
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1196 Session of
2017

INTRODUCED BY CUTLER, HICKERNELL, GREINER, MILLARD, HELM,
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WARD, PHILLIPS-HILL, SONNEY, WATSON, SIMMONS, BAKER,
CHARLTON, FRANKEL, TOPPER, GILLESPIE, SCHLOSSBERG, MAHER,
CALTAGIRONE, STURLA, MUSTIO, KAMPF, MACKENZIE AND BRIGGS,
SEPTEMBER 6, 2017

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 6, 2017

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in general provisions
3 relating to health care, further providing for applicability,
4 for definitions and for criminal penalties; in living wills,
5 further providing for emergency medical services; in out-of-
6 hospital nonresuscitation, further providing for definitions,
7 for orders, bracelets and necklaces, for revocation, for
8 absence of order, bracelet or necklace and for emergency
9 medical services, repealing provisions relating to advisory
10 committee and providing for discontinuance; providing for
11 Pennsylvania orders for life-sustaining treatment; and making
12 editorial changes.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 5421(a) of Title 20 of the Pennsylvania
16 Consolidated Statutes is amended to read:

17 § 5421. Applicability.

18 (a) General rule.--This chapter applies to advance health
19 care directives [and], out-of-hospital nonresuscitation orders
20 and Pennsylvania orders for life-sustaining treatment.

21 * * *

1 Section 2. The definitions of "medical command physician,"
2 "order" and "patient" in section 5422 of Title 20 are amended
3 and the section is amended by adding definitions to read:

4 § 5422. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 * * *

9 "Medical command physician." A licensed physician who is
10 authorized to give a medical command under [the act of July 3,
11 1985 (P.L.164, No.45), known as the Emergency Medical Services
12 Act] 35 Pa.C.S. Ch. 81 (relating to emergency medical services
13 system).

14 * * *

15 "Order." An out-of-hospital do-not-resuscitate order as
16 defined under section 5483 (relating to definitions) or
17 Pennsylvania orders for life-sustaining treatment as defined
18 under section 5493 (relating to definitions).

19 "Out-of-hospital do-not-resuscitate order" or "OOH-DNR
20 order." An out-of-hospital do-not-resuscitate order as defined
21 under section 5483 (relating to definitions).

22 ["Patient." An out-of-hospital do-not-resuscitate patient as
23 defined under section 5483 (relating to definitions).]

24 * * *

25 "Pennsylvania orders for life-sustaining treatment" or
26 "POLST." Pennsylvania orders for life-sustaining treatment as
27 defined under section 5493 (relating to definitions).

28 Section 3. Sections 5432, 5445(b), 5483, 5484(a) and (b),
29 5485, 5486 and 5487 of Title 20 are amended to read:

30 § 5432. Criminal penalties.

1 (a) Criminal homicide.--A person shall be subject to
2 prosecution for criminal homicide as provided in 18 Pa.C.S. Ch.
3 25 (relating to criminal homicide) if the person intends to
4 cause the withholding or withdrawal of life-sustaining treatment
5 contrary to the wishes of the principal or patient and, because
6 of that action, directly causes life-sustaining treatment to be
7 withheld or withdrawn and death to be hastened and:

8 (1) falsifies or forges the advance health care
9 directive, OOH-DNR order, bracelet [or], necklace or POLST
10 of that principal or patient; or

11 (2) willfully conceals or withholds personal knowledge
12 of a revocation of an advance health care directive or DNR
13 status.

14 (b) Interference with health care directive.--A person
15 commits a felony of the third degree if that person willfully:

16 (1) conceals, cancels, alters, defaces, obliterates or
17 damages an advance health care directive, OOH-DNR order,
18 bracelet [or], necklace or POLST without the consent of the
19 principal or patient;

20 (2) causes a person to execute an advance health care
21 directive or order or wear a bracelet or necklace by undue
22 influence, fraud or duress; or

23 (3) falsifies or forges an advance health care
24 directive, OOH-DNR order, bracelet [or], necklace or POLST
25 or any amendment or revocation thereof, the result of which
26 is a direct change in the health care provided to the
27 principal or patient.

28 § 5445. Emergency medical services.

29 * * *

30 (b) Applicability.--This section is applicable only in those

1 instances where an out-of-hospital DNR order is not in effect
2 under section 5484 (relating to OOH-DNR orders, bracelets and
3 necklaces).

4 § 5483. Definitions.

5 The following words and phrases when used in this subchapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Department." The Department of Health of the Commonwealth.

9 "Emergency medical services provider." [A health care
10 provider recognized under the act of July 3, 1985 (P.L.164,
11 No.45), known as the Emergency Medical Services Act.] As defined
12 under 35 Pa.C.S. § 8103 (relating to definitions). The term
13 includes those individuals recognized under 42 Pa.C.S. § 8331.2
14 (relating to good Samaritan civil immunity for use of automated
15 external defibrillator).

16 "EMS." Emergency medical services.

17 "Health care provider." A person who is licensed, certified
18 or otherwise authorized by the laws of this Commonwealth to
19 administer or provide health care in the ordinary course of
20 business or practice of a profession. The term includes
21 personnel recognized under [the act of July 3, 1985 (P.L.164,
22 No.45), known as the Emergency Medical Services Act,] 35 Pa.C.S.
23 Ch. 81 (relating to emergency medical services system) and those
24 individuals recognized under 42 Pa.C.S. § 8331.2 (relating to
25 good Samaritan civil immunity for use of automated external
26 defibrillator).

27 "Out-of-hospital do-not-resuscitate bracelet." A bracelet in
28 the standard format set forth in section 5484 (relating to OOH-
29 DNR orders, bracelets and necklaces), supplied by the department
30 and issued by the attending physician, which may be worn at the

1 patient's option to notify emergency medical services providers
2 of the presence of an OOH-DNR order.

3 "Out-of-hospital do-not-resuscitate necklace." A necklace in
4 the standard format set forth in section 5484 (relating to OOH-
5 DNR orders, bracelets and necklaces), supplied by the department
6 and issued by the attending physician, which may be worn at the
7 patient's option to notify emergency medical services providers
8 of the presence of an OOH-DNR order.

