

Regular Session, 2010

HOUSE BILL NO. 1485 (Substitute for House Bill No. 635 by Representative Mills)

BY REPRESENTATIVE MILLS

WILLS/TESTAMENTS: Provides for the LaPOST program

1 AN ACT

2 To enact Part XXIV-C of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950,
3 to be comprised of R.S. 40:1299.64.1 through 1299.64.6, relative to Louisiana
4 Physician Order for Scope of Treatment; to provide for the Louisiana Physician
5 Order for Scope of Treatment program and form; to provide for definitions; to
6 provide for the promulgation of rules and regulations; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part XXIV-C of Chapter 5 of Title 40 of the Louisiana Revised Statutes
10 of 1950, comprised of R.S. 40:1299.64.1 through 1299.64.6 is hereby enacted to read as
11 follows:

12 PART XXIV-C. Louisiana Physician Order for Scope of Treatment

13 §1299.64.1. Legislative purpose, findings and intent

14 A. The legislature finds and declares all of the following:

15 (1) It is important for people to make health care decisions before a medical
16 crisis presents itself.

17 (2) Health care planning is a process, rather than a single decision, that helps
18 individuals to consider the kind of care they would want if they become seriously ill
19 or incapacitated, and encourages them to talk to their family members or legal
20 representative about such issues.

1 (3) The Louisiana Physician Order for Scope of Treatment "LaPOST" form
2 documents the wishes of a qualified patient in a physician order.

3 (4) The hallmarks of the LaPOST form are the following:

4 (a) Immediately actionable, signed physician orders on a standardized form.

5 (b) Orders that address a range of life-sustaining interventions as well as the
6 patient's preferred treatment for each intervention.

7 (c) A brightly colored, clearly identifiable form.

8 (d) A form that is recognized, adopted, and honored across treatment
9 settings.

10 B.(1) The legislature intends that the provisions of this Part are permissive
11 and voluntary. The legislature further intends that the completion of the Louisiana
12 Physician Order for Scope of Treatment form merely illustrates a means of
13 documenting a decision of a patient relative to withholding or withdrawal of medical
14 treatment or life-sustaining procedures.

15 (2) It is the intent of the legislature that nothing in this Part shall be
16 construed to require the completion of a Louisiana Physician Order for Scope of
17 Treatment form pursuant to this Part.

18 (3) It is the intent of the legislature that nothing in this Part shall be
19 construed to be the exclusive means by which life-sustaining procedures may be
20 withheld or withdrawn, nor shall this Part be construed to require the application of
21 medically inappropriate treatment or life-sustaining procedures to any patient.

22 §1299.64.2. Definitions

23 As used in this Part, the following terms shall have the meanings ascribed to
24 them unless the context clearly states otherwise:

25 (1) "Attending physician" means the physician who has primary
26 responsibility for the treatment and care of the patient.

27 (2) "Certified emergency medical technician" means a certified emergency
28 medical technician as defined in R.S. 40:1231.

1 (3) "Certified first responder" means any person who has successfully
2 completed a training course developed and promulgated by the United States
3 Department of Transportation and adopted by the bureau of emergency medical
4 services of the Department of Health and Hospitals and who is certified by the
5 bureau.

6 (4) "Health care provider" means any home health agency, hospice, hospital,
7 or nursing facility.

8 (5) "LaPOST" means Louisiana Physician Order for Scope of Treatment.

9 (6) "Life-limiting and irreversible condition" means a continual profound
10 comatose state with no reasonable chance of recovery or a condition caused by
11 injury, disease, or illness which within reasonable medical judgment would usually
12 produce death within six months, for which the application of life-sustaining
13 procedures would serve only to postpone the moment of death and for which the life-
14 sustaining procedures would be a burden and not a benefit to the qualified patient,
15 except as provided in the definition of "life-sustaining procedure" herein.

