

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 * * *

22 Section 2. The definitions of "medical command physician,"

1 "order" and "patient" in section 5422 of Title 20 are amended
2 and the section is amended by adding definitions to read:
3 § 5422. Definitions.

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

7 * * *

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

13 * * *

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

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

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

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

26 * * *

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

29 § 5432. Criminal penalties.

30 (a) Criminal homicide.--A person shall be subject to

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6 withheld or withdrawn and death to be hastened and:

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

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

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

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

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

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

27 § 5445. Emergency medical services.

28 * * *

29 (b) Applicability.--This section is applicable only in those
30 instances where an out-of-hospital DNR order is not in effect

1 under section 5484 (relating to OOH-DNR orders, bracelets and
2 necklaces).

3 § 5483. Definitions.

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

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

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

15 "EMS." Emergency medical services.

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

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

1 of the presence of an OOH-DNR order.

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

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

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

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

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

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

26 § 5484. [Orders] OOH-DNR orders, bracelets and necklaces.

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

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

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

14 PENNSYLVANIA OUT-OF-HOSPITAL

15 DO-NOT-RESUSCITATE ORDER

16 Patient's full legal name:

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

22 has an end-stage medical condition.

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

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

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

9 Signature of attending physician:

10 Printed name of attending physician:

11 Dated:

12 Attending physician's emergency telephone number:

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

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

24 I, the undersigned, hereby certify that I am authorized
25 to execute this order on the patient's behalf by virtue of
26 having been designated as the patient's surrogate and/or by
27 virtue of my relationship to the patient (specify
28 relationship:). I hereby direct that in the event
29 of the patient's cardiac and/or respiratory arrest efforts at
30 cardiopulmonary resuscitation not be initiated and be

1 withdrawn if initiated.

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

4 * * *

5 § 5485. Revocation.

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

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

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

15 § 5486. Absence of OOH-DNR order, bracelet or necklace.

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

20 § 5487. Emergency medical services.

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

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

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

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

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

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

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

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

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

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

28 (d) Recognition of other states' orders.--Emergency medical
29 services or [~~out-of-hospital DNR~~] OOH-DNR orders, bracelets or
30 necklaces valid in states other than this Commonwealth shall be

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

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

12 [§ 5488. Advisory committee.

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

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

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

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

30 (2) The use and evaluation of use of such forms in other

1 states.

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

4 Section 5. Title 20 is amended by adding a section to read:

5 § 5489. Discontinuance.

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

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

13 SUBCHAPTER F

14 PENNSYLVANIA ORDERS FOR LIFE-SUSTAINING TREATMENT

15 Sec.

16 5491. Scope of subchapter.

17 5492. Legislative findings and intent.

18 5493. Definitions.

19 5494. Prohibitions on use.

20 5495. Voluntary consent requirement.

21 5496. POLST Advisory Committee.

22 5497. Administration of POLST program.

23 5498. POLST form.

24 5498.1. Education about POLST.

25 5498.2. Requirements for valid POLST.

26 5498.3. Portability.

27 5498.4. Team care.

28 5498.5. Copies of orders.

29 5498.6. Signature options.

30 5498.7. Standards for surrogate decision makers.

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

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

15 § 5492. Legislative findings and intent.

16 The General Assembly finds and declares as follows:

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

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

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

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

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

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

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

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

30 (9) A key step in the POLST process is the health care

1 practitioner's review with the patient or the patient's
2 surrogate decision maker of the patient's current health
3 status, diagnoses and prognosis to determine whether a POLST
4 order would be appropriate or should be updated.

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

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

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

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

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

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

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

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

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

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

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

22 § 5493. Definitions.

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

26 "Committee." The POLST Advisory Committee established under
27 this subchapter.

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

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

30 (1) A facility that is licensed as a health care

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

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

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

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

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

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

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

28 (4) A professional health service corporation subject to
29 40 Pa.C.S. Ch. 63 (relating to professional health services
30 plan corporations).

