Physicians Orders for Life-Sustaining Treatment

By CSG Committee on Suggested State Legislation [1]
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Submitted as:
Idaho
HB119 [Engrossed Bill (Original Bill with Amendment(s) Incorporated)]
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According to the Alzheimer’s Association, Physician Orders For Life-Sustaining Treatment (POLST) are forms people complete with their doctor for the purpose of clearly defining which medical treatments are to be given to them at the end of their lives. At least eight states currently recognize POLST forms, including California, Idaho, New York, North Carolina, Oregon, Tennessee, Washington and West Virginia. Although the names may differ slightly by state (such as Idaho’s POST program), the forms are essentially the same.

A POLST form is easily recognizable because it is printed on brightly colored paper. It is intended for people with a terminal illness, anyone in a nursing home, or anyone expected to die within the next year. A POLST form offers more choices than a DNR, which typically gives people just two choices if they go into cardiac arrest: resuscitate or do not resuscitate. On a POLST form, people can record their choices about feeding tubes, intubation, mechanical ventilation, IV fluids, comfort measures, or other treatments. The elections in a POLST form constitute a physician’s order. While advance directives merely express a person’s wishes, a POLST form translates those wishes into medical orders that healthcare professionals such as EMT’s and physicians must follow.

POLST forms follow patients across care settings. When someone moves from a nursing home to the hospital or is discharged from the hospital and returns to their home, a DNR or advance directive is not guaranteed to stand in the new setting. With a POLST form, however, the physician’s order is enforceable regardless of setting. Most states with POLST programs, such as Idaho, include in their POLST laws that if there is a disagreement between an advance directive or other end-of-life planning document and a POLST form, the POLST form legally trumps the advance directive.

If a person lives at home, their POLST form is usually taped to the refrigerator so it can be located easily in a medical emergency. If the person lives in a long-term care facility, the form goes in their chart. Paramedics in POLST states are trained to check for a POLST form before making treatment decisions. When transporting a person to a hospital, paramedics physically attach the POLST form to the patient, so physicians and other hospital staff can align care with the person’s wishes as
expressed on the POLST form. Idaho also authorized the development of a standardized piece of POST identification jewelry that people can wear.

Interested readers can find information about state efforts to enable people to use POLST forms at Physician Orders for Life-Sustaining Treatment (POLST) Paradigm Program (http://www.ohsu.edu/polst/programs/ [3]).

The draft legislation in this SSL volume is based on a 2007 Idaho law about medical care at the end of a person’s life. This Act:
• contains provisions about giving consent to one’s care to another person;
• contains provisions applicable to a Living Will and Durable Power of Attorney for Health Care;
• provides a duty to inspect certain medical documents;
• contains provisions relating to immunity for actions taken under the Act; and
• incorporates Physician Orders for Scope of Treatment and related protocols into making medical care decisions in advance of dying.

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act shall be cited as “An Act to Address Medical Directives and Physician Orders for Scope of Treatment (POST).”

Section 2. [Purposes and Application.]
(A) The primary purposes of this Act are:
(1) To codify [state] law concerning consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures, and concerning what constitutes an informed consent for such care, treatment or procedures; and
(2) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.
(B) Nothing in this Act shall be deemed to amend or repeal the provisions of [insert citation] pertaining to hospitalization of the mentally ill, provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.
(C) Nothing in this Act shall be construed to permit or require the provision of health care for a patient in contravention of the patient’s stated or implied objection thereto upon religious grounds nor shall anything in this Act be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient’s parent or spouse.

Section 3. [Definitions.] As used in this Act:
(1) “Artificial life-sustaining procedure” means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which, when applied to a qualified patient, would serve only to artificially prolong life. “Artificial life-sustaining procedure” does not include the administration of pain management medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.
(2) “Artificial nutrition and hydration” means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.
(3) “Attending physician” means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.
(4) “Cardiopulmonary resuscitation” or “CPR” means measures to restore cardiac function and/or to support ventilation in the event of cardiac or respiratory arrest.
“Comfort care” means treatment and care to provide comfort and cleanliness. “Comfort care” includes:
(a) Oral and body hygiene;
(b) Reasonable efforts to offer food and fluids orally;
(c) Medication, positioning, warmth, appropriate lighting and other measures to relieve pain and suffering; and
(d) Privacy and respect for the dignity and humanity of the patient.