16 (7) "Life-sustaining procedure" means any medical procedure or intervention
17 which, within reasonable medical judgment, would serve only to prolong the dying
18 process of a qualified patient, including such procedures as the invasive
19 administration of nutrition and hydration and the administration of cardiopulmonary
20 resuscitation when the benefits of the procedure do not outweigh the burdens thereof.
21 A "life-sustaining procedure" shall not include any measure deemed as comfort care.
22 Notwithstanding any other provision of this Part, the administration of nutrition and
23 hydration, whether orally or by invasive means, shall always occur except in the
24 event another condition arises which is life-limiting and irreversible and in which
25 nutrition and hydration by any means becomes a greater burden than benefit to the
26 qualified patient.

27 (8) "Louisiana Physician Order for Scope of Treatment" means a form which
28 documents the wishes of a qualified patient in a physician order. The following
29 statements shall appear at the bottom of each page of the form: "Send form with

1 person whenever transferred or discharged. Use of original form is strongly
2 encouraged. Photocopies and faxes of signed LaPOST forms are legal and valid".
3 The form shall include certain fields which provide information, instructions, and
4 areas to record information. The fields shall include but not be limited to the
5 following:

6 (a) A field stating "HIPAA permits disclosure of LaPOST to other health
7 care providers as necessary".

8 (b) A field identifying the form as "Louisiana Physician Orders for
9 Scope of Treatment".

10 (c) A field providing an instruction which reads: "First follow these
11 orders, then contact physician. This is a physician order sheet based on the
12 person's medical condition and wishes. Any section not completed implies
13 full treatment for that section. Everyone shall be treated with dignity and
14 respect. Please see www.La-POST.org for information regarding "what my
15 cultural/religious heritage tells me about end of life care".

16 (d) Fields for recording the last name, first name, middle initial, and
17 date of birth of a qualified patient.

18 (e) A field titled "Patient's diagnosis of life-limiting disease and
19 irreversible condition" with an area below to record information.

20 (f) A field titled "A. Cardiopulmonary resuscitation (CPR): person
21 has no pulse and is not breathing". This field shall provide an instruction
22 which reads "check one" and shall further provide two options for selection.

23 The two options shall be labeled as follows:

24 (i) "CPR / attempt resuscitation (requires full treatment in section
25 B)".

26 (ii) "DNR / do not attempt resuscitation (allow natural death)".

27 (g) A field titled "B. Medical interventions: person has pulse and is
28 breathing". This field shall provide an instruction which reads "check one"

1 and shall further provide three options for selection and one area to record
2 additional orders. The four items shall be labeled as follows:

3 (i) "Comfort measures only: Use medication by any route,
4 positioning, wound care and other measures to relieve pain and suffering.
5 Use oxygen, oral suction and manual treatment of airway obstruction as
6 needed for comfort. Patient prefers no transfer: EMS contact medical control
7 to determine if transport indicated".

8 (ii) "Limited additional interventions: Includes care described above.
9 Use medical treatment, IV fluids and cardiac monitor as indicated. Do not
10 use intubations, advanced airway interventions, or mechanical ventilation.
11 Transfer to hospital if indicated. Avoid intensive care unit if possible".

12 (iii) "Full treatment: Includes care described above. Use intubation,
13 advanced airway interventions, mechanical ventilation. Transfer to hospital
14 if indicated, includes intensive care unit".

15 (iv) "Additional orders (e.g. dialysis, etc.)"

16 (h) A field titled "C. Antibiotics". This field shall provide an
17 instruction which reads "check one" and shall further provide three options
18 for selection and one area to record additional orders. The four items shall
19 be labeled as follows:

20 (i) "No antibiotics. Use other measures to relieve symptoms".

21 (ii) "Use antibiotics if life can be prolonged".

22 (iii) "Determine use or limitation of antibiotics when infection
23 occurs, with comfort as goal. (Benefit of treatment should outweigh burden
24 of treatment)".

25 (iv) "Additional orders:"

26 (i) A field titled "D. Artificially administered fluids and nutrition:
27 (Always offer food / fluids by mouth as tolerated)". This field shall contain
28 the statement "The administration of nutrition and hydration, whether orally
29 or by invasive means, shall always occur except in the event another

1 condition arises, which is life-limiting or irreversible in which the nutrition
2 or hydration becomes a greater burden than benefit to patient". This field
3 shall provide an instruction which reads "check one in each column" and
4 shall further provide a column listing three options for selection, a column
5 listing two options for selection, and one area to record additional orders.
6 The six items shall be labeled as follows and contain the following text,
7 respectively:

8 (i) A column shall list:

9 (a) "No artificial nutrition by tube".

