

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

43

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

1 b. A health care professional shall not be subject to criminal or
2 civil liability or to discipline by a health care institution or the
3 applicable State licensing board for professional misconduct for any
4 action taken by the health care professional to carry out the terms of
5 a completed POLST form that is performed in good faith and in
6 accordance with the provisions of this act, any rules and regulations
7 established by the commissioner pursuant to this act, and accepted
8 professional standards.

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

13 d. The withholding or withdrawing of life-sustaining treatment
14 pursuant to a completed POLST form, when performed in good
15 faith and in accordance with the terms of that form and the
16 provisions of this act, shall not constitute homicide, suicide,
17 assisted suicide, or active euthanasia.

18

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

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

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

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

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

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

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

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

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

3

4 12. a. The commissioner shall establish and operate a Statewide
5 registry, to be designated as the New Jersey POLST Registry, for
6 the collection and dissemination of completed POLST forms in
7 order to help ensure that the health care preferences of each patient
8 who has completed a POLST form are honored.

9 b. The commissioner, in consultation with the POLST Registry
10 Advisory Committee established pursuant to this section, shall
11 adopt regulations for the implementation, operation, and evaluation
12 of the registry, including, but not limited to, those that:

13 (1) require submission of the following documents to the
14 registry, unless the patient has requested to opt out of the registry in
15 a manner to be prescribed by regulation of the commissioner:

16 (a) a copy of each completed POLST form;

17 (b) a copy of each modified POLST form; and

18 (c) notice of any known revocation of a completed POLST form;

19 (2) prescribe the manner for submitting a document, as specified
20 in paragraph (1) of this subsection, to the registry;

21 (3) require the release of information from the registry to
22 authorized recipients for patient treatment purposes; and authorize
23 notification by the registry to specified persons of the receipt,
24 modification, or revocation of a POLST form; and

25 (4) establish procedures to ensure the accuracy and
26 confidentiality of information submitted to the registry.

27 c. The commissioner may permit qualified researchers to access
28 data in the registry in accordance with regulations that the
29 commissioner shall adopt governing such access, which shall
30 include, but not be limited to:

31 (1) the process for a qualified researcher to request access to
32 data contained in the registry;

33 (2) the types of data that a qualified researcher may be provided
34 from the registry, except that the data which may be provided shall
35 contain no information that could be used to identify any patient,
36 health care professional, or health care institution; and

37 (3) any additional confidentiality requirements with respect to
38 the data that the commissioner deems necessary.

39 d. The commissioner may contract with a public or private entity
40 to implement or operate the registry.

41 e. Except to the extent necessary to effectuate the purposes of
42 paragraph (3) of subsection b. of this section, as prescribed by
43 regulation of the commissioner, all information collected or
44 developed by the registry that identifies or could be used to identify
45 a patient, health care professional, or health care institution shall be
46 confidential and shall not be subject to civil or administrative
47 subpoena or discovery in a civil action, including, but not limited
48 to, a judicial, administrative, arbitration, or mediation proceeding.

1 f. A person who reports information to the registry or acts on
2 information obtained from the registry in good faith, and in
3 accordance with the provisions of this act and the rules and
4 regulations adopted pursuant thereto, shall be immune from any
5 civil or criminal liability that might otherwise be incurred or
6 imposed with respect to those actions.

7 g. The commissioner shall establish the POLST Registry
8 Advisory Committee to advise the commissioner regarding the
9 implementation, operation, and evaluation of the POLST registry.

10 (1) The advisory committee shall include nine members as
11 follows:

12 (a) two persons employed by the department, at least one of
13 whom shall be the Director of the Office of Emergency Medical
14 Services or his designee, as ex officio members; and

15 (b) seven public members who are residents of this State, to be
16 appointed by the commissioner, including: a paramedic providing
17 emergency medical services in this State; one person who
18 represents licensed hospice care programs in this State; a physician
19 licensed to practice in this State who has had experience in the
20 provision of end-of-life care in this State; one person who
21 represents general hospitals in this State; one person who represents
22 nursing homes in this State; and two members of the general public
23 with expertise or interest in end-of-life care who are not licensed
24 health care professionals, at least one of whom is a member of a
25 minority racial or ethnic group.

26 (2) The advisory committee shall select a chairperson from
27 among its members and a secretary who need not be a member of
28 the advisory committee.

29 (3) Of the public members of the advisory committee first
30 appointed, three shall be appointed for a term of three years, three
31 for a term of two years, and one for a term of one year. Thereafter,
32 the public members shall be appointed for terms of three years. The
33 public members shall be eligible for reappointment and shall serve
34 until the appointment and qualification of their successors.

35 (4) Vacancies in the advisory committee shall be filled for the
36 unexpired terms in the same manner as the original appointments
37 were made.

38 (5) The members of the advisory committee shall not receive
39 any compensation, but shall be reimbursed for expenses incurred in
40 the performance of their duties.

41 (6) The advisory committee shall meet at least quarterly, at a
42 time and place to be specified by the commissioner.

43 (7) The department shall provide such staff and other support to
44 the advisory committee as it deems necessary to perform its duties.

45

46 13. The Commissioner of Health and Senior Services, pursuant
47 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
48 1 et seq.), shall adopt such rules and regulations as are necessary to

1 effectuate the purposes of this act.

2

3 14. This act shall take effect on the first day of the seventh
4 month after the date of enactment, but the Commissioner of Health
5 and Senior Services may take such anticipatory administrative
6 action in advance thereof as shall be necessary for the
7 implementation of this act.

8

9

10

STATEMENT

11

12 This bill, which is designated the “Physician Orders for Life-
13 Sustaining Treatment Act,” provides for the use of Physician Orders
14 for Life-Sustaining Treatment (POLST) forms in New Jersey.

15 The bill provides specifically as follows:

16 • The POLST Paradigm program is established in the Department
17 of Health and Senior Services (DHSS) to enable patients in this
18 State to indicate their preferences for health care through a
19 completed POLST form as a complementary measure to the use
20 of an advance directive for health care, or in lieu of an advance
21 directive if the patient has not executed such a document.

22 • The Commissioner of Health and Senior Services is to:

23 -- oversee and direct the development of the program on a
24 Statewide basis in accordance with the recommendations of the
25 National POLST Paradigm Task Force, and designate an individual
26 within DHSS to serve as Statewide coordinator for the program;

27 -- prescribe, by regulation, a POLST form for use pursuant to the
28 bill and the procedures for completion, modification, and revocation
29 of the form;

30 -- seek to promote awareness among health care professionals
31 and the general public in this State about the POLST form;

32 -- encourage ongoing training of health care professionals about
33 the POLST form;

34 -- prescribe additional requirements for the completion of a
35 POLST form applicable to a patient with mental illness or a
36 developmental disability;

37 -- require that health care institutions annually report to DHSS
38 such data as the commissioner determines reasonably necessary to
39 oversee and evaluate the program; and

40 -- seek to minimize any record-keeping burden imposed on a
41 health care institution pursuant to the bill and ensure the
42 confidentiality of data furnished to DHSS that may contain patient-
43 specific information.