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

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

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

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

10 "Life-limiting and irreversible condition." A continual
11 profound comatose state with no reasonable chance of recovery or
12 a condition caused by injury, disease or illness which within
13 reasonable medical judgment would usually produce death within
14 one year.

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

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

26 "PLSWC form." The form for a POLST previously approved by
27 the department on the recommendation of the Patient Life-
28 Sustaining Wishes Committee.

29 "POLST form." The form for a POLST adopted under section
30 5498 (relating to POLST form).

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

2 "Surrogate decision maker." A health care agent, health care
3 representative or guardian of the person or parent of a minor
4 who is legally authorized to make a health care decision for a
5 patient.

6 § 5494. Prohibitions on use.

7 Nothing in this subchapter shall be construed to advance or
8 support euthanasia, suicide or health care practitioner-assisted
9 suicide.

10 § 5495. Voluntary consent requirement.

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

13 (b) Eligibility.--

14 (1) A POLST for an individual may be completed after a
15 physician has determined and has confirmed in writing that
16 the individual is a person who has a life-limiting and
17 irreversible condition and the person's then-current health
18 status, diagnosis and prognosis indicate that standing
19 medical orders concerning treatment options are appropriate.

20 (2) A POLST may not be completed for individuals with
21 stable, even if chronic, medical conditions and more than one
22 year of life expectancy.

23 (3) A POLST is not appropriate simply because a person
24 is seriously ill or frail.

25 (c) Health insurance or coverage.--A health care insurer may
26 not:

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

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

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

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

6 (5) Impose a rating or reimbursement penalty if a health
7 care provider fails to achieve a target for POLST
8 completions.

9 (d) Consultation.--Notwithstanding subsection (b), a health
10 care provider may be paid for consultation with or counseling of
11 a patient concerning a POLST or offering advance health care
12 planning.

13 (e) Health care provider and health care facility
14 policies.--The following shall apply:

15 (1) A health care provider and a health care facility
16 may not make consent to a POLST or having a POLST a condition
17 of admission to, continued occupancy at, or the provision of
18 health care services by the health care provider or a health
19 care facility.

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

24 (3) In complying with paragraphs (1) and (2), a health
25 care provider and a health care facility may have a policy to
26 offer a POLST to appropriate individuals as part of a
27 conversation about goals of care, personal values and
28 preferences, benefits of various treatment options and
29 avoiding unwanted burden.

30 § 5496. POLST Advisory Committee.

1 (a) Appointment.--The secretary shall appoint a POLST
2 Advisory Committee, including a chairperson and vice chairperson
3 of the committee.

4 (b) Role of committee.--The committee shall advise the
5 department on POLST-related matters, including, but not limited
6 to, the format and content of the POLST form and education about
7 POLST.

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

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

12 (i) The Pennsylvania Medical Society.

13 (ii) The Hospital and Healthsystem Association of
14 Pennsylvania.

15 (iii) The Pennsylvania Homecare Association.

16 (iv) The Pennsylvania Bar Association.

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

19 (vi) State and local emergency medical services
20 providers.

21 (vii) Long-term care facilities and providers of
22 long-term support.

23 (viii) Patient advocates.

24 (ix) Disability rights advocates.

25 (x) Faith-based health care providers.

26 (xi) Bioethicists, including both a secular and
27 faith-based representative.

28 (2) The secretary may appoint additional individuals to
29 the committee to provide expertise and a broad representation
30 of interests.

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

3 (i) community POLST coalition efforts; and

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

7 § 5497. Administration of POLST program.

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

10 (1) Adopt and update a POLST form under section 5498
11 (relating to POLST form).

12 (2) Develop and update basic education materials on
13 POLST under section 5498.1 (relating to education about
14 POLST).

15 (3) Make the POLST form and its educational materials
16 available and accessible through the department's publicly
17 accessible Internet website.

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

23 (c) Coordination.--In the performance of its
24 responsibilities under this subchapter, the department shall
25 coordinate with other State agencies that address the special
26 needs of individuals with disabilities and older persons,
27 including the Department of Aging and the Department Human
28 Services.

29 § 5498. POLST form.

