

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 623

PRINTER NO. 1229

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

October 5, 2017

PRIME SPONSOR

Senator Yaw

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 623 amends Title 20 (Decedents, Estates and Fiduciaries) to codify Pennsylvania Orders for Life Sustaining Treatment (POLST), clarify certain provisions regarding out-of-hospital do not resuscitate (OOH-DNR) orders, and prevent the use of new OOH-DNR orders executed after the adoption of an initial POLST form by the Department of Health (department).

The bill provides that Chapter 54 of Title 20 applies not only to health care directives and OOH-DNR orders but also to the newly defined POLST.

The bill adds that an individual is subject to prosecution for criminal homicide for falsification or forgery of a POLST and adds that an individual is guilty of a felony of the third degree if he or she commits enumerated fraudulent acts with respect to a POLST.

The bill abolishes the "advisory committee," which was established to assist the department in determining the advisability of using a standardized form containing orders by a qualified physician that detail the scope of medical treatment for a patient's life-sustaining wishes.

The bill creates Subchapter F under Chapter 54 for POLST which is defined as an order issued for the care of an individual regarding cardiopulmonary resuscitation or other medical interventions that are entered in accordance with section 5498.2 (relating to requirements for valid POLST).

The bill states that nothing in this subchapter shall be construed to advance or support euthanasia, suicide, or health care practitioner-assisted suicide.

The bill provides that a POLST is not valid without the voluntary consent of the patient or a surrogate decision maker.

The bill prohibits a health care insurer from:

- Requiring an individual to consent to a POLST as a condition for insurance;
- Charging a different rate whether or not the individual consents to, or has, a POLST;
- Requiring a health care provider to offer a POLST;

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- Providing a financial incentive to a health care provider for having a POLST policy; and
- Penalizing a health care provider for failing to achieve a target for POLST completions.

The bill allows a health care provider to be paid for consultation with or counseling of a patient concerning a POLST or offering advance health care planning.

The bill prohibits a health care provider or facility from requiring a POLST as a condition of admission and from offering an in-kind or financial incentive to a patient or surrogate decision maker for having a POLST.

The bill creates a POLST Advisory Committee to advise the department on issues such as the format and content of the POLST form. The makeup of the committee consists of members of various stakeholder groups as well as individuals with specified backgrounds and expertise. The Secretary of Health is permitted to appoint additional individuals in an effort to provide further expertise and a broad representation of interests.

The bill requires the department to perform the following functions in consultation with the POLST Advisory Committee: adopt a POLST form, develop education materials, and make the POLST form and educational materials available on the department's website. The POLST form and educational materials shall be in plain language, and the department shall coordinate its efforts with other state agencies to address individuals with disabilities and older persons.

The bill requires the department and the POLST Advisory Committee to develop a standard POLST form which:

- Includes options for a set of medical orders for cardiopulmonary resuscitation and other medical interventions;
- Is outcome neutral;
- May include options for nutrition and hydration;
- States that the POLST may only be issued with the voluntary consent of the patient or the surrogate decision maker;
- May include other notices that the department, in conjunction with the POLST Advisory Committee, deems appropriate; and
- Provides for the identification and signatures of the patient, the surrogate, and the health care practitioner who authorizes the POLST.

The bill requires the department to submit for publication notice of the initial proposed POLST form and any subsequent updates to the form in the Pennsylvania Bulletin and provide a 60-day comment period. The department shall provide a copy of the form to the Senate Health and Human Services Committee and the House Health Committee. Within 60 days of the close of the comment period, the department shall publish a notice responding to each comment received and the reasons for adopting or rejecting the recommendations. The final version of the POLST form shall be published in the Pennsylvania Bulletin and on the department's public internet website.

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The bill stipulates that POLST forms executed prior to the effective date of the law shall be recognized as valid.

The bill requires the department, in consultation with the POLST Advisory Committee, to develop and update POLST educational materials. The educational materials shall include recommendations for training of health care practitioners and others who educate patients about POLST or assist in completion of a POLST form.

To be valid, a POLST shall require the use of the POLST form, completion of the medical order section regarding cardiopulmonary resuscitation, and the date and signature of the health care practitioner and patient or surrogate.

The bill deems verbal POLST orders and verbal consents from a surrogate decision maker to be effective under certain circumstances and within certain periods.

A POLST is effective on the date that it meets the requirements of this subchapter.

The bill specifies that a POLST executed in accordance with the provisions of this subchapter is valid anywhere in the Commonwealth and in all health care facilities regardless of whether the health care practitioner who signed the order has clinical privileges with the health care facility.

The bill allows for various methods of signature on a POLST including electronic signatures.

The bill requires surrogate decision makers to comply with all applicable legal requirements and states that surrogates are subject to all applicable legal restrictions, including Chapter 54, Subchapter C (relating to health care agents and representatives) and Chapter 55 (relating to incapacitated persons).

The bill allows a patient or surrogate to revoke consent at any time and in any manner that communicates an intent to revoke. A health care professional or surrogate must communicate that revocation to any attending health care professional and to any health care facility. The revocation shall be recorded in the medical records containing the order that are maintained by the health care provider.

The bill requires a health care facility that transfers a patient with a POLST to another health care facility to provide the POLST to the receiving health care facility. The new treating health care professional shall review the POLST as soon as feasible with the patient or the surrogate decision maker.

The bill requires the attending physician or the health care provider to notify the patient or the surrogate if he or she cannot comply, in good conscience, with a POLST or if the policies of a health care provider preclude compliance.

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The attending physician or health care provider shall thereafter make every reasonable effort to assist in the transfer of the patient to another physician or health care provider who will comply. If the transfer is impossible, the provision of life sustaining care shall not subject the physician or health care provider to criminal or civil liability.

The bill requires health care facilities to have policies and procedures for implementation of a POLST.

The bill stipulates that a health care provider or other person may not be subject to civil or criminal liability or discipline for unprofessional conduct for:

- Complying with a POLST based upon a good faith assumption that the orders therein were valid; and
- Refusing to comply with a POLST on the good faith belief that the POLST was not valid, and compliance would be unethical or result in medical care having no medical basis in addressing any medical need or condition.

If a POLST conflicts with an advanced health care directive, the provision of the document dated the latest shall prevail.

A POLST executed on a form that was valid when executed shall remain valid even if a revised form is adopted later.

A POLST executed on a Patient Life-Sustaining Wishes Committee (PLSWC) form prior to the adoption of POLST under the provisions of this subchapter is effective to the same extent as if it had been executed on a POLST form. Emergency medical service providers may contact their medical command physician prior to complying with a POLST on a PLSWC form.

The bill allows a health care provider to comply with a POLST from another state if the POLST meets certain standards and the health care provider consults with the patient or surrogate regarding continued compliance. This provision does not apply to an order that directs procedures or withholding of procedures inconsistent with Pennsylvania law.

The bill requires the department to study the feasibility and cost of creating an internet-based registry allowing health care providers to obtain a current POLST for a patient and to report the final results of the study to the Senate Health and Human Services Committee and the House Health Committee.

The addition of section 5496 regarding the creation of the POLST Advisory Committee shall take effect immediately. The remainder of the act shall take effect in 90 days.

FISCAL IMPACT:

SB 623 will have no adverse fiscal impact to the Commonwealth. Assuming that existing Department of Health staff develop the POLST form and educational material, any costs related to fulfilling those duties are capable of being accommodated within the agency's current workload and budget.