44 • A health care professional or health care institution is to treat a
45 patient who has a completed POLST form in accordance with the
46 information contained therein, except as otherwise provided in
47 the bill.

- 1 • A POLST form is to be deemed completed, and therefore valid
2 for the purposes of the bill, if it:
- 3 -- contains information indicating a patient's health care
4 preferences;
- 5 -- has been voluntarily signed by a patient with decision-making
6 capacity, or by the patient's representative at the patient's direction,
7 after receiving, from the patient's attending physician,
8 informational material prepared by DHSS that explains the
9 difference between an advance directive and a POLST form;
- 10 -- includes the signature of the patient's attending physician and
11 the date of that signature; and
- 12 -- meets any other requirements to be deemed valid as prescribed
13 by regulation of the commissioner.
- 14 • The bill provides for changes relating to a completed POLST
15 form, as follows:
- 16 -- If the goals of care of a patient with a completed POLST form
17 change, the patient's attending physician may, after evaluating the
18 patient and, to the maximum extent practicable, acting in
19 consultation with the patient or the patient's representative, issue a
20 new order that modifies or supersedes the completed POLST form.
- 21 -- A patient with decision-making capacity, may, at any time,
22 modify or revoke the patient's completed POLST form or otherwise
23 request alternative treatment to that ordered on the form.
- 24 -- If the orders in a patient's completed POLST form regarding
25 the use of any intervention specified therein conflict with the
26 patient's more recent verbal or written directive to the patient's
27 attending physician, the physician is to honor the more recent
28 directive.
- 29 -- If a patient who has a completed POLST form has lost
30 decision-making capacity, the patient's representative may, at any
31 time, after consultation with the patient's attending physician,
32 request the physician to modify or revoke the completed POLST
33 form, or otherwise request alternative treatment to that ordered on
34 the form, as the patient's representative deems necessary to reflect
35 the patient's health status or goals of care.
- 36 • The bill provides for the resolution of disputes relating to POLST
37 forms, as follows:
- 38 -- If a disagreement arises among the patient, the patient's
39 representative, and the patient's attending physician concerning the
40 patient's decision-making capacity or the appropriate interpretation
41 and application of the terms of a completed POLST form to the
42 patient's treatment, the parties may seek to resolve the disagreement
43 through the procedures and practices of the health care institution.
- 44 -- A health care professional involved in the patient's care, other
45 than the attending physician, or an administrator of a health care
46 institution may also invoke those procedures and practices to seek
47 to resolve a disagreement concerning the patient's decision-making
48 capacity or the use of a completed POLST form.

- 1 • Nothing in the bill is to be construed to:
- 2 -- abridge a patient's right to refuse treatment under the federal
- 3 or State Constitution;
- 4 -- impair a health care professional's obligations to provide for a
- 5 patient's care and comfort and to alleviate pain, in accordance with
- 6 accepted medical and nursing standards;
- 7 -- impair the legal validity of an otherwise valid do-not-
- 8 resuscitate order that is not part of a completed POLST form;
- 9 -- require a health care professional or health care institution to
- 10 participate in the beginning, continuing, withholding, or
- 11 withdrawing of health care in a manner contrary to law or accepted
- 12 medical standards; or
- 13 -- require a private, religiously-affiliated health care institution
- 14 to participate in the withholding or withdrawing of specified
- 15 measures utilized to sustain life in a manner contrary to any of its
- 16 written institutional policies and practices.
- 17 • The bill provides certain liability protections as follows:
- 18 -- A patient's representative is not subject to criminal or civil
- 19 liability for any action to carry out the terms of a completed POLST
- 20 form that is performed in good faith and in accordance with the bill.
- 21 -- A health care professional is not subject to criminal or civil
- 22 liability or to discipline by a health care institution or the applicable
- 23 State licensing board for professional misconduct for any action to
- 24 carry out the terms of a completed POLST form that is performed in
- 25 good faith and in accordance with the bill, any rules and regulations
- 26 of the commissioner pursuant to the bill, and accepted professional
- 27 standards.
- 28 -- A health care institution is not subject to criminal or civil
- 29 liability for any action to carry out the terms of a completed POLST
- 30 form that is performed in good faith and in accordance with the bill.
- 31 -- The withholding or withdrawing of life-sustaining treatment
- 32 pursuant to a completed POLST form, when performed in good
- 33 faith and in accordance with the bill, does not constitute homicide,
- 34 suicide, assisted suicide, or active euthanasia.
- 35 • The bill provides for certain civil and criminal penalties as
- 36 follows:
- 37 -- A health care professional who intentionally fails to act as
- 38 required in the bill is subject to discipline for professional
- 39 misconduct under section 8 of P.L.1978, c.73 (C.45:1-21).
- 40 -- A health care institution that intentionally fails to act as
- 41 required in the bill is liable to a civil penalty of not more than
- 42 \$1,000 for each offense.
- 43 -- A person is guilty of a crime of the fourth degree (punishable
- 44 by a fine of up to \$10,000 or imprisonment for up to 18 months, or
- 45 both) if the person: willfully conceals, cancels, defaces, obliterates,
- 46 or withholds personal knowledge of a completed POLST form or a
- 47 modification or revocation thereof, without the patient's consent;
- 48 falsifies or forges a completed POLST form or a modification or

1 revocation thereof of another person; coerces or fraudulently
2 induces the completion of a POLST form or a modification or
3 revocation thereof; requires or prohibits the completion of a POLST
4 form or a modification or revocation thereof as a condition of
5 coverage under a policy of health or life insurance or an annuity, or
6 a public benefits program, or as a condition of the provision of
7 health care; or commits an act as specified in the bill which results
8 in a patient's involuntary earlier death.

9 • The commissioner is to establish and operate the New Jersey
10 POLST Registry, for the collection and dissemination of
11 completed POLST forms in order to help ensure that the health
12 care preferences of each patient who has completed a POLST
13 form are honored.

14 -- The commissioner, in consultation with the POLST Registry
15 Advisory Committee established under the bill, is to adopt
16 regulations for the implementation, operation, and evaluation of the
17 registry, including, but not limited to, those that:

18 (1) require submission of completed or modified POLST forms,
19 or notices of POLST form revocations, to the registry, unless the
20 patient has requested to opt out of the registry as prescribed by
21 regulation of the commissioner;

22 (2) govern submissions of documents to the registry;

23 (3) require the release of information from the registry to
24 authorized recipients for patient treatment purposes; and authorize
25 notification by the registry to specified persons of the receipt,
26 modification, or revocation of a POLST form; and

27 (4) establish procedures to ensure the accuracy and
28 confidentiality of information submitted to the registry.

29 -- The commissioner may permit qualified researchers to access
30 data in the registry in accordance with regulations governing such
31 access, except that the data provided is to contain no information
32 that could be used to identify any patient, health care professional,
33 or health care institution.