9 "Out-of-hospital do-not-resuscitate order" or "OOH-DNR
10 order." An order in the standard format set forth in section
11 5484 (relating to OOH-DNR orders, bracelets and necklaces),
12 supplied by the department and issued by the attending
13 physician, directing emergency medical services providers to
14 withhold cardiopulmonary resuscitation from the patient in the
15 event of respiratory or cardiac arrest.

16 "Out-of-hospital do-not-resuscitate patient." An individual
17 who:

18 (1) Has an end-stage medical condition or is permanently
19 unconscious.

20 (2) Pursuant to section 5484(a) (relating to OOH-DNR
21 orders, bracelets and necklaces), possesses and in any manner
22 displays or causes to be displayed for emergency medical
23 services providers an apparently valid OOH-DNR order,
24 bracelet or necklace.

25 "Surrogate." A health care agent or a health care
26 representative.

27 § 5484. [Orders] OOH-DNR orders, bracelets and necklaces.

28 (a) Issuance.--An attending physician, upon the request of a
29 patient who is at least 18 years of age, has graduated from high
30 school, has married or is an emancipated minor, or the patient's

1 surrogate if the surrogate is so authorized, shall issue to the
2 patient an OOH-DNR order and may issue at the request of the
3 patient or the patient's surrogate a bracelet or necklace
4 supplied by the department. The patient may, at the patient's
5 option, wear the bracelet or display the order or necklace to
6 notify emergency medical services providers of the patient's DNR
7 status.

8 (b) Format of OOH-DNR order.--The department shall, with the
9 advice of the Pennsylvania Emergency Health Services Council and
10 with the assistance of the regional emergency medical services
11 councils, make available standard OOH-DNR orders for issuance to
12 patients by attending physicians of this Commonwealth. The form
13 of the order shall contain, but not be limited to, the
14 following:

15 PENNSYLVANIA OUT-OF-HOSPITAL

16 DO-NOT-RESUSCITATE ORDER

17 Patient's full legal name:

18 I, the undersigned, state that I am the attending
19 physician of the patient named above. The above-named patient
20 or the patient's surrogate has requested this order, and I
21 have made the determination that the patient is eligible for
22 an order and satisfies one of the following:

23 has an end-stage medical condition.

24 is permanently unconscious and has a living
25 will directing that no cardiopulmonary resuscitation be
26 provided to the patient in the event of the patient's cardiac
27 or respiratory arrest.

28 I direct any and all emergency medical services
29 personnel, commencing on the effective date of this order, to
30 withhold cardiopulmonary resuscitation (cardiac compression,

1 invasive airway techniques, artificial ventilation,
2 defibrillation and other related procedures) from the patient
3 in the event of the patient's respiratory or cardiac arrest.
4 I further direct such personnel to provide to the patient
5 other medical interventions, such as intravenous fluids,
6 oxygen or other therapies necessary to provide comfort care
7 or to alleviate pain, unless directed otherwise by the
8 patient or the emergency medical services provider's
9 authorized medical command physician.

10 Signature of attending physician:

11 Printed name of attending physician:

12 Dated:

13 Attending physician's emergency telephone number:

14 I, the undersigned, hereby direct that in the event of my
15 cardiac and/or respiratory arrest efforts at cardiopulmonary
16 resuscitation not be initiated and that they may be withdrawn
17 if initiated. I understand that I may revoke these directions
18 at any time by giving verbal instructions to the emergency
19 medical services providers, by physical cancellation or
20 destruction of this form or my bracelet or necklace or by
21 simply not displaying this form or the bracelet or necklace
22 for my EMS [caregivers] providers.

23 Signature of patient (if capable of making informed
24 decisions):

25 I, the undersigned, hereby certify that I am authorized
26 to execute this order on the patient's behalf by virtue of
27 having been designated as the patient's surrogate and/or by
28 virtue of my relationship to the patient (specify
29 relationship:). I hereby direct that in the event
30 of the patient's cardiac and/or respiratory arrest efforts at

1 cardiopulmonary resuscitation not be initiated and be
2 withdrawn if initiated.

3 Signature of surrogate (if patient is incapable of making
4 informed decisions):

5 * * *

6 § 5485. Revocation.

7 (a) Patient.--If a patient has obtained an OOH-DNR order,
8 only the patient may revoke the patient's DNR status.

9 (b) Surrogate.--If a surrogate has obtained an OOH-DNR
10 order, the patient or the surrogate may revoke a patient's
11 status.

12 (c) Manner.--Revocation under this section may be done at
13 any time without regard to the patient's physical or mental
14 condition and in any manner, including verbally or by destroying
15 or not displaying the OOH-DNR order, bracelet or necklace.

16 § 5486. Absence of OOH-DNR order, bracelet or necklace.

17 If an OOH-DNR order has not been issued by an attending
18 physician, a presumption does not arise as to the intent of the
19 individual to consent to or to refuse the initiation,
20 continuation or termination of life-sustaining treatment.

21 § 5487. Emergency medical services.

22 (a) Medical command instructions.--Notwithstanding the
23 absence of an OOH-DNR order, bracelet or necklace pursuant to
24 this section, emergency medical services providers shall at all
25 times comply with the instructions of an authorized medical
26 command physician to withhold or discontinue resuscitation.

27 (b) Effect of OOH-DNR order, bracelet or necklace.--

28 (1) Emergency medical services providers are authorized
29 to and shall comply with an OOH-DNR order if made aware of
30 the order by examining a bracelet, a necklace or the order

1 itself.

2 (2) Emergency medical services providers shall provide
3 other medical interventions necessary and appropriate to
4 provide comfort and alleviate pain, including intravenous
5 fluids, medications, oxygen and any other intervention
6 appropriate to the level of the certification of the
7 provider, unless otherwise directed by the patient or the
8 emergency medical services provider's authorized medical
9 command physician.

10 (3) As used in this subsection, the term "comply" means:

11 (i) to withhold cardiopulmonary resuscitation from
12 the patient in the event of respiratory or cardiac
13 arrest; or

14 (ii) to discontinue and cease cardiopulmonary
15 resuscitation in the event the emergency medical services
16 provider is presented with an OOH-DNR order or discovers
17 a necklace or bracelet after initiating cardiopulmonary
18 resuscitation.