10 (b) "Trial period of artificial nutrition by tube (Goal: _____)".

11 (c) "Long-term artificial nutrition by tube (if needed)".

12 (ii) A column shall list:

13 (a) "IV fluids (Goal: _____)".

14 (b) "No IV fluids".

15 (iii) "Additional orders:"

16 (j) A field titled "E. Other instructions: (May include additional
17 guidelines for starting or stopping treatments in sections above or other
18 directions not addressed elsewhere)".

19 (k) A field titled "F. Summary of goals" which shall comprise the
20 following two parts:

21 (i) An area providing an instruction which reads "check one" and
22 further providing the text "Discussed with" and the following two options for
23 selection:

24 (a) "Patient".

25 (b) "Personal health care representative".

26 (ii) An area providing an instruction which reads "check all that
27 apply" and further providing the text "The basis for these orders is:" and the
28 following four items for selection:

29 (a) "Patient's declaration (can be oral or nonverbal)".

1 **(b) "Patient's personal health care representative (qualified patient**
2 **without capacity)."**

3 **(c) "Patient's advanced directive, if indicated, patient has completed**
4 **an additional document that provides guidance for treatment measures if**
5 **he/she loses medical decision-making capacity".**

6 **(d) "Resuscitation would be medically non-beneficial".**

7 **(l) Fields for recording the name, signature, and phone number of a**
8 **physician.**

9 **(m) Fields, labeled "Mandatory," for recording the signature of the**
10 **patient or personal health care representative and the date of such signature.**

11 **(n) A field stating "If personal health care representative, state**
12 **relationship and authority to act on behalf of patient".**

13 **(o) A field titled "Directions for health care professionals" which**
14 **shall consist of three sections, labeled as follows, and state the following**
15 **information, respectively:**

16 **(i) A section labeled "Completing LaPOST" which shall state the**
17 **following:**

18 **(a) "Must be completed by a physician based on patient preferences**
19 **and medical indications".**

20 **(b) "LaPOST must be signed by a physician to be valid. Verbal**
21 **physician orders are acceptable with follow-up signature by physician in**
22 **accordance with Louisiana law".**

23 **(c) "Use of original form is strongly encouraged. Photocopies and**
24 **faxes of signed LaPOST are legal and valid".**

25 **(ii) A section labeled "Using LaPOST" which shall state the**
26 **following:**

27 **(a) "Any section of LaPOST not completed implies full treatment for**
28 **that section".**

1 **(b) "A semi-automatic external defibrillator (AED) should not be**
2 **used on a person who has chosen "do not attempt resuscitation"**.

3 **(c) "Even if a patient chooses "no artificial nutrition by tube" or "no**
4 **IV fluids" or "trial period of artificial nutrition by tube," the administration**
5 **of nutrition and hydration, whether orally or by invasive means, shall always**
6 **occur except in the event another condition arises which is life-limiting and**
7 **irreversible in which nutrition and hydration by any means becomes a greater**
8 **burden than benefit to patient"**.

9 **(d) "When comfort cannot be achieved in the current setting, the**
10 **person, including someone with "comfort measures only," should be**
11 **transferred to a setting able to provide comfort (e.g. pinning of a hip**
12 **fracture)"**.

13 **(e) "A person who chooses either "comfort measures only" or**
14 **"limited additional interventions" should not be entered into a Level I trauma**
15 **system"**.

16 **(f) "A parenteral (IV/Subcutaneous) medication to enhance comfort**
17 **may be appropriate for a person who has chosen "comfort measures only"**.

18 **(g) "Treatment of dehydration is a measure which may prolong life.**
19 **A person who desires IV fluids should indicate "limited interventions" or**
20 **"full treatment"**.

21 **(h) "A person with capacity or the personal representative (if the**
22 **patient lacks capacity) can revoke the LaPOST at any time and request**
23 **alternative treatment based on the known desires of the individual; or, if**
24 **unknown, the individual's best interests"**.