30 (a) General rule.--In consultation with the committee, the

1 department shall adopt, and periodically update when
2 appropriate, a standard POLST form for health care practitioners
3 to issue a POLST with the voluntary consent of the patient or an
4 authorized surrogate decision maker.

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

6 (1) The POLST form shall include options for a set of
7 medical orders for cardiopulmonary resuscitation and other
8 medical interventions that are determined to be appropriate
9 for a POLST.

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

13 (3) The POLST form may include options for nutrition and
14 hydration administered by gastric tube or intravenously or by
15 other medically administered means. If the consent is
16 provided by a surrogate decision maker, the following
17 requirements shall apply:

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

20 (ii) Section 5461(c) (relating to decisions by
21 health care representative).

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

24 (4) Except as provided under section 5498.2(a)(2)
25 (relating to requirements for valid POLST), no medical order
26 option section shall be required to be completed for the
27 POLST to be valid.

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

29 (1) The POLST form shall clearly and conspicuously state
30 that a POLST may only be issued with the voluntary consent of

1 the patient or the patient's authorized surrogate decision
2 maker and that a patient or surrogate decision maker may not
3 be compelled by a health care provider or health care insurer
4 to complete or sign a POLST.

5 (2) The POLST form may include other notices regarding
6 patient rights, health care practitioner responsibilities and
7 availability of educational information which the department,
8 in consultation with the committee, determines are
9 appropriate.

10 (d) Identification and signatures.--The following shall
11 apply:

12 (1) The POLST form shall provide for identification of
13 the patient, any surrogate decision maker who consents to the
14 POLST on behalf of the patient and the health care
15 practitioner who issues the POLST.

16 (2) The POLST form shall provide for the signatures of
17 the patient, any surrogate decision maker and the health care
18 practitioner who issues the POLST.

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

21 (1) The sections required to be completed for the POLST
22 to be valid.

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

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

26 (1) Prior to adopting the initial POLST form developed
27 after the effective date of this section, the department
28 shall transmit notice of the proposed form to the Legislative
29 Reference Bureau for publication in the Pennsylvania Bulletin
30 and provide an opportunity for comment on the proposed form

1 for at least 60 days after publication of the notice. The
2 following shall apply:

3 (i) In addition to submitting for publication notice
4 of the initial form in the Pennsylvania Bulletin, the
5 department shall serve a copy of the form to the Health
6 and Human Services Committee of the Senate and the Health
7 Committee of the House of Representatives.

8 (ii) Within 60 days after the close of the comment
9 period, the department shall transmit to the Legislative
10 Reference Bureau for publication a subsequent notice in
11 the Pennsylvania Bulletin that responds to each comment
12 the department has received. In providing responses to
13 each comment, the department shall indicate the reasons
14 for adopting or rejecting the recommendations made during
15 the comment period. The department shall submit for
16 publication a final version of the POLST form in the
17 Pennsylvania Bulletin and on the department's publicly
18 accessible Internet website.

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

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

24 (i) Article II of the act of July 31, 1968 (P.L.769,
25 No.240) referred to as the Commonwealth Documents Law.

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

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

1 (iv) Section 612 of the act of April 9, 1929
2 (P.L.177, No.175), known as The Administrative Code of
3 1929.

4 (g) POLST forms.--POLST forms executed prior to the
5 effective date of this section shall be recognized as valid
6 POLST forms and shall have full force and effect as if executed
7 on or after the effective date of this section.

8 (h) Printed copies.--The POLST form may not be required to
9 be obtained exclusively from the department or any particular
10 vendor. The department shall provide a process for the POLST
11 form to be downloaded free of charge from a publicly accessible
12 Internet website.

13 § 5498.1. Education about POLST.

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

18 (b) Basic education.--The department shall make its basic
19 educational materials available in alternative formats that are
20 accessible to persons with a disability. The department's POLST
21 educational materials shall include basic information that
22 explains and provides guidance on the following:

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

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

27 (3) When a POLST may be useful and appropriate and when
28 a POLST may not be appropriate.