19 (c) Uncertainty regarding validity or applicability of OOH-
20 DNR order, bracelet or necklace.--

21 (1) Emergency medical services providers who in good
22 faith are uncertain about the validity or applicability of an
23 OOH-DNR order, bracelet or necklace shall render care in
24 accordance with their level of certification.

25 (2) Emergency medical services providers who act under
26 paragraph (1) shall not be subject to civil or criminal
27 liability or administrative sanction for failure to comply
28 with an OOH-DNR order under this section.

29 (d) Recognition of other states' orders.--Emergency medical
30 services or [out-of-hospital DNR] OOH-DNR orders, bracelets or

1 necklaces valid in states other than this Commonwealth shall be
2 recognized in this Commonwealth to the extent that these orders,
3 bracelets or necklaces and the criteria for their issuance are
4 consistent with the laws of this Commonwealth. Emergency medical
5 services providers shall act in accordance with the provisions
6 of this section when encountering a patient with an apparently
7 valid EMS or out-of-hospital DNR form, bracelet or necklace
8 issued by another state. Emergency medical services providers
9 acting in good faith under this section shall be entitled to the
10 same immunities and protections that would otherwise be
11 applicable.

12 Section 4. Section 5488 of Title 20 is repealed:

13 [~~§ 5488. Advisory committee.~~

14 (a) Establishment.--Within 60 days of the effective date of
15 this section, the department shall establish a committee to
16 assist it in determining the advisability of using a
17 standardized form containing orders by qualified physicians that
18 detail the scope of medical treatment for patients' life-
19 sustaining wishes.

20 (b) Membership.--The committee shall include representatives
21 from the Pennsylvania Medical Society, the Hospital and Health
22 System Association of Pennsylvania, the Joint State Government
23 Commission's Advisory Committee on Decedents' Estates Laws, the
24 Pennsylvania Bar Association, the Department of Aging, the
25 Department of Public Welfare and other interested persons at the
26 department's discretion.

27 (c) Scope of review.--The committee's review shall include,
28 but not be limited to, examination of the following:

29 (1) The need to adopt this type of standardized form in
30 view of the existing use of do-not-resuscitate orders.

1 (2) The use and evaluation of use of such forms in other
2 states.

3 (3) Any other matters determined by the department to be
4 relevant to its determination.]

5 Section 5. Title 20 is amended by adding a section to read:
6 § 5489. Discontinuance.

7 An OOH-DNR order may not be executed on or after the date the
8 department adopts an initial POLST form under section 5498
9 (relating to POLST form). This subchapter shall continue to
10 apply to any OOH-DNR order executed prior to the date the
11 department adopts an initial POLST form.

12 Section 6. Chapter 54 of Title 20 is amended by adding a
13 subchapter to read:

14 SUBCHAPTER F

15 PENNSYLVANIA ORDERS FOR LIFE-SUSTAINING TREATMENT

16 Sec.

17 5491. Scope of subchapter.

18 5492. Legislative findings and intent.

19 5493. Definitions.

20 5494. Prohibitions on use.

21 5495. Voluntary consent requirement.

22 5496. POLST Advisory Committee.

23 5497. Administration of POLST program.

24 5498. POLST form.

25 5498.1. Education about POLST.

26 5498.2. Requirements for valid POLST.

27 5498.3. Portability.

28 5498.4. Team care.

29 5498.5. Copies of orders.

30 5498.6. Signature options.

- 1 5498.7. Standards for surrogate decision makers.
- 2 5498.8. Revocation.
- 3 5498.9. Transfer requirements.
- 4 5498.10. Review requirements.
- 5 5498.11. Compliance.
- 6 5498.12. Emergency medical services.
- 7 5498.13. Immunity.
- 8 5498.14. Conflict with advance health care directive.
- 9 5498.15. POLST executed under prior POLST form.
- 10 5498.16. POLST executed under PLSWC form.
- 11 5498.17. POLST executed in another state or jurisdiction.
- 12 5498.18. POLST registry study.
- 13 § 5491. Scope of subchapter.

14 This subchapter relates to Pennsylvania Orders for Life-
15 Sustaining Treatment.

16 § 5492. Legislative findings and intent.

17 The General Assembly finds and declares as follows:

18 (1) All individuals have a qualified right to control
19 their health care and should not lose that right if they
20 become incompetent or have never been a competent adult.

21 (2) The Commonwealth has recognized this right by
22 providing for advance health care directives in which
23 individuals may provide direction and state their goals and
24 preferences about future health care and by providing for
25 surrogate decision makers for incompetent adults and
26 unemancipated minors.

27 (3) A Pennsylvania order for life-sustaining treatment,
28 or POLST, differs from an advance health care directive as it
29 converts an individual's wishes regarding health care into a
30 medical order that is immediately actionable and applicable

1 across all health care settings.

2 (4) The use of POLST may overcome many of the
3 limitations and problems associated with advance health care
4 directives and existing orders regarding cardiopulmonary
5 resuscitation and other end-of-life care, including out-of-
6 hospital do-not-resuscitate orders.

7 (5) In many cases, advance health care directives only
8 name a surrogate decision maker to make health care decisions
9 for the principal or lack specificity as to the principal's
10 goals and preferences for a medical condition that
11 subsequently develops because it was not foreseen by the
12 principal.

13 (6) Existing medical orders frequently are ineffective
14 when the patient is transferred from one care setting to
15 another because the procedures, forms and requirements at
16 each care setting may be different, resulting in a loss in
17 the ability of patients to have their wishes honored.

18 (7) Existing emergency medical services protocols may
19 require emergency medical services personnel to proceed to
20 cardiopulmonary resuscitation when an individual is found in
21 cardiac and respiratory arrest, even if the individual has
22 completed an advance directive or has otherwise clearly
23 indicated that the individual does not wish to receive
24 cardiopulmonary resuscitation.

25 (8) A POLST, which is executed by a health care
26 practitioner under appropriate circumstances to implement the
27 wishes of the patient expressed directly by the patient or
28 through a surrogate decision maker, provides clear direction
29 for the patient's care regarding health care issues likely to
30 emerge given the patient's current medical condition.

1 (9) A key step in the POLST process is the health care
2 practitioner's review with the patient or the patient's
3 surrogate decision maker of the patient's current health
4 status, diagnoses and prognosis to determine whether a POLST
5 order would be appropriate or should be updated.

