

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 settings.

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

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

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19 withheld or withdrawn, nor shall this Part be construed to require the application of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

21 §1299.64.2. Definitions

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

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

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

28 (3) "Certified first responder" means any person who has successfully
29 completed a training course developed and promulgated by the United States

1 Department of Transportation and adopted by the bureau of emergency medical
2 services of the Department of Health and Hospitals and who is certified by the
3 bureau.

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

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

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

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

25 (8) "Louisiana Physician Order for Scope of Treatment" means a form which
26 documents the wishes of a qualified patient in a physician order. The following
27 statements shall appear at the bottom of each page of the form: "Send form with
28 person whenever transferred or discharged. Use of original form is strongly
29 encouraged. Photocopies and faxes of signed LaPOST forms are legal and valid".

1 The form shall include certain fields which provide information, instructions, and
2 areas to record information. The fields shall include but not be limited to the
3 following:

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

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

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

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

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

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

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

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

24 (g) A field titled "B. Medical interventions: person has pulse and is
25 breathing". This field shall provide an instruction which reads "check one" and shall
26 further provide three options for selection and one area to record additional orders.
27 The four items shall be labeled as follows:

28 (i) "Comfort measures only: Use medication by any route, positioning,
29 wound care and other measures to relieve pain and suffering. Use oxygen, oral

1 suction and manual treatment of airway obstruction as needed for comfort. Patient
2 prefers no transfer: EMS contact medical control to determine if transport indicated".

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

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

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

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

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

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

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

18 (iv) "Additional orders:"

19 (i) A field titled "D. Artificially administered fluids and nutrition: (Always
20 offer food / fluids by mouth as tolerated)". This field shall contain the statement
21 "The administration of nutrition and hydration, whether orally or by invasive means,
22 shall always occur except in the event another condition arises, which is life-limiting
23 or irreversible in which the nutrition or hydration becomes a greater burden than
24 benefit to patient". This field shall provide an instruction which reads "check one in
25 each column" and shall further provide a column listing three options for selection,
26 a column listing two options for selection, and one area to record additional orders.
27 The six items shall be labeled as follows and contain the following text, respectively:

28 (i) A column shall list:

29 (aa) "No artificial nutrition by tube".

- 1 (bb) "Trial period of artificial nutrition by tube (Goal: _____)".
- 2 (cc) "Long-term artificial nutrition by tube (if needed)".
- 3 (ii) A column shall list:
- 4 (aa) "IV fluids (Goal: _____)".
- 5 (bb) "No IV fluids".
- 6 (iii) "Additional orders:"
- 7 (j) A field titled "E. Other instructions: (May include additional guidelines
8 for starting or stopping treatments in sections above or other directions not addressed
9 elsewhere)".
- 10 (k) A field titled "F. Summary of goals" which shall comprise the following
11 two parts:
- 12 (i) An area providing an instruction which reads "check one" and further
13 providing the text "Discussed with" and the following two options for selection:
- 14 (aa) "Patient".
- 15 (bb) "Personal health care representative".
- 16 (ii) An area providing an instruction which reads "check all that apply" and
17 further providing the text "The basis for these orders is:" and the following four
18 items for selection:
- 19 (aa) "Patient's declaration (can be oral or nonverbal)".
- 20 (bb) "Patient's personal health care representative (qualified patient without
21 capacity)."
- 22 (cc) "Patient's advanced directive, if indicated, patient has completed an
23 additional document that provides guidance for treatment measures if he/she loses
24 medical decision-making capacity".
- 25 (dd) "Resuscitation would be medically non-beneficial".
- 26 (l) Fields for recording the name, signature, and phone number of a
27 physician.
- 28 (m) Fields, labeled "Mandatory," for recording the signature of the patient
29 or personal health care representative and the date of such signature.

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

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

6 (i) A section labeled "Completing LaPOST" which shall state the following:

7 (aa) "Must be completed by a physician based on patient preferences and
8 medical indications".

9 (bb) "LaPOST must be signed by a physician to be valid. Verbal physician
10 orders are acceptable with follow-up signature by physician in accordance with
11 Louisiana law".

12 (cc) "Use of original form is strongly encouraged. Photocopies and faxes of
13 signed LaPOST are legal and valid".

14 (ii) A section labeled "Using LaPOST" which shall state the following:

15 (aa) "Any section of LaPOST not completed implies full treatment for that
16 section".

17 (bb) "A semi-automatic external defibrillator (AED) should not be used on
18 a person who has chosen "do not attempt resuscitation"".

19 (cc) "Even if a patient chooses "no artificial nutrition by tube" or "no IV
20 fluids" or "trial period of artificial nutrition by tube," the administration of nutrition
21 and hydration, whether orally or by invasive means, shall always occur except in the
22 event another condition arises which is life-limiting and irreversible in which
23 nutrition and hydration by any means becomes a greater burden than benefit to
24 patient".

25 (dd) "When comfort cannot be achieved in the current setting, the person,
26 including someone with "comfort measures only," should be transferred to a setting
27 able to provide comfort (e.g. pinning of a hip fracture)".

28 (ee) "A person who chooses either "comfort measures only" or "limited
29 additional interventions" should not be entered into a Level I trauma system".

1 (ff) "A parenteral (IV/Subcutaneous) medication to enhance comfort may be
2 appropriate for a person who has chosen "comfort measures only"."

3 (gg) "Treatment of dehydration is a measure which may prolong life. A
4 person who desires IV fluids should indicate "limited interventions" or "full
5 treatment"."

6 (hh) "A person with capacity or the personal representative (if the patient
7 lacks capacity) can revoke the LaPOST at any time and request alternative treatment
8 based on the known desires of the individual; or, if unknown, the individual's best
9 interests"."

10 (ii) "Please see links on www.La-POST.org for "what my cultural/religious
11 heritage tells me about end of life care"."

12 (jj) "The duty of medicine is to care for patients even when they cannot be
13 cured. Physicians and their patients must evaluate the use of technology available for
14 their personal medical situation. Moral judgments about the use of technology to
15 maintain life must reflect the inherent dignity of human life and the purpose of
16 medical care"."

17 (iii) A section labeled "Reviewing LaPOST" which shall provide the
18 following:

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

27 (bb) A chart titled "Review of this LaPOST form" consisting of four columns
28 which are titled as follows:

29 (1) "Review date and time"."

1 (2) "Reviewer".

2 (3) "Location of review".

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

5 A. "No change".

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

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

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

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

17 §1299.64.3. Louisiana Physician Order for Scope of Treatment

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

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

23 (1) Promulgation of the LaPOST form.

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

27 (3) Methods for revocation.

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

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

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

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

12 §1299.64.4. Physician, health care provider, certified emergency technician, and
13 certified first responder responsibility

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

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

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

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

26 §1299.64.5. Immunity from liability

27 A.(1) Any health care provider, physician, or other person acting under the
28 direction of a physician shall not be subject to criminal prosecution or civil liability
29 or be deemed to have engaged in unprofessional conduct as a result of the

1 withholding or withdrawal of life-sustaining procedures from a patient who has duly
2 executed a LaPOST form in accordance with the provisions of this Part, or as a result
3 of transferring a patient to a provider with which the provisions of this Part can be
4 effectuated.

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

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

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

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

22 §1299.64.6. General application

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

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

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

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

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

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

12 C. The provisions of this Part are cumulative with existing law pertaining to
13 an individual's right to consent or refuse to consent to medical or surgical treatment.

14 D. It is the policy of the state of Louisiana that human life is of the highest
15 and inestimable value through natural death. When interpreting this Part, any
16 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 La. 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)