“Consent to care” includes refusal to consent to care and/or withdrawal of care.

“Directive” or “health care directive” means a document meeting the requirements of [insert citation] and/or a “Physician Orders for Scope of Treatment (POST)” form signed by a physician.

“Emergency medical services personnel” means personnel engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians and paramedics.

“Health care provider” or “provider” means any person or entity licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency or other medical services personnel.

“Persistent vegetative state” means an irreversible state that has been medically confirmed by a neurological specialist who is an expert in the examination of nonresponsive individuals in which the person has intact brain stem function but no higher cortical function and no awareness of self or environment.

“Physician” means a person who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in this state and is in good standing with no restriction upon or actions taken against his or her license.

“Physician Orders for Scope of Treatment (POST) form” means a standardized form containing orders by a physician that states a person's treatment wishes.

“Physician Orders for Scope of Treatment (POST) Identification Device” means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the [department of health and welfare].

“Terminal condition” means an incurable or irreversible condition which, without the administration of life-sustaining procedures, will, in the opinion of a physician, result in death if it runs its usual course.

Section 4. [People Who May Consent to Their Own Care.] Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite intelligence and awareness at the time of giving the consent.

Section 5. [People Who May Give Consent to Care for Others.]
(A) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures to any person who is not then capable of giving such consent as provided in this Act or who is a minor or incompetent person, may be given or refused in the order of priority set forth hereafter unless the patient is a competent person who has refused to give such consent, and provided further that this subsection shall not be deemed to authorize any person to override the express refusal by a competent patient to give such consent himself:
(1) The legal guardian of such person;
(2) The person named in a “Living Will and Durable Power of Attorney for Health Care” pursuant to [insert citation], or a similar document authorized by this Act;
(3) If married, the spouse of such person;
A parent of such person;
Any relative representing himself or herself to be an appropriate, responsible person to act under
the circumstances;
Any other competent individual representing himself or herself to be responsible for the health
care of such person; or
If the subject person presents a medical emergency or there is a substantial likelihood of his or her
life or health being seriously endangered by withholding or delay in the rendering of such hospital,
medical, dental or surgical care to such patient and the subject person has not communicated and is
unable to communicate his or her treatment wishes, the attending physician or dentist may, in his or
her discretion, authorize and/or provide such care, treatment or procedure as he or she deems
appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such
physician or dentist, may proceed as if informed, valid consent therefore had been otherwise duly
given.
(B) No person who, in good faith, gives consent or authorization for the provision of hospital, medical,
dental or surgical care, treatment or procedures to another as provided by this Act shall be subject to
civil liability therefor.
(C) No health care provider who, in good faith, obtains consent from a person pursuant to either
section 4 of this Act or paragraph (A) of this section, shall be subject to civil liability therefor.
Section 5. [Blood Testing.]
(A) A physician may consent to ordering tests of a patient's or a deceased person's blood or other
body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without
the prior consent of the patient if:
1. There has been or is likely to be a significant exposure to the patient's or a deceased person's
   blood or body fluids by a person providing emergency or medical services to such patient which may
   result in the transmittal of a virus or disease; and
2. The patient is unconscious or incapable of giving informed consent and the physician is unable to
   obtain consent pursuant to section 4 of this Act.
(B) The [department of health and welfare] shall promulgate rules identifying the blood-transmitted or
body fluid-transmitted viruses or diseases for which blood tests or body fluid tests can be ordered
under this section and defining the term “significant exposure” as provided in this section.
(C) Results of tests conducted under this section which confirm the presence of a blood-transmitted or
body fluid-transmitted virus or disease shall be reported to the director of the [department of health
and welfare] in the name of the patient or deceased person. The [department] records containing
such test results shall be used only by public health officials who must conduct investigations. The
exposed person shall only be informed of the results of the test and shall not be informed of the name
of the patient or deceased person. Protocols shall be established by hospitals to maintain
confidentiality while disseminating the necessary test result information to persons who may have a
significant exposure to blood or other body fluids and to maintain records of such tests to preserve
the confidentiality of the test results.
(D) Any person who willfully or maliciously discloses the results of a test conducted under this section,
except pursuant to a written authorization by the person whose blood was tested or by such person's
authorized representative, or as otherwise authorized by law, shall be guilty of a [misdemeanor.]
Section 6. [Sufficiency of Consent.] Consent, or refusal to consent, for the furnishing of hospital,
medical, dental or surgical care, treatment or procedures shall be valid in all respects if the person
giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the
nature of, and the significant risks ordinarily attendant upon, such a patient receiving such care, as to
permit the giving or withholding of such consent to be a reasonably informed decision. Any such
consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by
whom it is secured has made such disclosures and given such advice respecting pertinent facts and
considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term “in the same community” refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