6 (10) A POLST is appropriate for individuals with serious
7 illnesses or frailty if their health care practitioner would
8 not be surprised if they died within the next year and their
9 current health status, diagnoses and prognosis indicates
10 standing medical orders concerning treatment options and
11 other care are appropriate.

12 (11) A POLST is not recommended for individuals with
13 stable, even if chronic, medical conditions and years of life
14 expectancy.

15 (12) Among vulnerable populations, including persons
16 with disabilities, POLST are appropriate for seriously ill or
17 frail patients if their health care practitioner would not be
18 surprised if they died within the next year. POLST are not
19 appropriate for the entire population.

20 (13) It should not be assumed that all patients in any
21 facility, including a nursing home, should have or would
22 desire POLST.

23 (14) The well-being of the patient is paramount in
24 considering a POLST, not cost savings to the government or
25 insurers.

26 (15) A POLST is appropriately entered following a shared
27 decision-making process that facilitates patient consent that
28 is voluntary, educated, collaborative and thoughtful,
29 including a discussion of the patient's current clinical
30 status, treatment options and likely outcomes, together with

1 the patient's goals of care, preferences and values.

2 (16) Conversations about POLST must avoid any bias
3 against continuation of care and must not characterize the
4 continuation of life as burdensome. When appropriate, these
5 conversations should emphasize palliative care and hospice
6 availability.

7 (17) A standardized POLST form, which is easily
8 recognized, understood and implemented, can greatly advance
9 the ability of patients to ensure that their medical care is
10 aligned with their goals of care, preferences and values, as
11 informed by a shared decision-making process.

12 (18) Advance health care directives remain critically
13 important for adults from the age of majority until death. An
14 advance health care directive, rather than a POLST, is the
15 appropriate advance care planning tool for healthy patients.

16 (19) When the use of a POLST becomes appropriate, an
17 existing advance health care directive will help shape the
18 choices of the patient or the patient's surrogate decision
19 maker when discussing a POLST with a health care
20 professional.

21 (20) This subchapter is intended to provide a framework
22 and legal authority for POLST to be valid and portable across
23 all care settings, consistent with the foregoing findings.

24 § 5493. Definitions.

25 The following words and phrases when used in this subchapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Committee." The POLST Advisory Committee established under
29 this subchapter.

30 "Department." The Department of Health of the Commonwealth.

1 "Health care facility." Any of the following:

2 (1) A facility that is licensed as a health care
3 facility by the department under Chapter 8 of the act of July
4 19, 1979 (P.L.130, No.48), known as the Health Care
5 Facilities Act, including, but not limited to, a hospital,
6 long term care facility, home health care agency or hospice.

7 (2) A facility that is licensed or approved by the
8 Department of Human Services under Article IX or X of the act
9 of June 13, 1967 (P.L.31, No.21), known as the Human Services
10 Code, and provides health care services, including, but not
11 limited to, a psychiatric facility or intermediate care
12 facility for the developmentally or intellectually disabled.

13 (3) A facility that is licensed as a prescribed
14 pediatric extended care center by the department under the
15 act of November 24, 1999 (P.L.884, No.54), known as the
16 Prescribed Pediatric Extended Care Centers Act.

17 "Health care insurer." Any person, corporation or other
18 entity that offers administrative, indemnity or payment services
19 under a program of health care or disability benefits,
20 including, but not limited to, the following:

21 (1) An insurance company, association, exchange or
22 fraternal benefit society subject to the act of May 17, 1921
23 (P.L.682, No.284), known as The Insurance Company Law of
24 1921.

25 (2) A health maintenance organization subject to the act
26 of December 29, 1972 (P.L.1701, No.364), known as the Health
27 Maintenance Organization Act.

28 (3) A hospital plan corporation subject to 40 Pa.C.S.
29 Ch. 61 (relating to hospital plan corporations).

30 (4) A professional health service corporation subject to

1 40 Pa.C.S. Ch. 63 (relating to professional health services
2 plan corporations).

3 (5) A self-insured employee welfare benefit plan.

4 (6) A third-party administrator of a self-insured
5 employee welfare benefit plan.

6 (7) A Federal, State or local government sponsored or
7 operated program.

8 "Health care practitioner." A physician, physician assistant
9 or certified registered nurse practitioner acting in accordance
10 with applicable law, including, but not limited to, their
11 respective licensing acts and regulations.

12 "Patient Life-Sustaining Wishes Committee." The committee
13 appointed to assist the department in determining the
14 advisability of using a standardized form containing orders by
15 qualified physicians that detail the scope of medical treatment
16 for patients' life-sustaining wishes under former section 5488
17 (relating to advisory committee).

18 "Pennsylvania orders for life-sustaining treatment" or
19 "POLST." One or more medical orders, issued for the care of an
20 individual, regarding cardiopulmonary resuscitation or other
21 medical interventions that are entered in accordance with
22 section 5498.2 (relating to requirements for valid POLST).

23 "PLSWC form." The form for a POLST previously approved by
24 the department on the recommendation of the Patient Life-
25 Sustaining Wishes Committee.

26 "POLST form." The form for a POLST adopted under section
27 5498 (relating to POLST form).

28 "Secretary." The Secretary of Health of the Commonwealth.

29 "Surrogate decision maker." A health care agent, health care
30 representative, guardian of the person or parent of a minor who

1 is legally authorized to make a health care decision for a
2 patient.

3 § 5494. Prohibitions on use.

4 Nothing in this subchapter shall be construed to advance or
5 support euthanasia, suicide or health care practitioner-assisted
6 suicide.

7 § 5495. Voluntary consent requirement.

8 (a) Patient consent.--No POLST shall be valid without the
9 voluntary consent of the patient or a surrogate decision maker.

10 (b) Health insurance or coverage.--A health care insurer may
11 not:

12 (1) Require an individual to consent to a POLST or to
13 have a POLST as a condition for being insured.

14 (2) Charge an individual a different rate or fee whether
15 or not the individual consents to, or has, a POLST.

16 (3) Require a health care provider to have a policy to
17 offer a POLST to any individual.

18 (4) Provide a health care provider a financial
19 incentive, payment, discount or rating incentive for having a
20 policy or procedure relating to POLST completion.