34 -- Except to the extent necessary to provide information from the
35 registry to authorized recipients for patient treatment purposes and
36 to notify specified persons of the receipt, modification, or
37 revocation of a POLST form, as prescribed by regulation of the
38 commissioner, all information collected or developed by the
39 registry that could identify a patient, health care professional, or
40 health care institution is to be confidential and not subject to civil or
41 administrative subpoena or discovery in a civil action.

42 -- A person who reports information to the registry or acts on
43 information obtained from the registry in good faith, and in
44 accordance with the provisions of the bill and the rules and
45 regulations adopted pursuant thereto, is immune from any civil or
46 criminal liability that might otherwise be incurred or imposed with
47 respect to those actions.

- 1 -- The commissioner is to establish the POLST Registry
2 Advisory Committee to advise the commissioner regarding the
3 implementation, operation, and evaluation of the POLST registry.
- 4 -- The advisory committee is to include nine members as
5 follows: two persons employed by DHSS, including the Director of
6 the Office of Emergency Medical Services or his designee, as ex
7 officio members; and seven public members residing in this State,
8 to be appointed by the commissioner, including: a paramedic; a
9 hospice representative; a physician with experience in the provision
10 of end-of-life care; a hospital representative; a nursing home
11 representative; and two members of the general public with
12 expertise or interest in end-of-life care who are not health care
13 professionals, at least one of whom is a member of a minority racial
14 or ethnic group.
- 15 -- The advisory committee is to meet at least quarterly, at a time
16 and place to be specified by the commissioner, and DHSS is to
17 provide staff and other support to the advisory committee.
- 18 • The bill takes effect on the first day of the seventh month after
19 enactment, but the commissioner may take administrative action
20 in advance as necessary for its implementation.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2197

STATE OF NEW JERSEY

DATED: MAY 12, 2011

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2197.

This committee substitute, which is designated the "Physician Orders for Life-Sustaining Treatment Act," provides for the use of Physician Orders for Life-Sustaining Treatment (POLST) forms in New Jersey.

The substitute provides specifically as follows:

- It is to be the public policy of this State to encourage public awareness and understanding of the POLST 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.
- The Commissioner of Health and Senior Services is to designate a patient safety organization (PSO) operating in this State pursuant to the federal "Patient Safety and Quality Improvement Act of 2005," to carry out the following responsibilities, by mutual written agreement of the commissioner and that PSO:
 - prescribe a POLST form and the procedures for completion, modification, and revocation of the form;
 - 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;
 - 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;
 - 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 development disabilities, respectively;

-- 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

-- 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.

- A health care professional, health care institution, or emergency care provider are required to treat a patient who has a completed POLST form in accordance with the information contained therein, except as otherwise provided in the substitute.

- A POLST form is to be deemed completed, and therefore valid for the purposes of the substitute if it:

-- contains information indicating a patient's health care preferences;

-- 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;

-- includes the signature of the patient's attending physician or advanced practice nurse (APN) and the date of that signature; and

-- meets any other requirements to be deemed valid for the purposes of the substitute.

- The substitute provides for changes relating to a completed POLST form, as follows:

-- If the goals of care of a patient with a completed POLST form change, the patient's attending physician or APN may, after evaluating the patient and, to the maximum extent practicable, acting in consultation with the patient or the patient's representative, 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.

-- 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 that ordered on the form.

-- 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 is to honor the more recent directive.

-- If a patient who has a completed POLST form has lost decision-making capacity, the patient's representative may, at any time, 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 that ordered on the form, as

the patient's representative deems necessary to reflect the patient's health status or goals of care.

- 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 the substitute, is to be effectuated once the patient's attending physician or APN has signed the POLST form attesting to that request for modification or revocation.
- The substitute provides for the resolution of disputes relating to POLST forms, as follows:
 - If a disagreement arises 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 treatment, the parties: may seek to resolve the disagreement through the procedures and practices of the health care institution; or, if unable to do so in that manner, may seek resolution through the courts. (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 use of a completed POLST form in the same manner.)
- Nothing in the substitute is to be construed to:
 - abridge a patient's right to refuse treatment under the federal or State Constitution;
 - impair a health care professional's obligations to provide for a patient's care and comfort and to alleviate pain, in accordance with accepted medical and nursing standards;
 - impair the legal validity of an otherwise valid do-not-resuscitate order that is not part of a completed POLST form;
 - 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;
 - 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; or
 - 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.).
- The substitute provides certain liability protections as follows:
 - A patient's representative is not subject to criminal or civil liability for any action to carry out the terms of a completed POLST form that is performed in good faith and in accordance with the substitute.
 - A health care professional, health care institution, or emergency care provider will 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, as applicable) for any action taken to carry out the terms of a completed POLST form that is performed in good faith and in accordance with the substitute.

-- The withholding or withdrawing of life-sustaining treatment pursuant to a completed POLST form, when performed in good faith and in accordance with the substitute, does not constitute homicide, suicide, assisted suicide, or active euthanasia.

- The substitute provides for certain civil and criminal penalties as follows:

-- A health care professional who intentionally fails to act as required in the substitute is subject to discipline for professional misconduct under section 8 of P.L.1978, c.73 (C.45:1-21).

-- A health care institution that intentionally fails to act as required in the bill is liable to a civil penalty of not more than \$1,000 for each offense.

-- An emergency care provider subject to regulation by the Department of Health and Senior Services who intentionally fail to act in accordance with the requirements of the substitute are subject to such disciplinary measures as the commissioner deems necessary and within his statutory authority to impose.

-- A person is guilty of a crime of the fourth degree (punishable by a fine of up to \$10,000 or imprisonment for up to 18 months, or both) if the person: willfully conceals, cancels, defaces, obliterates, or withholds personal knowledge of a completed POLST form or a modification or revocation thereof, without the patient's consent; falsifies or forges a completed POLST form or a modification or revocation thereof of another person; coerces or fraudulently induces the completion of a POLST form or a modification or revocation thereof; requires or prohibits the completion of a POLST form or a modification or revocation thereof as a condition of coverage under a policy of health or life insurance or an annuity, or a public benefits program, or as a condition of the provision of health care; or commits an act as specified in the substitute which results in a patient's involuntary earlier death.

- The Commissioner of Health and Senior Services may take such actions to ensure compliance with the provisions of the substitute by the PSO designated pursuant to the substitute, 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 the substitute.
- The Commissioner of Human Services may take such actions to ensure compliance with the provisions of the substitute 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 the substitute.

- The State Board of Medical Examiners is to require that the number of credits of continuing medical education required of each person licensed as a physician, as a condition of biennial registration with the board, include two credits of educational programs or topics related to end-of-life care, although the board may waive this requirement for a specific individual if the board deems it appropriate to do so.
- The New Jersey State Board of Nursing is to require that a person certified as an APN, as a condition of 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 this requirement for a specific individual if the board deems it appropriate to do so.
- The provisions of the substitute concerning use of the POLST form take effect on the first day of the seventh month after enactment of the substitute; and its provisions concerning continuing education in end-of-life care for physicians and APNs take effect on the first day of the 13th month after enactment, but the relevant boards are authorized to take administrative action in advance as necessary for its implementation.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2197

with Senate Floor Amendments
(Proposed by Senator RUIZ)

ADOPTED: JUNE 27, 2011

These amendments:

- revise the definition of “patient” to “a person who is under the care of a physician or APN” (section 3); and
- increase the penalty for an act as specified in the substitute that results in a patient’s involuntary earlier death, from that of a fourth degree crime to a first degree crime (section 11, subsection e.).