Section 7. [Form of Consent.] It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other specific form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initiated by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

Section 8. [Responsibility for Consent and Documentation.] Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; provided however, a licensed hospital and any medical or dental office employee, acting with the approval of such an attending or other physician or dentist, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the patient. In performing such a ministerial act, the hospital or medical or dental office employee shall not be deemed to have engaged in the practice of medicine or dentistry.

Section 9. [Statement of Policy -- Definition.] For purposes of [section 9 of this Act through the end of this Act]:

(1) The [legislature] recognizes the established common law and the fundamental right of adults to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The [legislature] further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The [legislature] further finds that patients are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the patient because of the patient’s inability to communicate with the physician.

(2) In recognition of the dignity and privacy which patients have a right to expect, the [legislature] hereby declares that the laws of this state shall recognize the right of a competent person to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the physician.

(3) It is the intent of the [legislature] to establish an effective means for such communication. It is not the intent of the [legislature] that the procedures described in [sections 9 of this Act through the end of this Act], are the only effective means of such communication, and nothing in [sections 9 of this Act through the end of this Act] shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person’s wishes with respect to health care should be honored.

(4) “Competent person” means any emancipated minor or person [eighteen (18)] or more years of age who is of sound mind.

Section 10. [Living Will and Durable Power of Attorney for Health Care.]

(A) Any competent person may execute a document known as a “Living Will and Durable Power of Attorney for Health Care.” Such document shall be in substantially the following form, or in another form that contains the elements set forth in this Act. Any portions of the “Living Will and Durable Power of Attorney for Health Care” which are left blank by the person executing the document shall
be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive .................................................................
Name of person executing Directive ..................................................
Address of person executing Directive ..................................................

A LIVING WILL

A Directive to Withhold or to Provide Treatment
1. I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:
   a. I have an incurable or irreversible injury, disease, illness or condition, and a medical doctor who has examined me has certified:
      1. That such injury, disease, illness or condition is terminal; and
      2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and
      3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or
   b. I have been diagnosed as being in a persistent vegetative state.
   In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

   Check one box and initial the line after such box:
   ....... I direct that all medical treatment, care and procedures necessary to restore my health and sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.
   ....... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

   Check one box and initial the line after such box:
   A. ....... Only hydration of any nature, whether artificial or nonartificial, shall be administered;
   B. ....... Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;
   C. ....... Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

   ....... I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.
2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.
3. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.
4. Check one box and initial the line after such box:
   ....... I have discussed these decisions with my physician and have also completed a Physician Orders for Scope of Treatment (POST) Form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if
A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent:
   (1) your treating health care provider; (2) a nonrelative employee of your treating health care
   provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of
   a community care facility. If the agent or an alternate agent designated in this Directive is my spouse,
   and our marriage is thereafter dissolved, such designation shall be thereupon revoked.
   I do hereby designate and appoint the following individual as my attorney in fact (agent) to make
   health care decisions for me as authorized in this Directive. (Insert name, address and telephone
   number of one individual only as your agent to make health care decisions for you.)

