

CHAPTER 145

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

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

C.26:2H-129 Short title.

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

C.26:2H-130 Findings, declarations relative to physician orders for life-sustaining treatment (POLST) forms.

2. The Legislature finds and declares that:

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

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

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

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

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

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

g. To date, at least the following states, or communities within these states, have established programs providing for the use of the POLST form that have been endorsed by the National POLST Paradigm Task Force or are in the process of developing such programs: Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska,

Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming; and

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

C.26:2H-131 Definitions relative to POLST form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.26:2H-132 Encouragement of public awareness, understanding of POLST form.

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

C.26:2H-133 Designation of patient safety organization; responsibilities.

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

- a. prescribe a POLST form and the procedures for completion, modification, and revocation of the form;
- b. seek to promote awareness among health care professionals, emergency care providers, and the general public in this State about the option to complete a POLST form;
- c. provide ongoing training of health care professionals and emergency care providers about the use of the POLST form, in consultation with organizations representing, and educational programs serving, health care professionals and emergency care providers, respectively, in this State;
- d. prescribe additional requirements for the completion of a POLST form that may be applicable in the case of a patient with mental illness or a developmental disability in consultation with organizations that represent persons with mental illness and developmental disabilities, respectively;

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

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

C.26:2H-134 Treatment of patient in accordance with POLST form.

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

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

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

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

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

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

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

C.26:2H-135 Modification, supersedure of POLST form.

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

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

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

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

authorize the patient's representative to revoke or modify the patient's completed POLST form, the patient's representative may not revoke or modify the patient's completed POLST form.

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

C.26:2H-136 Procedure in event of disagreement.

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

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

(2) may seek resolution by a court of competent jurisdiction.

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

C.26:2H-137 Construction of act.

9. Nothing in this act shall be construed to:

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

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

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

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

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

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

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

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

C.26:2H-138 Immunity from liability.

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

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

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

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

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

C.26:2H-139 Intentional failure to act, penalties, degree of crime.

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

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

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

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

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

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

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

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

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

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

C.26:2H-140 Ensurance of compliance.

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

C.30:4-7.10 Actions to ensure compliance.

13. The Commissioner of Human Services may take such actions to ensure compliance with the provisions of sections 1 through 11 of P.L.2011, c.145 (C.26:2H-129 et seq.) by any State or county psychiatric facility or State developmental center as the commissioner deems necessary and within his statutory authority to effectuate the purposes of that act.

C.45:9-7.7 Continuing medical education for physicians; rules, regulations.

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

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

C.45:11-47.1 Educational requirements for APN; rules, regulations.

15. a. The New Jersey State Board of Nursing shall require that a person certified as an advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et seq.), as a condition of such continued certification, complete two credits of educational programs or topics related to end-of-life care as part of the total number of continuing education credits required by the

board; except that the board may waive the provisions of this section for a specific individual if the board deems it appropriate to do so.

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

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

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

Approved December 20, 2011.