21 (5) Impose a rating or reimbursement penalty if a health
22 care provider fails to achieve a target for POLST
23 completions.

24 (c) Consultation.--Notwithstanding subsection (b), a health
25 care provider may be paid for consultation with or counseling of
26 a patient concerning a POLST or offering advance health care
27 planning.

28 (d) Health care provider and health care facility
29 policies.--The following shall apply:

30 (1) A health care provider and a health care facility

1 may not make consent to a POLST or having a POLST a condition
2 of admission to, continued occupancy at, or the provision of
3 health care services by the health care provider or a health
4 care facility.

5 (2) A health care provider and a health care facility
6 may not provide a patient or surrogate decision maker an in-
7 kind or financial incentive, payment or discount for
8 consenting to or having a POLST.

9 (3) In complying with paragraphs (1) and (2), a health
10 care provider and a health care facility may have a policy to
11 offer a POLST to appropriate individuals as part of a
12 conversation about goals of care, personal values and
13 preferences, benefits of various treatment options and
14 avoiding unwanted burden.

15 § 5496. POLST Advisory Committee.

16 (a) Appointment.--The secretary shall appoint a POLST
17 Advisory Committee, including a chairperson and vice chairperson
18 of the committee.

19 (b) Role of committee.--The committee shall advise the
20 department on POLST-related matters, including, but not limited
21 to, the format and content of the POLST form and education about
22 POLST.

23 (c) Composition.--The following shall apply:

24 (1) After consulting Statewide organizations comprised
25 of relevant stakeholders, the secretary shall appoint one or
26 more representatives of the following to the committee:

27 (i) The Pennsylvania Medical Society.

28 (ii) The Hospital and Healthsystem Association of
29 Pennsylvania.

30 (iii) The Pennsylvania Homecare Association.

1 (iv) The Pennsylvania Bar Association.

2 (v) The Joint State Government Commission's Advisory
3 Committee on Decedents' Estates Laws.

4 (vi) State and local emergency medical services
5 providers.

6 (vii) Long-term care facilities and providers of
7 long-term support.

8 (viii) Patient advocates.

9 (ix) Disability rights advocates.

10 (x) Faith-based health care providers.

11 (xi) Bioethicists, including both a secular and
12 faith-based representative.

13 (2) The secretary may appoint additional individuals to
14 the committee to provide expertise and a broad representation
15 of interests.

16 (3) The secretary shall ensure that members appointed to
17 the committee include individuals with knowledge about:

18 (i) community POLST coalition efforts; and

19 (ii) nationally-accepted physician orders for life-
20 sustaining treatment standards and educational resources,
21 such as the National POLST Paradigm Task Force.

22 § 5497. Administration of POLST program.

23 (a) Duties.--The department shall perform the following
24 duties in consultation with the committee:

25 (1) Adopt and update a POLST form under section 5498
26 (relating to POLST form).

27 (2) Develop and update basic education materials on
28 POLST under section 5498.1 (relating to education about
29 POLST).

30 (3) Make the POLST form and its educational materials

1 available and accessible through the department's publicly
2 accessible Internet website.

3 (b) Plain language requirement.--In consultation with the
4 committee, the department shall make the POLST form and its
5 educational materials clear, concise, well-organized and
6 otherwise understandable to patients, their families, other
7 surrogate decision makers and health care providers.

8 (c) Coordination.--In the performance of its
9 responsibilities under this subchapter, the department shall
10 coordinate with other State agencies that address the special
11 needs of individuals with disabilities and older persons,
12 including the Departments of Aging and Human Services.

13 § 5498. POLST form.

14 (a) General rule.--In consultation with the committee, the
15 department shall adopt, and periodically update when
16 appropriate, a standard POLST form for health care practitioners
17 to issue a POLST with the voluntary consent of the patient or an
18 authorized surrogate decision maker.

19 (b) Medical order options.--The following shall apply:

20 (1) The POLST form shall include options for a set of
21 medical orders for cardiopulmonary resuscitation and other
22 medical interventions that are determined to be appropriate
23 for a POLST.

24 (2) The POLST form shall be outcome neutral. The medical
25 order options shall range from full treatment to comfort care
26 only, with options in between.

27 (3) The POLST form may include options for nutrition and
28 hydration administered by gastric tube or intravenously or by
29 other medically administered means. If the consent is
30 provided by a surrogate decision maker, the following

1 requirements shall apply:

2 (i) Section 5456(c)(5)(iii) (relating to authority
3 of health care agent).

4 (ii) Section 5461(c) (relating to decisions by
5 health care representative).

6 (iii) Section 5462(c) (relating to duties of
7 attending physician and health care provider).

8 (4) Except as provided under section 5498.2(a)(2)
9 (relating to requirements for valid POLST), no medical order
10 option section shall be required to be completed for the
11 POLST to be valid.

12 (c) Notices.--The following shall apply:

13 (1) The POLST form shall clearly and conspicuously state
14 that a POLST may only be issued with the voluntary consent of
15 the patient or the patient's authorized surrogate decision
16 maker and that a patient or surrogate decision maker may not
17 be compelled by a health care provider or health care insurer
18 to complete or sign a POLST.

19 (2) The POLST form may include other notices regarding
20 patient rights, health care practitioner responsibilities and
21 availability of educational information which the department,
22 in consultation with the committee, determines are
23 appropriate.

24 (d) Identification and signatures.--The following shall
25 apply:

26 (1) The POLST form shall provide for identification of
27 the patient, any surrogate decision maker who consents to the
28 POLST on behalf of the patient and the health care
29 practitioner who issues the POLST.

30 (2) The POLST form shall provide for the signatures of

1 the patient, any surrogate decision maker and the health care
2 practitioner who issues the POLST.

3 (e) Instructions.--The POLST form shall include instructions
4 for its completion. The instructions shall clearly convey:

5 (1) The sections required to be completed for the POLST
6 to be valid.

7 (2) The optional sections, including those regarding
8 health care other than cardiopulmonary resuscitation.