**SENATE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 2197
(First Reprint)**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill No. 2197 (First Reprint) with my recommendations for reconsideration.

This legislation would provide for the use of Physician Orders for Life-Sustaining Treatment ("POLST") forms in New Jersey. Under the bill, a POLST form can be filled out on a voluntary basis by a patient who either has an advanced chronic progressive illness or a life expectancy of less than five years, or who otherwise wishes to further define his or her preferences for health care. A POLST form, which can replace or complement an advance directive and other end-of-life planning tools, seeks to ensure that seriously ill persons' wishes regarding life-sustaining treatments are known, communicated, and respected across all health care settings.

I commend the sponsors for putting forward legislation that seeks to improve end-of-life care. End-of-life care issues are often very complicated, and raise many difficult and emotional issues for patients and their families. Although advance directives provide an important means of ensuring that a patient's wishes are respected, families and health care professionals are often confronted with the negative consequences of inadequate end-of-life care planning. As a result, a POLST form can be a useful tool to improve end-of-life care for patients, families, health care professionals, and health care institutions as long as it is clear that the form may only be completed, modified, or revoked in a way that fully respects the patient's health care wishes.

While this bill protects the patient's health care wishes and could help guide specific treatment by creating a mechanism that allows for effective communication between a patient and/or his or her legally designated decision-maker and health care professionals, I believe there are a few provisions of the bill that do not adequately protect a patient's decision.

Specifically, I have serious concerns with the provisions of the bill that would effectively allow a patient's wishes to be overridden by the patient's physician or healthcare representative without the patient's prior consent. In addition, while I agree that alternate dispute resolution should be an option for parties, I do not agree that it should be mandated as a prerequisite to a patient's or his or her representative's right to go to court to protect a patient's wishes. Therefore, I recommend revising these provisions of the bill to further protect a patient's health care wishes.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill No. 2197 (First Reprint) and recommend that it be amended as follows:

- | | |
|--|---|
| <u>Page 6, Section 7, Line 24:</u> | After "and" insert "after obtaining informed consent from" |
| <u>Page 6, Section 7, Lines 24-25:</u> | Delete ", to the maximum extent practicable, acting in consultation with" |
| <u>Page 6, Section 7, Line 25:</u> | After "or" insert ", if the patient has lost decision-making capacity," |
| <u>Page 6, Section 7, Line 26:</u> | After "representative" insert "in accordance with subsection d. of this section" |
| <u>Page 6, Section 7, Line 40:</u> | After "d." delete "If a" and insert "The POLST form shall provide the patient with the choice to authorize the patient's representative with the ability to revoke or |

modify the patient's POLST if the"

Page 6, Section 7, Line 40:

After "patient" delete "who has a completed POLST form has lost" and insert "loses"

Page 6, Section 7, Line 41:

After "capacity" delete "," and insert ". If the patient authorizes the patient's representative,"

Page 6, Section 7, Line 42:

After "time" delete "," and insert "after the patient loses decision-making capacity and"

Page 6, Section 7, Line 47:

After "care." Insert "If the patient does not authorize the patient's representative to revoke or modify the patient's POLST form, the patient's representative may not revoke or modify the patient's POLST form."

Page 7, Section 8, Line 14:

After "(1)" delete "shall" and insert "may"

Page 7, Section 8, Line 18:

Delete "and" and insert "or"

Page 7, Section 8, Lines 19-20:

After "(2)" delete "upon a failure to resolve the disagreement in the manner set forth in paragraph (1) of this subsection,"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attested:

/s/ Kevin M. O'Dowd

Deputy Chief Counsel to the Governor

ASSEMBLY, No. 3475

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED NOVEMBER 8, 2010

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman NANCY F. MUNOZ

District 21 (Essex, Morris, Somerset and Union)

Assemblywoman CONNIE WAGNER

District 38 (Bergen)

SYNOPSIS

“Physician Orders for Life-Sustaining Treatment Act”; provides for use of Physician Orders for Life-Sustaining Treatment forms and establishes registry.

CURRENT VERSION OF TEXT

As introduced.



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

4

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

7

8 1. This act shall be known and may be cited as the “Physician
9 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 competent adults to plan ahead
15 for health care decisions through the execution of advance
16 directives, and to have the wishes expressed in those documents
17 respected, subject to certain limitations, in order to ensure that the
18 right to control decisions about one's own health care is not lost if a
19 patient loses decision-making capacity and is no longer able to
20 participate actively in making his own health care decisions;

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

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

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

37 e. The use of POLST forms can overcome many of the problems
38 associated with advance directives, which in many cases are
39 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
43 deposit boxes and unavailable to health care providers when the
44 need arises to ensure that the patient's wishes are followed;

45 f. A completed POLST form is signed by, and more readily
46 available than an advance directive to, the patient's attending
47 physician, and provides a specific and detailed set of instructions
48 for a health care professional or health care institution to follow in

1 regard to the patient's preference for the use of various medical
2 interventions;

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

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

17

18 3. As used in this part:

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

21 "Commissioner" means the Commissioner of Health and Senior
22 Services.

23 "Department" means the Department of Health and Senior
24 Services.

25 "Decision-making capacity" means a patient's ability to
26 understand and appreciate the nature and consequences of a
27 particular health care decision, including the benefits and risks of
28 that decision, and alternatives to any proposed health care, and to
29 reach an informed decision.

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

34 "Health care decision" means a decision to accept or refuse a
35 treatment, service, or procedure used to diagnose, treat, or care for a
36 person's physical or mental condition, including life-sustaining
37 treatment.

38 "Health care institution" means an institution, facility, or agency
39 authorized by State law to administer health care in the ordinary
40 course of business, including, but not limited to: a hospital, nursing
41 home, residential health care facility, home health care agency,
42 hospice care program; inpatient or residential facility serving
43 persons with mental illness; or inpatient or residential facility
44 serving persons with a developmental disability.

45 "Health care professional" means a physician, nurse, or
46 physician assistant licensed to practice in this State.

47 "Life-sustaining treatment" means the use of any medical device
48 or procedure, artificially provided fluids and nutrition, drugs,

1 surgery, or therapy that uses mechanical or other artificial means to
2 sustain, restore, or supplant a vital bodily function, and thereby
3 increase the expected life span of a patient.

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

5 “Patient’s representative” means an individual who is authorized
6 under law to make health care decisions on the patient’s behalf if
7 the patient lacks decision-making capacity.