25 **(i) "Please see links on www.La-POST.org for "what my**
26 **cultural/religious heritage tells me about end of life care"**.

27 **(j) "The duty of medicine is to care for patients even when they**
28 **cannot be cured. Physicians and their patients must evaluate the use of**
29 **technology available for their personal medical situation. Moral judgments**

1 about the use of technology to maintain life must reflect the inherent dignity
2 of human life and the purpose of medical care".

3 (iii) A section labeled "Reviewing LaPOST" which shall provide the
4 following:

5 (a) The statement: "This LaPOST should be reviewed periodically
6 such as when the person is transferred from one care setting or care level to
7 another, or there is a substantial change in the person's health status. A new
8 LaPOST should be completed if the patient wishes to make a substantive
9 change to their treatment goal (e.g. reversal of prior directive). When
10 completing a new form, the old form must be properly voided and retained
11 in the medical chart. To void the LaPOST form, draw a line through
12 "Physician Orders" and write "void" in large letters. This should be signed
13 and dated".

14 (b) A chart titled "Review of this LaPOST form" consisting of four
15 columns which are titled as follows:

16 (1) "Review date and time".

17 (2) "Reviewer".

18 (3) "Location of review".

19 (4) "Review outcome". Each row in this column shall contain the
20 following two options for selection:

21 A. "No change".

22 B. "Form voided and new form completed".

23 (9) "Personal health care representative" means a person who has authority
24 in accordance with Louisiana law to act on behalf of an individual who is an adult
25 or an emancipated minor in making decisions related to health care because of
26 incapacity.

27 (10) "Physician" means a physician or surgeon licensed by the Louisiana
28 State Board of Medical Examiners or by the official licensing authority of another
29 state.

1 (11) "Qualified patient" means a patient diagnosed and certified in writing
2 as having a life-limiting and irreversible condition by the attending physician or
3 personal physician of the patient.

4 §1299.64.3. Louisiana Physician Order for Scope of Treatment

5 A. The secretary of the Department of Health and Hospitals is hereby
6 authorized and directed to promulgate and publish rules, regulations, and standards,
7 in accordance with the Administrative Procedure Act, to provide for the Louisiana
8 Physician Order for Scope of Treatment "LaPOST" program.

9 B. The rules and regulations shall include the following:

10 (1) Promulgation of the LaPOST form.

11 (2) Requirements that shall be met in order for a LaPOST form to be valid,
12 including but not limited to situations in which the personal health care
13 representative of a patient may execute the LaPOST form.

14 (3) Methods for revocation.

15 (4) Requirements which relate to a patient's informed consent upon
16 executing a LaPOST form.

17 (5) Requirements for periodic review of the LaPOST form by the patient and
18 his physician.

19 C. Nothing in this Part shall be construed in any manner to prevent the
20 withholding or the withdrawal of life-sustaining procedures from an adult person
21 who is comatose, incompetent, or otherwise physically or mentally incapable of
22 communication and has not executed a prior LaPOST form in accordance with this
23 Part.

24 D. The Louisiana Physician Order for Scope of Treatment or LaPOST form
25 is not a declaration concerning life-sustaining procedures and therefore shall not
26 have to comply with the provisions of R.S. 40:1299.58.1 through 1299.58.10 in order
27 to be valid and enforceable.

28 §1299.64.4. Physician, health care provider, certified emergency technician, and
29 certified first responder responsibility

1 A. Any attending physician who refuses to comply with the provisions of a
2 duly executed LaPOST form executed pursuant to this Part shall make a reasonable
3 effort to transfer the patient to another physician.

4 B. No provision of this Part imposes a duty upon the physician or health care
5 provider to make a search of whether a patient has executed a LaPOST form.

6 C. If the policies of a health care provider preclude compliance with the
7 LaPOST form executed under this Part or preclude compliance with the provisions
8 pertaining to a representative acting on behalf of a patient, then the health care
9 provider shall take all reasonable steps to transfer the patient to a health care
10 provider with which the provisions of this Part can be effectuated.

11 D. Certified emergency medical technicians and certified first responders
12 shall make a reasonable effort to detect the presence of an executed LaPOST form.