9 (f) Opportunity for comment.--The following shall apply:

10 (1) Prior to adopting the initial POLST form developed
11 after the effective date of this section, the department
12 shall submit for publication notice of the proposed form in
13 the Pennsylvania Bulletin and provide an opportunity for
14 comment on the proposed form for at least 60 days after
15 publication of the notice. The following shall apply:

16 (i) In addition to submitting for publication notice
17 of the initial form in the Pennsylvania Bulletin, the
18 department shall serve a copy of the form to the Health
19 and Human Services Committee of the Senate and the Health
20 Committee of the House of Representatives.

21 (ii) Within 60 days after the close of the comment
22 period, the department shall submit for publication a
23 subsequent notice in the Pennsylvania Bulletin that
24 responds to each comment the department has received. In
25 providing responses to each comment, the department shall
26 indicate the reasons for adopting or rejecting the
27 recommendations made during the comment period. The
28 department shall submit for publication a final version
29 of the POLST form in the Pennsylvania Bulletin and on the
30 department's publicly accessible Internet website.

1 (2) The department shall comply with the procedures
2 under paragraph (1) for updates to the POLST form.

3 (3) The adoption of the initial POLST form and any
4 subsequent updates to the POLST form shall be exempt from the
5 following:

6 (i) Article II of the act of July 31, 1968
7 (P.L.7569, No.240) known as the Commonwealth Documents
8 Law.

9 (ii) Sections 204(b) and 301(10) of the act of
10 October 15, 1980 (P.L.950, No.164), known as the
11 Commonwealth Attorneys Act.

12 (iii) The act of June 25, 1982 (P.L.633, No .181),
13 known as the Regulatory Review Act.

14 (iv) Section 612 of the act of April 9, 1929 (P.L.
15 177, No. 175), known as The Administrative Code of 1929.

16 (g) POLST forms.--POLST forms executed prior to the
17 effective date of this section shall be recognized as valid
18 POLST forms and shall have full force and effect as if executed
19 on or after the effective date of this section.

20 (h) Printed copies.--The POLST form may not be required to
21 be obtained exclusively from the department or any particular
22 vendor. The department shall provide a process for the POLST
23 form to be downloaded free of charge from a publicly accessible
24 Internet website.

25 § 5498.1. Education about POLST.

26 (a) General rule.--In consultation with the committee, the
27 department shall develop, and periodically update when
28 appropriate, educational materials about POLST for patients,
29 surrogate decision makers, health care providers and the public.

30 (b) Basic education.--The department shall make its basic

1 educational materials available in alternative formats that are
2 accessible to persons with a disability. The department's POLST
3 educational materials shall include basic information that
4 explains and provides guidance on the following:

5 (1) The definition of a POLST, including the types of
6 medical interventions that may be covered.

7 (2) How a POLST is an immediately actionable medical
8 order and is valid and portable across all patient settings.

9 (3) When a POLST may be useful and appropriate and when
10 a POLST may not be appropriate.

11 (4) The differences between a POLST and an advance
12 health care directive.

13 (5) The voluntary consent requirement, including a
14 patient's right to refuse to execute a POLST without adverse
15 consequences under section 5495(b) and (d) (relating to
16 voluntary consent requirement).

17 (6) The importance of a shared decision-making process
18 to assure understanding and voluntary consent by patients and
19 surrogate decision makers.

20 (7) When review of a POLST is required or recommended.

21 (8) The obligation of health care providers to comply
22 with a POLST under this subchapter.

23 (9) Legal requirements for surrogate decision making.

24 (10) Appropriate inclusion of patients, to the extent
25 possible, regardless of their physical or mental condition,
26 in decision making when decisions are made on their behalf by
27 surrogate decision makers.

28 (c) Training recommendations.--The department's educational
29 materials shall include recommendations for training of health
30 care practitioners and others who educate patients about POLST

1 or assist in completion of a POLST form to assure that they have
2 the practiced skills of those conversations and understand the
3 applicable law, medical issues and treatments covered by a
4 POLST. These materials shall incorporate information consistent
5 with the findings in section 5492(9) through (16) (relating to
6 legislative findings and intent).

7 (d) Other resources.--The department may provide information
8 about the availability of educational materials from other
9 sources, such as non-profit organizations that provide
10 education, training and resources for POLST programs.

11 § 5498.2. Requirements for valid POLST.

12 (a) General rule.--To be valid, a POLST shall require each
13 of the following:

14 (1) Use of the POLST form, except as provided under
15 section 5498.5 (relating to copies of orders), section
16 5498.15 (relating to POLST executed under prior POLST form),
17 section 5498.16 (related to POLST executed under PLSWC form)
18 and section 5498.17 (related to POLST executed in another
19 state or jurisdiction).

20 (2) Completion of the medical order section regarding
21 cardiopulmonary resuscitation.

22 (3) The date and signature of a health care practitioner
23 in accordance with section 5498.6 (related to signature
24 options), except as provided under subsection (b).

25 (4) The date and signature of the patient or a surrogate
26 decision maker in accordance with section 5498.6, except as
27 provided under subsection (c).

28 (b) Verbal orders.--A verbal order is effective from the
29 date given without countersignature until the expiration of the
30 period of countersignature set forth under paragraph (2) or (3).

1 A health care practitioner's verbal order for a POLST shall be
2 deemed to meet the requirements of subsection (a) (2) if all of
3 the following requirements are met:

4 (1) The order is entered for a patient receiving care
5 from a health care facility.

6 (2) The order is documented on the POLST form and
7 countersigned by the health care practitioner in accordance
8 with any applicable laws and regulations governing the health
9 care facility, including but not limited to a timeframe in
10 which the order must be countersigned.

11 (3) No law or regulation governing the health care
12 facility establishes a time limit in which the order must be
13 countersigned, and the order is countersigned by the health
14 care practitioner within seven days.

15 (c) Verbal consent.--A surrogate decision maker's verbal
16 consent for a POLST shall be deemed to satisfy the requirements
17 of subsection (a) (4) if all of the following requirements are
18 met:

19 (1) Obtaining the signature of the surrogate decision
20 maker is not feasible in a timely manner.

21 (2) The consent is documented on the POLST form by the
22 health care facility in accordance with its policies and
23 procedures.

24 (3) The signature of the surrogate decision maker is
25 obtained as soon as feasible.

26 (d) Effectiveness.--A POLST shall be effective on the date
27 it meets the requirement of this section.

28 § 5498.3. Portability.