   Name of Health Care Agent: …………………………………………………………
   Address of Health Care Agent: …………………………………………………………
   …………………………………………………………
   Telephone Number of Health Care Agent: ……………………………………………..

   For the purposes of this Directive, “health care decision” means consent, refusal of consent, or
   withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an
   individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I
   create a Durable Power of Attorney for Health Care. This power of attorney shall not be affected by
   my subsequent incapacity. This power shall be effective only when I am unable to communicate
   rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and
   authority to make health care decisions for me to the same extent that I could make such decisions
   for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care
   decisions that are consistent with my desires as stated in this Directive or otherwise made known to
   my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing
   artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a
   Living Will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by
   me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you
   can state the limitations in paragraph 4 (“Statement of Desires, Special Provisions, and Limitations”)
   below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health
   care decisions that are consistent with your known desires. You can, but are not required to, state
   your desires in the space provided below. You should consider whether you want to include a
   statement of your desires concerning artificial life-sustaining care, treatment, services and
   procedures. You can also include a statement of your desires concerning other matters relating to
   your health care, including a list of one or more persons whom you designate to be able to receive
   medical information about you and/or to be allowed to visit you in a medical institution. You can also
   make your desires known to your agent by discussing your desires with your agent or by some other
   means. If there are any types of treatment that you do not want to be used, you should state them in
   the space below. If you want to limit in any other way the authority given your agent by this Directive,
you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this Durable Power of Attorney for Health Care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in my Physician Orders for Scope of Treatment (POST) form, a Living Will, or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations ... (You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.
A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 "Statement of Desires, Special Provisions, and Limitations" above.)
B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a “Refusal to Permit Treatment” and/or a “Leaving Hospital Against Medical Advice”; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS.
1. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:
A. First Alternate Agent:
Name ..............................................................................
Address ........................................................................
Telephone Number ..........................................................

B. Second Alternate Agent:
Name ............................................................................
Address ........................................................................
Telephone Number ..........................................................

C. Third Alternate Agent:
Name ...........................................................................
Address ........................................................................
Telephone Number ..........................................................

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior Durable Power of Attorney for Health Care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this form at .......................................................... (City, State) ..................................................

Signature .................................................................

Section 11. [Registering Health Care Directives.] A health care directive meeting the requirements of [this Act] may be registered with the [secretary of state] pursuant to [insert citation]. Failure to register the health care directive shall not affect the validity of the health care directive.

Section 12. [Revocation.]
(A) A “Living Will and Durable Power of Attorney for Health Care” or Physician Orders for Scope of Treatment (POST) form may be revoked at any time by the maker thereof by any of the following methods:
(1) By being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;
(2) By a written, signed revocation of the maker thereof expressing his intent to revoke; or
(3) By an oral expression by the maker thereof expressing his intent to revoke.
(B) The maker of the revoked Living Will and Durable Power of Attorney For Health Care is responsible for notifying his physician of the revocation.
(C) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a “Living Will and Durable Power of Attorney for Health Care” or Physician Orders for Scope of Treatment (POST) form made pursuant to [this Act] unless that person has actual knowledge of the revocation.

Section 13. [Physician Orders for Scope of Treatment (POST).]
(A) A Physician Orders for Scope of Treatment (POST) form is appropriate in cases where a patient has an incurable or irreversible injury, disease, illness or condition, or where a patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are anticipated.
(B) The POST form shall be effective from the date of execution unless otherwise revoked. If there is a conflict between the person's expressed directives, the POST form, and the decisions of the Durable Power of Attorney representative or surrogate, the orders contained in the POST form shall be followed.
(C) The attending physician shall, upon request of the patient, provide the patient with a copy of the POST form, discuss with the patient the form's content and ramifications and treatment options, and assist the patient in the completion of the form.
(D) The attending physician shall review the POST form:
(1) Each time the physician examines the patient, or at least every [seven (7)] days, for patients who
are hospitalized; and
(2) Each time the patient is transferred from one care setting or care level to another; and
(3) Any time there is a substantial change in the patient's health status; and
(4) Any time the patient's treatment preferences change.