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

11 a. is recommended for use on a voluntary basis by patients who
12 have advanced chronic progressive illness or a life expectancy of
13 less than one year, or who otherwise wish to further define their
14 preferences for health care;

15 b. does not qualify as an advance directive;

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

18 d. is intended to provide direction to emergency care personnel
19 regarding the use of emergency care, and to a health care
20 professional regarding the use of life-sustaining treatment, with
21 respect to the patient, by indicating the patient’s preference
22 concerning the use of specified interventions and the intensity of
23 treatment for each intervention;

24 e. is intended to accompany the patient, and to be honored by all
25 personnel attending the patient, across the full range of possible
26 health care settings, including the patient’s home, a health care
27 institution, or otherwise at the scene of a medical emergency; and

28 f. may be modified or revoked at any time, in a manner
29 prescribed by regulation of the commissioner, by a patient with
30 decision-making capacity or the patient’s representative.

31 “Program” means the POLST Paradigm program established
32 pursuant to this act.

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

36

37 4. There is established the POLST Paradigm program in the
38 Department of Health and Senior Services for the purpose of
39 enabling patients in this State to indicate their preferences for health
40 care through the use of a completed POLST form as a
41 complementary measure to the use of an advance directive, or in
42 lieu of an advance directive if the patient has not executed such a
43 document, in accordance with the provisions of this act and the
44 rules and regulations adopted pursuant thereto.

45

46 5. The Commissioner of Health and Senior Services shall:

47 a. oversee and direct the development of the program on a
48 Statewide basis in accordance with the recommendations of the

- 1 National POLST Paradigm Task Force, and designate an individual
2 within the department to serve as Statewide coordinator for the
3 program;
- 4 b. prescribe, by regulation, a POLST form for use pursuant to
5 this act, which shall be designed to reflect the considerations for
6 development and revision of a POLST Paradigm form, and the
7 procedures for completion, modification, and revocation of the
8 form;
- 9 c. seek to promote awareness among health care professionals
10 and the general public in this State about the program and the
11 option to complete a POLST form pursuant to this act, including the
12 provision of informational material prepared by the department that
13 explains the difference between an advance directive and a POLST
14 form, which a patient's attending physician shall furnish to the
15 patient or the patient's representative prior to the completion of a
16 POLST form for that patient;
- 17 d. encourage ongoing training of health care professionals about
18 the goals of the program and use of the POLST form, in
19 consultation with organizations representing, and educational
20 programs serving, health care professionals in this State;
- 21 e. prescribe additional requirements for the completion of a
22 POLST form that may be applicable in the case of a patient with
23 mental illness or a developmental disability;
- 24 f. provide for ongoing evaluation of the implementation and
25 operation of the program, for which purpose the commissioner shall
26 provide by regulation for the annual reporting to the department by
27 health care institutions, and the gathering by other means as the
28 commissioner determines necessary, of such data as the
29 commissioner determines reasonably necessary to oversee and
30 evaluate the operation of the program; and
- 31 g. seek to minimize any record-keeping burden imposed on a
32 health care institution pursuant to this act and take such actions as
33 are necessary to ensure the confidentiality of any such data
34 furnished to the department that may contain patient-specific
35 information.
- 36
- 37 6. a. A health care professional or health care institution shall
38 treat a patient who has a completed POLST form in accordance with
39 the information contained therein, except as otherwise provided in
40 this act.
- 41 b. A POLST form shall be deemed to be completed, and
42 therefore valid for the purposes of this act, if it:
- 43 (1) contains information indicating a patient's health care
44 preferences;
- 45 (2) has been voluntarily signed by a patient with decision-
46 making capacity, or by the patient's representative at the patient's
47 direction, after the receipt of informational material pursuant to
48 subsection c. of section 5 of this act;

1 (3) includes the signature of the patient's attending physician
2 and the date of that signature; and

3 (4) meets any other requirements to be deemed valid for the
4 purposes of this act as prescribed by regulation of the
5 commissioner.

6 c. A document executed in another state, which meets the
7 requirements of this act and those prescribed by regulation of the
8 commissioner for a POLST form, shall be deemed to be completed
9 and valid for the purposes of this act to the same extent as a POLST
10 form completed in this State.

11

12 7. a. If the goals of care of a patient with a completed POLST
13 form change, the patient's attending physician may, after
14 conducting an evaluation of the patient and, to the maximum extent
15 practicable, acting in consultation with the patient or the patient's
16 representative, issue a new order that modifies or supersedes the
17 completed POLST form consistent with the most current
18 information available about the patient's health status and goals of
19 care.

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

24 c. If the orders in a patient's completed POLST form regarding
25 the use of any intervention specified therein conflict with the
26 patient's more recent verbal or written directive to the patient's
27 attending physician, the physician shall honor the more recent
28 directive from the patient.

29 d. If a patient who has a completed POLST form has lost
30 decision-making capacity, the patient's representative may, at any
31 time, after consultation with the patient's attending physician,
32 request the physician to modify or revoke the completed POLST
33 form, or otherwise request alternative treatment to the treatment that
34 was ordered on the form, as the patient's representative deems
35 necessary to reflect the patient's health status or goals of care.

36

37 8. a. In the event of a disagreement among the patient, the
38 patient's representative, and the patient's attending physician
39 concerning the patient's decision-making capacity or the appropriate
40 interpretation and application of the terms of a completed POLST
41 form to the patient's course of treatment, the parties may seek to
42 resolve the disagreement by means of procedures and practices
43 established by the health care institution, including, but not limited
44 to, consultation with an institutional ethics committee, or with a
45 person designated by the health care institution for this purpose, or
46 may seek resolution by a court of competent jurisdiction.

47 b. A health care professional involved in the patient's care, other
48 than the attending physician, or an administrator of a health care

1 institution may also invoke the applicable procedures and practices
2 established by the health care institution to seek to resolve a
3 disagreement concerning the patient's decision-making capacity or
4 the appropriate interpretation and application of the terms of a
5 completed POLST form to the patient's course of treatment, or may
6 seek resolution by a court of competent jurisdiction.

7

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

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

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

15 c. impair the legal validity of a written order not to attempt
16 cardiopulmonary resuscitation on a patient in the event that the
17 patient suffers a cardiac or respiratory arrest, which is not part of a
18 completed POLST form, if the order was signed by a physician
19 prior to or after the effective date of this act and would be deemed
20 valid under State law or regulation in effect prior to the date of
21 enactment of this act;

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

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

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

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

43

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

1 b. A health care professional shall not be subject to criminal or
2 civil liability or to discipline by a health care institution or the
3 applicable State licensing board for professional misconduct for any
4 action taken by the health care professional to carry out the terms of
5 a completed POLST form that is performed in good faith and in
6 accordance with the provisions of this act, any rules and regulations
7 established by the commissioner pursuant to this act, and accepted
8 professional standards.

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

13 d. The withholding or withdrawing of life-sustaining treatment
14 pursuant to a completed POLST form, when performed in good
15 faith and in accordance with the terms of that form and the
16 provisions of this act, shall not constitute homicide, suicide,
17 assisted suicide, or active euthanasia.