29 (a) General rule.--A POLST executed in accordance with this
30 subchapter shall be valid anywhere within this Commonwealth,

1 including, but not limited to, all health care facilities, the
2 patient's residence and other care settings outside of a health
3 care facility, and while the patient is in transit from one
4 health care facility or care setting to another.

5 (b) Authority of health care practitioners.--A POLST
6 executed in accordance with this subchapter shall be valid in a
7 health care facility regardless of whether the health care
8 practitioner who signed the order has clinical privileges with
9 the health care facility.

10 (c) Other orders.--This subchapter does not prohibit a do-
11 not-resuscitate or other order issued for care within a health
12 care facility from being valid and actionable within that health
13 care facility in accordance with the laws and regulations
14 governing the health care facility.

15 § 5498.4. Team care.

16 A health care facility may designate individuals who have
17 been trained in a manner consistent with section 5498.1(c)
18 (relating to education about POLST), including, but not limited
19 to, nurses and social workers, to participate in conversations
20 with a patient or the patient's surrogate decision maker
21 regarding a POLST or assisting in completion of the POLST form.

22 § 5498.5. Copies of orders.

23 A copy of a POLST, including a photocopy, a facsimile or
24 other electronic copy, shall be as effective as the original
25 POLST.

26 § 5498.6. Signature options.

27 (a) Options.--A signature required by section 5498.2
28 (relating to requirements for valid POLST) may be provided by a
29 hand-written signature or any other means allowed under this
30 section.

1 (b) Patient unable to sign.--If a patient is unable to sign
2 by a written signature, it shall be sufficient for:

3 (1) the patient to sign by a mark; or

4 (2) another individual to sign for the patient if that
5 patient specifically directs the other individual to sign the
6 POLST for the patient.

7 (c) Electronic signatures.--In the case of a patient
8 receiving care from a health care facility, a signature on a
9 POLST may be obtained by any electronic means that is authorized
10 by the policies and procedures of the facility and is consistent
11 with the laws governing the facility, including, but not limited
12 to, a digitized signature and a digital signature. A copy of the
13 POLST shall show a representative image of the signature in the
14 applicable signature field.

15 § 5498.7. Standards for surrogate decision makers.

16 (a) General rule.--When making a decision about a POLST on
17 behalf of a patient, a surrogate decision maker shall comply
18 with all applicable legal requirements for health care decision
19 making by a surrogate decision maker, including, but not limited
20 to, those provided under subsection (b), and the decisions of
21 the surrogate decision maker are subject to all applicable legal
22 restrictions on decisions by a surrogate decision maker.

23 (b) Specific laws.--Surrogate decision makers must comply
24 with the following:

25 (1) Subchapter C (relating to health care agents and
26 representatives), including but not limited to:

27 (i) Section 5456(c) (relating to authority of health
28 care agent).

29 (ii) Section 5461(c) (relating to decisions by
30 health care representative).

1 (iii) Section 5462(c) (relating to duties of
2 attending physician and health care provider).
3 (2) Chapter 55 (relating to incapacitated persons).
4 (c) Minors.--A surrogate decision maker for an unemancipated
5 minor shall be subject to the requirements and restrictions
6 applicable to a health care representative for an adult when
7 making a decision about a POLST on behalf of the minor.
8 (d) Competent patient.--This section does not limit the
9 right of a competent patient to consent to a POLST.
10 § 5498.8. Revocation.
11 (a) Consent.--A patient or a surrogate decision maker acting
12 within his decision-making authority may revoke consent to all
13 or part of a POLST at any time and in any manner that
14 communicates an intent to revoke.
15 (b) Notice.--A health care professional or surrogate
16 decision maker who is informed of a revocation shall promptly
17 communicate the fact of the revocation to any attending health
18 care professional and to any health care facility from which the
19 patient is receiving care.
20 (c) Implementation.--A health care provider that is notified
21 of a POLST revocation shall record that the POLST is void in any
22 medical records containing the order that are maintained by the
23 health care provider.
24 § 5498.9. Transfer requirements.
25 (a) Notice of POLST.--A health care facility that transfers
26 a patient with a POLST to another health care facility shall
27 provide the POLST to the receiving facility and any health care
28 providers who are responsible for the patient's care during
29 transport to the receiving facility. The notice of the order
30 shall be provided prior to the transfer, or, if prior notice is

1 not feasible, as soon as feasible thereafter.

2 (b) Compliance.--The requirements of section 5498.11
3 (relating to compliance) shall apply in the event that the
4 receiving health care provider or health care provider involved
5 in the transfer is unable in good conscience to comply with the
6 POLST or the policies of the health care provider preclude
7 compliance.

8 § 5498.10. Review requirements.

9 (a) Mandatory review.--In the event a patient with a POLST
10 is admitted or transferred to a health care facility, the
11 treating health care professional at the health care facility
12 shall review the POLST as soon as feasible with the patient or
13 the patient's authorized surrogate decision maker. The POLST
14 shall remain effective unless and until modified or voided as a
15 result of the review.

16 (b) Recommended review.--In consultation with the committee,
17 the department shall develop recommendations for other
18 situations in which it is appropriate or advisable for a POLST
19 to be reviewed, giving consideration to the following
20 circumstances:

21 (1) A substantial change in the patient's health status.

22 (2) A change in the patient's goals of care or treatment
23 preferences.

24 § 5498.11. Compliance.

25 (a) Notification by attending physician or health care
26 provider.--If an attending physician or other health care
27 provider cannot in good conscience comply with a POLST or if the
28 policies of a health care provider preclude compliance with a
29 POLST, the attending physician or health care provider shall so
30 inform the patient, if the patient is competent, and any

1 surrogate decision maker who consented to the order on behalf of
2 the patient.

3 (b) Transfer.--The attending physician or health care
4 provider under subsection (a) shall make every reasonable effort
5 to assist in the transfer of the patient to another physician or
6 health care provider who will comply with the POLST.

7 (c) Liability.--If transfer under subsection (b) is
8 impossible, the provision of care necessary to sustain life to a
9 patient may not subject an attending physician or a health care
10 provider to criminal or civil liability or administrative
11 sanction for failure to carry out the POLST.

12 (d) Policies.--The department shall require health care
13 facilities to have policies and procedures for implementation of
14 a POLST.