Failure to meet these review requirements does not affect the POST form's validity or enforceability.
As conditions warrant, the physician may issue a superseding POST form. The physician shall,
whenever practical, consult with the patient or the patient's agent.

(E) A patient who has completed a POST form signed by a physician may wear a POST Identification
Device as provided in section 3 (13) of this Act.

(F) The [department of health and welfare] shall develop the POST Form.

Section 14. [Adherence to Physician Orders for Scope of Treatment (POST) Protocol.]
(A) Health care providers and emergency medical services personnel shall comply with a patient's
Physician Orders for Scope of Treatment (POST) instruction when presented with a completed POST
form signed by a physician or when a patient is wearing a proper POST Identification Device pursuant
to section 3 (13) of this Act.

(B) A completed POST form is deemed to meet the requirements of “Do Not Resuscitate (DNR)” forms
of all [state] health care facilities. Health care providers and emergency medical services personnel
shall not require the completion of other forms in order for the patient's wishes to be respected.

Section 15. [Duty To Inspect.] Health care providers and emergency medical services personnel shall
make reasonable efforts to inquire as to whether the patient has completed a Physician Orders for
Scope of Treatment (POST) form and inspect the patient for a POST Identification Device when
presented with a situation calling for artificial life-sustaining treatment not caused by severe trauma
or involving mass casualties and with no indication of homicide or suicide.

Section 16. [Immunity.]
(A) No emergency medical services personnel, health care provider, facility, or individual employed
by, acting as the agent of, or under contract with any such health care provider or facility shall be
civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions
carried out or performed in good faith pursuant to the directives in a facially valid POST form or Living
Will or by the holder of a facially valid Durable Power of Attorney or directive for health care.

(B) Any physician or other health care provider who for ethical or professional reasons is incapable or
unwilling to conform to the desires of the patient as expressed by the procedures set forth in this
chapter may withdraw without incurring any civil or criminal liability provided the physician or other
health care provider, before withdrawal of his or her participation, makes a good faith effort to assist
the patient in obtaining the services of another physician or other health care provider who is willing
to provide care for the patient in accordance with the patient's expressed or documented wishes.

(C) No person who exercises the responsibilities of a Durable Power of Attorney for Health Care in
good faith shall be subject to civil or criminal liability as a result.

(D) Neither the registration of a health care directive in the health care directive registry under [insert
citation], nor the revocation of such a directive requires a health care provider to request information
from that registry. The decision of a health care provider to request or not to request a health care
directive document from the registry shall be immune from civil or criminal liability. A health care
provider who in good faith acts in reliance on a facially valid health care directive received from the
health care directive registry shall be immune from civil or criminal liability for those acts done in
such reliance.

(E) Health care providers and emergency medical services personnel may disregard the POST form or
a POST Identification Device:
(1) If they believe in good faith that the order has been revoked; or
(2) To avoid oral or physical confrontation; or
(3) If ordered to do so by the attending physician.

Section 17. [General Provisions.]
(A) Application. This Act shall have no effect or be in any manner construed to apply to people not executing a “Living Will and Durable Power of Attorney for Health Care” or POST form pursuant to this Act nor shall it in any manner affect the rights of any such people or of others acting for or on behalf of such people to give or refuse to give consent or withhold consent for any medical care, neither shall this Act be construed to affect [insert citation] in any manner.

(B) Euthanasia, mercy killing, or assisted suicide. This Act does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

(C) Comfort care. People who are taking care of a patient for whom artificial life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide comfort care as defined in section 3 of this Act.