18

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

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

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

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

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

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

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

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

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

3

4 12. a. The commissioner shall establish and operate a Statewide
5 registry, to be designated as the New Jersey POLST Registry, for
6 the collection and dissemination of completed POLST forms in
7 order to help ensure that the health care preferences of each patient
8 who has completed a POLST form are honored.

9 b. The commissioner, in consultation with the POLST Registry
10 Advisory Committee established pursuant to this section, shall
11 adopt regulations for the implementation, operation, and evaluation
12 of the registry, including, but not limited to, those that:

13 (1) require submission of the following documents to the
14 registry, unless the patient has requested to opt out of the registry in
15 a manner to be prescribed by regulation of the commissioner:

16 (a) a copy of each completed POLST form;

17 (b) a copy of each modified POLST form; and

18 (c) notice of any known revocation of a completed POLST form;

19 (2) prescribe the manner for submitting a document, as specified
20 in paragraph (1) of this subsection, to the registry;

21 (3) require the release of information from the registry to
22 authorized recipients for patient treatment purposes; and authorize
23 notification by the registry to specified persons of the receipt,
24 modification, or revocation of a POLST form; and

25 (4) establish procedures to ensure the accuracy and
26 confidentiality of information submitted to the registry.

27 c. The commissioner may permit qualified researchers to access
28 data in the registry in accordance with regulations that the
29 commissioner shall adopt governing such access, which shall
30 include, but not be limited to:

31 (1) the process for a qualified researcher to request access to data
32 contained in the registry;

33 (2) the types of data that a qualified researcher may be provided
34 from the registry, except that the data which may be provided shall
35 contain no information that could be used to identify any patient,
36 health care professional, or health care institution; and

37 (3) any additional confidentiality requirements with respect to
38 the data that the commissioner deems necessary.

39 d. The commissioner may contract with a public or private
40 entity to implement or operate the registry.

41 e. Except to the extent necessary to effectuate the purposes of
42 paragraph (3) of subsection b. of this section, as prescribed by
43 regulation of the commissioner, all information collected or
44 developed by the registry that identifies or could be used to identify
45 a patient, health care professional, or health care institution shall be
46 confidential and shall not be subject to civil or administrative
47 subpoena or discovery in a civil action, including, but not limited
48 to, a judicial, administrative, arbitration, or mediation proceeding.

1 f. A person who reports information to the registry or acts on
2 information obtained from the registry in good faith, and in
3 accordance with the provisions of this act and the rules and
4 regulations adopted pursuant thereto, shall be immune from any
5 civil or criminal liability that might otherwise be incurred or
6 imposed with respect to those actions.

7 g. The commissioner shall establish the POLST Registry
8 Advisory Committee to advise the commissioner regarding the
9 implementation, operation, and evaluation of the POLST registry.

10 (1) The advisory committee shall include nine members as
11 follows:

12 (a) two persons employed by the department, at least one of
13 whom shall be the Director of the Office of Emergency Medical
14 Services or his designee, as ex officio members; and

15 (b) seven public members who are residents of this State, to be
16 appointed by the commissioner, including: a paramedic providing
17 emergency medical services in this State; one person who
18 represents licensed hospice care programs in this State; a physician
19 licensed to practice in this State who has had experience in the
20 provision of end-of-life care in this State; one person who
21 represents general hospitals in this State; one person who represents
22 nursing homes in this State; and two members of the general public
23 with expertise or interest in end-of-life care who are not licensed
24 health care professionals, at least one of whom is a member of a
25 minority racial or ethnic group.

26 (2) The advisory committee shall select a chairperson from
27 among its members and a secretary who need not be a member of
28 the advisory committee.

29 (3) Of the public members of the advisory committee first
30 appointed, three shall be appointed for a term of three years, three
31 for a term of two years, and one for a term of one year. Thereafter,
32 the public members shall be appointed for terms of three years. The
33 public members shall be eligible for reappointment and shall serve
34 until the appointment and qualification of their successors.

35 (4) Vacancies in the advisory committee shall be filled for the
36 unexpired terms in the same manner as the original appointments
37 were made.

38 (5) The members of the advisory committee shall not receive any
39 compensation, but shall be reimbursed for expenses incurred in the
40 performance of their duties.

41 (6) The advisory committee shall meet at least quarterly, at a
42 time and place to be specified by the commissioner.

43 (7) The department shall provide such staff and other support to
44 the advisory committee as it deems necessary to perform its duties.

45

46 13. The Commissioner of Health and Senior Services, pursuant
47 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
48 1 et seq.), shall adopt such rules and regulations as are necessary to

1 effectuate the purposes of this act.

2

3 14. This act shall take effect on the first day of the seventh
4 month after the date of enactment, but the Commissioner of Health
5 and Senior Services may take such anticipatory administrative
6 action in advance thereof as shall be necessary for the
7 implementation of this act.

8

9

10 STATEMENT

11

12 This bill, which is designated the “Physician Orders for Life-
13 Sustaining Treatment Act,” provides for the use of Physician Orders
14 for Life-Sustaining Treatment (POLST) forms in New Jersey.

15 The bill provides specifically as follows:

16 • The POLST Paradigm program is established in the Department
17 of Health and Senior Services (DHSS) to enable patients in this
18 State to indicate their preferences for health care through a
19 completed POLST form as a complementary measure to the use
20 of an advance directive for health care, or in lieu of an advance
21 directive if the patient has not executed such a document.

22 • The Commissioner of Health and Senior Services is to:

23 -- oversee and direct the development of the program on a
24 Statewide basis in accordance with the recommendations of the
25 National POLST Paradigm Task Force, and designate an individual
26 within DHSS to serve as Statewide coordinator for the program;

27 -- prescribe, by regulation, a POLST form for use pursuant to the
28 bill and the procedures for completion, modification, and revocation
29 of the form;

30 -- seek to promote awareness among health care professionals
31 and the general public in this State about the POLST form;

32 -- encourage ongoing training of health care professionals about
33 the POLST form;

34 -- prescribe additional requirements for the completion of a
35 POLST form applicable to a patient with mental illness or a
36 developmental disability;

37 -- require that health care institutions annually report to DHSS
38 such data as the commissioner determines reasonably necessary to
39 oversee and evaluate the program; and

40 -- seek to minimize any record-keeping burden imposed on a
41 health care institution pursuant to the bill and ensure the
42 confidentiality of data furnished to DHSS that may contain patient-
43 specific information.

44 • A health care professional or health care institution is to treat a
45 patient who has a completed POLST form in accordance with the
46 information contained therein, except as otherwise provided in
47 the bill.