15 § 5498.12. Emergency medical services.

16 (a) Medical command instructions.--Notwithstanding the
17 absence of a do-not-resuscitate order in a POLST, emergency
18 medical services providers shall at all times comply with the
19 instructions of an authorized medical command physician to
20 withhold or discontinue resuscitation.

21 (b) Effect of POLST do-not-resuscitate order.--The following
22 shall apply:

23 (1) Emergency medical services providers shall comply
24 with a do-not-resuscitate order in a POLST if made aware of
25 the order. In order to be in compliance with the do-not-
26 resuscitate order in a POLST, an emergency medical service
27 provider must:

28 (i) withhold cardiopulmonary resuscitation from the
29 patient in the event of respiratory and cardiac arrest;
30 or

1 (ii) discontinue and cease cardiopulmonary
2 resuscitation, in the event the emergency medical
3 services provider is presented with a do-not-resuscitate
4 order in a POLST after initiating cardiopulmonary
5 resuscitation.

6 (2) Emergency medical services providers shall provide
7 other medical interventions necessary and appropriate to
8 provide comfort and alleviate pain, including intravenous
9 fluids, medications, oxygen and any other intervention
10 appropriate to the level of the certification of the
11 provider, unless otherwise directed by the patient or the
12 emergency medical services provider's authorized medical
13 command physician.

14 (c) Uncertainty regarding validity or applicability of do-
15 not resuscitate order in POLST.--The following shall apply:

16 (1) Emergency medical services providers who in good
17 faith are uncertain about the validity or applicability of a
18 do-not-resuscitate order in a POLST shall render care in
19 accordance with their level of certification.

20 (2) Emergency medical services providers who act under
21 paragraph (1) may not be subject to civil or criminal
22 liability or administrative sanction for failure to comply
23 with a do-not-resuscitate order in a POLST.

24 (d) Uncertainty regarding validity or applicability of
25 POLST.--Emergency medical services providers are not required
26 to, but may if they deem it necessary, contact their medical
27 command physician prior to complying with a POLST.

28 § 5498.13. Immunity.

29 (a) Compliance.--A health care provider or other person may
30 not be subject to civil or criminal liability or to discipline

1 for unprofessional conduct for complying with a POLST based upon
2 the good faith assumption that the orders therein were valid
3 when made and have not been revoked or terminated.

4 (b) Noncompliance.--A health care provider or other person
5 may not be subject to civil or criminal liability or to
6 discipline for unprofessional conduct for refusing to comply
7 with a POLST on the good faith belief that:

8 (1) The POLST is not valid.

9 (2) Compliance with the POLST would be unethical or, to
10 a reasonable degree of medical certainty, would result in
11 medical care having no medical basis in addressing any
12 medical need or condition of the patient, provided that the
13 health care provider complies in good faith with sections
14 5462(c) (relating to duties of attending physician and health
15 care provider) and 5498.11 (relating to compliance).

16 (c) Other protection.--This section does not limit the
17 immunity available to a health care provider or person under
18 sections 5431 (relating to liability) or 5498.12(c) (2) (relating
19 to emergency medical services).

20 § 5498.14. Conflict with advance health care directive.

21 If a POLST conflicts with a provision of an advance health
22 care directive, the provision of the instrument latest in date
23 of execution shall prevail to the extent of the conflict.

24 § 5498.15. POLST executed under prior POLST form.

25 A POLST executed on a POLST form that was valid when executed
26 shall remain valid even if the department subsequently adopts a
27 revised form.

28 § 5498.16. POLST executed under PLSWC form.

29 (a) Validity.--Except as provided under subsection (b), a
30 POLST executed on the PLSWC form prior to the adoption of a

1 POLST form under this subchapter is effective to the same extent
2 as it would be effective if executed on the POLST form.

3 (b) Emergency medical services providers.--Emergency medical
4 services providers are not required to, but may if they deem it
5 necessary, contact their medical command physician prior to
6 complying with a POLST executed on the PLSWC form.

7 (c) Immunity.--For purposes of the immunity under sections
8 5431 (relating to liability) and 5498.13 (relating to immunity),
9 a POLST executed on the PLSWC form shall be deemed to be a POLST
10 executed under this subchapter.

11 § 5498.17. POLST executed in another state or jurisdiction.

12 (a) Validity.--Except as provided under subsection (b), a
13 health care provider may comply with a POLST, or its substantial
14 equivalent executed under the laws of another state or
15 jurisdiction and in conformity with the laws of that state or
16 jurisdiction, if:

17 (1) the order meets the requirements of section
18 5498.2(a)(2) through (4) (relating to requirements for valid
19 POLST); and

20 (2) the health care provider consults, as soon as
21 feasible, with the patient if competent and any surrogate
22 decision maker regarding continued compliance with the order.

23 (b) Exception.--Subsection (a) shall not apply to orders
24 executed in another state or jurisdiction to the extent that the
25 order directs procedures or the withholding or withdrawal of
26 procedures under circumstances that are inconsistent with the
27 laws of this Commonwealth, including, but not limited to,
28 section 5498.7 (relating to standards for surrogate decision
29 makers).

30 (c) Immunity.--For purposes of the immunity under section

1 5431 (relating to liability) and section 5498.13 (related to
2 immunity), a POLST, or its substantial equivalent that was
3 executed under the laws of another state or jurisdiction and is
4 valid under subsections (a) and (b), shall be deemed to be a
5 POLST executed under this subchapter.

6 § 5498.18. POLST registry study.

7 (a) Study.--In consultation with the committee and the
8 Pennsylvania eHealth Partnership Authority, the department shall
9 study the feasibility and cost of creating an Internet-based
10 POLST registry that would allow health care providers caring for
11 a patient to obtain a current POLST for the patient.

12 (b) Report.--The department shall report the results of its
13 study to the Health and Human Services Committee of the Senate
14 and the Health Committee of the House of Representatives. The
15 department shall report the status of the study to the
16 committees at least every 180 days until the final results are
17 reported.

18 Section 7. This act shall take effect as follows:

19 (1) The following provisions shall take effect
20 immediately:

21 (i) This section.

22 (ii) The addition of 20 Pa.C.S. § 5496.

23 (2) The remainder of this act shall take effect in 90
24 days.