13 §1299.64.5. Immunity from liability

14 A.(1) Any health care provider, physician, or other person acting under the
15 direction of a physician shall not be subject to criminal prosecution or civil liability
16 or be deemed to have engaged in unprofessional conduct as a result of the
17 withholding or withdrawal of life-sustaining procedures from a patient who has duly
18 executed a LaPOST form in accordance with the provisions of this Part, or as a result
19 of transferring a patient to a provider with which the provisions of this Part can be
20 effectuated.

21 (2) Any person, health care provider, physician, or other person acting under
22 the direction of a physician who authorizes the withholding or withdrawal of life-
23 sustaining procedures in accordance with a duly executed LaPOST form, or as
24 otherwise provided in this Part, shall not be subject to criminal prosecution or civil
25 liability for such action.

26 (3) A duly executed LaPOST form made in accordance with this Part shall
27 be presumed to have been made voluntarily.

1 B.(1) A certified emergency medical technician or a certified first responder
2 shall not be subject to criminal prosecution or civil liability for withholding life-
3 sustaining procedures from a patient who has duly executed a LaPOST form.

4 (2) A certified emergency medical technician or a certified first responder
5 shall not be subject to criminal prosecution or civil liability for administering life-
6 sustaining procedures to a patient who has duly executed a LaPOST form when there
7 is no reasonable means by which the certified emergency medical technician or
8 certified first responder could know or should have known that the patient had
9 executed such LaPOST form, or as a result of transferring a patient to a provider with
10 which the provisions of this Part can be effectuated.

11 §1299.64.6. General application

12 A. Nothing in this Part shall be construed to condone, authorize, or approve
13 mercy killing or euthanasia or to permit any affirmative or deliberate act or omission
14 to end life other than to permit the natural process of dying.

15 B.(1) The withholding or withdrawal of life-sustaining procedures from a
16 patient who has duly executed a LaPOST form in accordance with the provisions of
17 this Part shall not, for any purpose, constitute a suicide.

18 (2) The execution of a LaPOST form pursuant to this Part shall not affect
19 the sale, procurement, or issuance of any life insurance policy, nor shall it be deemed
20 to modify the terms of an existing policy.

21 (3) No policy shall be legally impaired or invalidated by the withholding or
22 withdrawal of life-sustaining procedures from an insured who has duly executed a
23 LaPOST form, notwithstanding any term of the policy to the contrary.

24 (4) A person shall not be required to execute a LaPOST form as a condition
25 for being insured or for receiving health care services.

26 (5) The removal of life support systems or the failure to administer cardio-
27 pulmonary resuscitation under this Part shall not be deemed the cause of death for
28 purposes of insurance coverage or the denial of insurance coverage.

- 1 C. The provisions of this Part are cumulative with existing law pertaining to
- 2 an individual's right to consent or refuse to consent to medical or surgical treatment.
- 3 D. It is the policy of the state of Louisiana that human life is of the highest
- 4 and inestimable value through natural death. When interpreting this Part, any
- 5 ambiguity shall be interpreted to preserve human life.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Mills

HB No. 1485

Abstract: Establishes the Louisiana Physician Order for Scope of Treatment (LaPOST) program.

Proposed law establishes the LaPOST program and form, which constitute a means by which a person may convert his wishes concerning life-sustaining medical treatment into a standing medical order.

Proposed law provides specific requirements for the structure and language of the LaPOST form.

Proposed law directs the Dept. of Health and Hospitals to promulgate rules, regulations, and standards to provide for the LaPOST program and form.

Proposed law provides for responsibilities of physicians, health care providers, certified emergency technicians, and certified first responders regarding LaPOST.

Proposed law provides for immunity from liability for health care providers, physicians, and persons acting under the direction of a physician who act in accordance with a duly executed LaPOST form.

Proposed law intends for the LaPOST form to complement other declarations concerning life-sustaining procedures as provided for in present law.

Proposed law stipulates that the LaPOST form is not a declaration concerning life-sustaining procedures and shall not have to comply with the provisions of present law in order to be valid and enforceable.

(Adds R.S. 40:1299.64.1-1299.64.6)