- 1 • A POLST form is to be deemed completed, and therefore valid
2 for the purposes of the bill, if it:
3 -- contains information indicating a patient's health care
4 preferences;
5 -- has been voluntarily signed by a patient with decision-making
6 capacity, or by the patient's representative at the patient's direction,
7 after receiving, from the patient's attending physician,
8 informational material prepared by DHSS that explains the
9 difference between an advance directive and a POLST form;
10 -- includes the signature of the patient's attending physician and
11 the date of that signature; and
12 -- meets any other requirements to be deemed valid as prescribed
13 by regulation of the commissioner.
- 14 • The bill provides for changes relating to a completed POLST
15 form, as follows:
16 -- If the goals of care of a patient with a completed POLST form
17 change, the patient's attending physician may, after evaluating the
18 patient and, to the maximum extent practicable, acting in
19 consultation with the patient or the patient's representative, issue a
20 new order that modifies or supersedes the completed POLST form.
21 -- A patient with decision-making capacity, may, at any time,
22 modify or revoke the patient's completed POLST form or otherwise
23 request alternative treatment to that ordered on the form.
24 -- If the orders in a patient's completed POLST form regarding
25 the use of any intervention specified therein conflict with the
26 patient's more recent verbal or written directive to the patient's
27 attending physician, the physician is to honor the more recent
28 directive.
29 -- If a patient who has a completed POLST form has lost
30 decision-making capacity, the patient's representative may, at any
31 time, after consultation with the patient's attending physician,
32 request the physician to modify or revoke the completed POLST
33 form, or otherwise request alternative treatment to that ordered on
34 the form, as the patient's representative deems necessary to reflect
35 the patient's health status or goals of care.
- 36 • The bill provides for the resolution of disputes relating to POLST
37 forms, as follows:
38 -- If a disagreement arises among the patient, the patient's
39 representative, and the patient's attending physician concerning the
40 patient's decision-making capacity or the appropriate interpretation
41 and application of the terms of a completed POLST form to the
42 patient's treatment, the parties may seek to resolve the disagreement
43 through the procedures and practices of the health care institution.
44 -- A health care professional involved in the patient's care, other
45 than the attending physician, or an administrator of a health care
46 institution may also invoke those procedures and practices to seek
47 to resolve a disagreement concerning the patient's decision-making
48 capacity or the use of a completed POLST form.

- 1 • Nothing in the bill is to be construed to:
- 2 -- abridge a patient's right to refuse treatment under the federal
3 or State Constitution;
- 4 -- impair a health care professional's obligations to provide for a
5 patient's care and comfort and to alleviate pain, in accordance with
6 accepted medical and nursing standards;
- 7 -- impair the legal validity of an otherwise valid do-not-
8 resuscitate order that is not part of a completed POLST form;
- 9 -- require a health care professional or health care institution to
10 participate in the beginning, continuing, withholding, or
11 withdrawing of health care in a manner contrary to law or accepted
12 medical standards; or
- 13 -- require a private, religiously-affiliated health care institution
14 to participate in the withholding or withdrawing of specified
15 measures utilized to sustain life in a manner contrary to any of its
16 written institutional policies and practices.
- 17 • The bill provides certain liability protections as follows:
- 18 -- A patient's representative is not subject to criminal or civil
19 liability for any action to carry out the terms of a completed POLST
20 form that is performed in good faith and in accordance with the bill.
- 21 -- A health care professional is not subject to criminal or civil
22 liability or to discipline by a health care institution or the applicable
23 State licensing board for professional misconduct for any action to
24 carry out the terms of a completed POLST form that is performed in
25 good faith and in accordance with the bill, any rules and regulations
26 of the commissioner pursuant to the bill, and accepted professional
27 standards.
- 28 -- A health care institution is not subject to criminal or civil
29 liability for any action to carry out the terms of a completed POLST
30 form that is performed in good faith and in accordance with the bill.
- 31 -- The withholding or withdrawing of life-sustaining treatment
32 pursuant to a completed POLST form, when performed in good
33 faith and in accordance with the bill, does not constitute homicide,
34 suicide, assisted suicide, or active euthanasia.
- 35 • The bill provides for certain civil and criminal penalties as
36 follows:
- 37 -- A health care professional who intentionally fails to act as
38 required in the bill is subject to discipline for professional
39 misconduct under section 8 of P.L.1978, c.73 (C.45:1-21).
- 40 -- A health care institution that intentionally fails to act as
41 required in the bill is liable to a civil penalty of not more than
42 \$1,000 for each offense.
- 43 -- A person is guilty of a crime of the fourth degree (punishable
44 by a fine of up to \$10,000 or imprisonment for up to 18 months, or
45 both) if the person: willfully conceals, cancels, defaces, obliterates,
46 or withholds personal knowledge of a completed POLST form or a
47 modification or revocation thereof, without the patient's consent;
48 falsifies or forges a completed POLST form or a modification or

1 revocation thereof of another person; coerces or fraudulently
2 induces the completion of a POLST form or a modification or
3 revocation thereof; requires or prohibits the completion of a POLST
4 form or a modification or revocation thereof as a condition of
5 coverage under a policy of health or life insurance or an annuity, or
6 a public benefits program, or as a condition of the provision of
7 health care; or commits an act as specified in the bill which results
8 in a patient's involuntary earlier death.

9 • The commissioner is to establish and operate the New Jersey
10 POLST Registry, for the collection and dissemination of
11 completed POLST forms in order to help ensure that the health
12 care preferences of each patient who has completed a POLST
13 form are honored.

14 -- The commissioner, in consultation with the POLST Registry
15 Advisory Committee established under the bill, is to adopt
16 regulations for the implementation, operation, and evaluation of the
17 registry, including, but not limited to, those that:

18 (1) require submission of completed or modified POLST forms,
19 or notices of POLST form revocations, to the registry, unless the
20 patient has requested to opt out of the registry as prescribed by
21 regulation of the commissioner;

22 (2) govern submissions of documents to the registry;

23 (3) require the release of information from the registry to
24 authorized recipients for patient treatment purposes; and authorize
25 notification by the registry to specified persons of the receipt,
26 modification, or revocation of a POLST form; and

27 (4) establish procedures to ensure the accuracy and
28 confidentiality of information submitted to the registry.

29 -- The commissioner may permit qualified researchers to access
30 data in the registry in accordance with regulations governing such
31 access, except that the data provided is to contain no information
32 that could be used to identify any patient, health care professional,
33 or health care institution.

34 -- Except to the extent necessary to provide information from the
35 registry to authorized recipients for patient treatment purposes and
36 to notify specified persons of the receipt, modification, or
37 revocation of a POLST form, as prescribed by regulation of the
38 commissioner, all information collected or developed by the
39 registry that could identify a patient, health care professional, or
40 health care institution is to be confidential and not subject to civil or
41 administrative subpoena or discovery in a civil action.

42 -- A person who reports information to the registry or acts on
43 information obtained from the registry in good faith, and in
44 accordance with the provisions of the bill and the rules and
45 regulations adopted pursuant thereto, is immune from any civil or
46 criminal liability that might otherwise be incurred or imposed with
47 respect to those actions.