(D) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless:
(1) A completed Living Will for that person is in effect, pursuant to section 10 of this Act, and the person is in a terminal condition or persistent vegetative state; or
(2) A completed Durable Power of Attorney for Health Care for that person is in effect, pursuant to section 10 of this Act, in which the person has indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation; or
(3) The patient has a completed Physician Orders for Scope of Treatment (POST) form indicating otherwise and/or proper POST identification pursuant to this Act.

(E) Futile care. Nothing in this Act shall be construed to require medical treatment that is medically inappropriate or futile.

(F) Existing directives and directives from other states. A Health Care Directive executed prior to [July 1, 2007], but which was in the Living Will, Durable Power of Attorney for Health Care, DNR, or POST form pursuant to prior [state] law at the time of execution, or in another form that contained the elements set forth in this Act at the time of execution, shall be deemed to be in compliance with this Act. Health Care Directives or similar documents executed in another state that substantially comply with this Act shall be deemed to be in compliance with this Act.

(G) Insurance.
(1) The making of a Living Will and/or Durable Power of Attorney for Health Care or Physician Orders for Scope of Treatment (POST) form pursuant to this Act shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary.
(2) No physician, health care facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a Living Will and Durable Power of Attorney for Health Care or Physician Orders for Scope of Treatment (POST) form as a condition for being insured for, or receiving, health care services.

(H) Portability and copies.
(1) A completed Physician Orders for Scope of Treatment (POST) form signed by a physician shall be transferred with the patient to, and be effective in, all care settings including, but not limited to, home care, ambulance or other transport, hospital, residential care facility, and hospice care. The POST form shall remain in effect until such time as there is a valid revocation pursuant to section 12 of this
Act, or new orders are issued by a physician.

(2) A photostatic, facsimile or electronic copy of a valid Physician Orders for Scope of Treatment (POST) form may be treated as an original by a health care provider or by an institution receiving or treating a patient.

(I) Registration. A directive or the revocation of a directive meeting the requirements of this Act may be registered with the [secretary of state] pursuant to [insert citation]. Failure to register the health care directive shall not affect the validity of the health care directive.

(J) Rulemaking authority.

(1) The [department of health and welfare] shall adopt those rules and protocols necessary to administer the provisions of this Act.

(2) In the adoption of a Physician Orders for Scope of Treatment (POST) or DNR protocol, the [department] shall adopt standardized POST identification to be used statewide.

Section 18. [Order in Protective Proceedings.]

(A) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the Uniform Probate Code.

(B) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(C) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(D) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(E) In the event that more than [one (1)] person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the [department] or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.

(F) Subject to the limitations of the provisions of subsection (G) of this section, guardians or conservators may have any of the duties and powers as provided in [insert citation] and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least [annually]. In addition to such other requirements imposed by law or order, the report shall include:

(1) A description of the respondent's current mental, physical and social condition;

(2) The respondent's present address and living arrangement;

(3) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;

(4) A description of services being provided the respondent;

(5) A description of significant actions taken by the guardian or conservator during the reporting period;

(6) Any significant problems relating to the guardianship or conservatorship;

(7) A complete financial statement of the financial resources under the control or supervision of the
guardian or conservator; and

(8) A description of the need for continued guardianship or conservatorship services.

(G) No guardian appointed under this Act shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 5(A)(7) of this Act.

(H) A guardian may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

(1) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least [one (1)] other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or

(2) Has been diagnosed by the respondent's attending physician and at least [one (1)] other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(I) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to [adult protective services] or to the [state protection and advocacy system for people with developmental disabilities], who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided. If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(J) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

(1) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;

(2) Consent to experimental surgery, procedures or medications; or

(3) Delegate the powers granted by the order.

Section 19. [Severability.] [Insert severability clause.]

Section 20. [Repealer.] [Insert repealer clause.]

Section 21. [Effective Date.] [Insert effective date.]
### Suggested State Legislation

#### Policy Area
- [Health](#)
- [Aging and Disabilities](#)
- [Long Term Care](#)

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