- 1 -- The commissioner is to establish the POLST Registry
2 Advisory Committee to advise the commissioner regarding the
3 implementation, operation, and evaluation of the POLST registry.
- 4 -- The advisory committee is to include nine members as
5 follows: two persons employed by DHSS, including the Director of
6 the Office of Emergency Medical Services or his designee, as ex
7 officio members; and seven public members residing in this State,
8 to be appointed by the commissioner, including: a paramedic; a
9 hospice representative; a physician with experience in the provision
10 of end-of-life care; a hospital representative; a nursing home
11 representative; and two members of the general public with
12 expertise or interest in end-of-life care who are not health care
13 professionals, at least one of whom is a member of a minority racial
14 or ethnic group.
- 15 -- The advisory committee is to meet at least quarterly, at a time
16 and place to be specified by the commissioner, and DHSS is to
17 provide staff and other support to the advisory committee.
- 18 • The bill takes effect on the first day of the seventh month after
19 enactment, but the commissioner may take administrative action
20 in advance as necessary for its implementation.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3475

STATE OF NEW JERSEY

DATED: JUNE 13, 2011

The Assembly Health and Senior Services Committee reports favorably a committee substitute for Assembly Bill No. 3475.

This committee substitute, which is designated the “Physician Orders for Life-Sustaining Treatment Act,” authorizes the voluntary use of Physician Orders for Life-Sustaining Treatment (POLST) forms in New Jersey and requires physicians and advanced practice nurses to pursue continuing education in end-of-life care.

The substitute provides specifically as follows:

- It is to be the public policy of this State to encourage public awareness and understanding of the POLST 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.
- The Commissioner of Health and Senior Services is to designate a patient safety organization (PSO) operating in this State pursuant to the federal “Patient Safety and Quality Improvement Act of 2005,” to carry out the following responsibilities, by mutual written agreement of the commissioner and the PSO:
 - prescribe a POLST form and the procedures for completion, modification, and revocation of the form;
 - 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;
 - 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;
 - 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 development disabilities, respectively;

-- 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

-- seek to minimize any record-keeping burden imposed on a health care institution pursuant to this substitute 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.

- A health care professional, health care institution, or emergency care provider are required to treat a patient who has a completed POLST form in accordance with the information contained therein, except as otherwise provided in the substitute.

- A POLST form is to be deemed completed if it:

- contains information indicating a patient's health care preferences;

- 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;

- includes the signature of the patient's attending physician or advanced practice nurse (APN) and the date of that signature; and

- meets any other requirements to be deemed valid for the purposes of the substitute.

- The substitute provides for changes relating to a completed POLST form, as follows:

- If the goals of care of a patient with a completed POLST form change, the patient's attending physician or APN may, after evaluating the patient and, to the maximum extent practicable, acting in consultation with the patient or the patient's representative, 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.

- 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 that ordered on the form.

- 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 is to honor the more recent directive.

- If a patient who has a completed POLST form has lost decision-making capacity, the patient's representative may, at any time, 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 that ordered on the form, as the patient's representative deems necessary to reflect the patient's health status or goals of care.

- 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 the substitute, is to be effectuated once the patient's attending physician or APN has signed the POLST form attesting to that request for modification or revocation.
- The substitute provides for the resolution of disputes relating to POLST forms, as follows:
 - If a disagreement arises 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 treatment, the parties may: seek to resolve the disagreement through the procedures and practices of the health care institution; or, if unable to do so in that manner, seek resolution through the courts.
 - 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 use of a completed POLST form in the same manner.
- Nothing in the substitute is to be construed to:
 - abridge a patient's right to refuse treatment under the federal or State Constitution;
 - impair a health care professional's obligations to provide for a patient's care and comfort and to alleviate pain, in accordance with accepted medical and nursing standards;
 - impair the legal validity of an otherwise valid do-not-resuscitate order that is not part of a completed POLST form;
 - 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;
 - 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; or
 - 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.).
- The substitute provides certain liability protections as follows:
 - A patient's representative is not subject to criminal or civil liability for any action to carry out the terms of a completed POLST form that is performed in good faith and in accordance with the substitute.
 - A health care professional, health care institution, or emergency care provider is not subject to criminal or civil liability (or to discipline by a health care institution or the applicable State licensing board for

professional misconduct, as applicable) for any action taken to carry out the terms of a completed POLST form that is performed in good faith and in accordance with the substitute.

-- The withholding or withdrawing of life-sustaining treatment pursuant to a completed POLST form, when performed in good faith and in accordance with the substitute, does not constitute homicide, suicide, assisted suicide, or active euthanasia.

- The substitute provides for certain civil and criminal penalties as follows:

-- A health care professional who intentionally fails to act as required in the substitute is subject to discipline for professional misconduct under section 8 of P.L.1978, c.73 (C.45:1-21).

-- A health care institution that intentionally fails to act as required in the substitute is liable to a civil penalty of not more than \$1,000 for each offense.

-- 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 the substitute is subject to such disciplinary measures as the commissioner deems necessary and within his statutory authority to impose.

-- A person is guilty of a crime of the fourth degree (punishable by a fine of up to \$10,000 or imprisonment for up to 18 months, or both) if the person: willfully conceals, cancels, defaces, obliterates, or withholds personal knowledge of a completed POLST form or a modification or revocation thereof, without the patient's consent; falsifies or forges a completed POLST form or a modification or revocation thereof of another person; coerces or fraudulently induces the completion of a POLST form or a modification or revocation thereof; or requires or prohibits the completion of a POLST form or a modification or revocation thereof as a condition of coverage under a policy of health or life insurance or an annuity, or a public benefits program, or as a condition of the provision of health care.

-- A person is guilty of a crime of the first degree (punishable by a fine of up to \$200,000 or imprisonment for between 10 and 20 years, or both) if the person commits an act as specified in the substitute that results in a patient's involuntary earlier death.

- The Commissioner of Health and Senior Services may take such actions to ensure compliance with the provisions of the substitute by the PSO designated pursuant to the substitute, 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 the substitute.
- The Commissioner of Human Services may take such actions to ensure compliance with the provisions of the substitute by any State or county psychiatric facility or State developmental center as the

commissioner deems necessary and within the commissioner's statutory authority to effectuate the purposes of the substitute.

- The State Board of Medical Examiners is to require that the number of credits of continuing medical education required of each person licensed as a physician, as a condition of biennial registration with the board, include two credits of educational programs or topics related to end-of-life care, although the board may waive this requirement for a specific individual if the board deems it appropriate to do so.
- The New Jersey State Board of Nursing is to require that a person certified as an APN, as a condition of 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 this requirement for a specific individual if the board deems it appropriate to do so.
- The provisions of the substitute concerning use of the POLST form take effect on the first day of the seventh month after enactment of the substitute; and its provisions concerning continuing education in end-of-life care for physicians and APNs take effect on the first day of the 13th month after enactment, but the relevant boards are authorized to take administrative action in advance as necessary for implementation.

The substitute is similar to the Senate Committee Substitute for Senate Bill No. 2197 (1R) (Ruiz/Weinberg), which is pending in the Senate Budget and Appropriations Committee.