29 (4) The differences between a POLST and an advance
30 health care directive.

1 (5) The voluntary consent requirement, including a
2 patient's right to refuse to execute a POLST without adverse
3 consequences under section 5495(b) and (d) (relating to
4 voluntary consent requirement).

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

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

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

11 (9) Legal requirements for surrogate decision making.

12 (10) Appropriate inclusion of patients, to the extent
13 possible, regardless of their physical or mental condition,
14 in decision making when decisions are made on their behalf by
15 surrogate decision makers.

16 (c) Training recommendations.--The department's educational
17 materials shall include recommendations for training of health
18 care practitioners and others who educate patients about POLST
19 or assist in completion of a POLST form to assure that they have
20 the practiced skills of those conversations and understand the
21 applicable law, medical issues and treatments covered by a
22 POLST. These materials shall incorporate information consistent
23 with the findings in section 5492(9), (10), (11), (12), (13),
24 (14), (15) and (16) (relating to legislative findings and
25 intent).

26 (d) Other resources.--The department may provide information
27 about the availability of educational materials from other
28 sources, such as nonprofit organizations that provide education,
29 training and resources for POLST programs.

30 § 5498.2. Requirements for valid POLST.

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

3 (1) Use of the POLST form, except as provided under
4 sections 5498.5 (relating to copies of orders), 5498.15
5 (relating to POLST executed under prior POLST form), 5498.16
6 (related to POLST executed under PLSWC form) and 5498.17
7 (related to POLST executed in another state or jurisdiction).

8 (2) Completion of the medical order section regarding
9 cardiopulmonary resuscitation.

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

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

16 (b) Verbal orders.--A verbal order is effective from the
17 date given without countersignature until the expiration of the
18 period of countersignature specified under paragraph (2) or (3).
19 A health care practitioner's verbal order for a POLST shall be
20 deemed to meet the requirements of subsection (a)(2) if all of
21 the following requirements are met:

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

24 (2) The order is documented on the POLST form and
25 countersigned by the health care practitioner in accordance
26 with any applicable laws and regulations governing the health
27 care facility, including a time frame in which the order must
28 be countersigned.

29 (3) No law or regulation governing the health care
30 facility establishes a time limit in which the order must be

1 countersigned, and the order is countersigned by the health
2 care practitioner within seven days.

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

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

9 (2) The consent is documented on the POLST form by the
10 health care facility in accordance with its policies and
11 procedures.

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

14 (d) Effectiveness.--A POLST shall be effective on the date
15 it meets the requirements of this section.

16 § 5498.3. Portability.

17 (a) General rule.--A POLST executed in accordance with this
18 subchapter shall be valid anywhere within this Commonwealth,
19 including, but not limited to, all health care facilities, the
20 patient's residence and other care settings outside of a health
21 care facility, and while the patient is in transit from one
22 health care facility or care setting to another.

23 (b) Authority of health care practitioners.--A POLST
24 executed in accordance with this subchapter shall be valid in a
25 health care facility regardless of whether the health care
26 practitioner who signed the order has clinical privileges with
27 the health care facility.

28 (c) Other orders.--This subchapter does not prohibit a do-
29 not-resuscitate or other order issued for care within a health
30 care facility from being valid and actionable within that health

1 care facility in accordance with the laws and regulations
2 governing the health care facility.

3 § 5498.4. Team care.

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

10 § 5498.5. Copies of orders.

11 A copy of a POLST, including a photocopy, a facsimile or
12 other electronic copy, shall be as effective as the original
13 POLST.

14 § 5498.6. Signature options.

15 (a) Options.--A signature required by section 5498.2
16 (relating to requirements for valid POLST) may be provided by a
17 hand-written signature or any other means allowed under this
18 section.

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

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

22 (2) another individual to sign for the patient if that
23 patient specifically directs the other individual to sign the
24 POLST for the patient.

25 (c) Electronic signatures.--In the case of a patient
26 receiving care from a health care facility, a signature on a
27 POLST may be obtained by any electronic means that is authorized
28 by the policies and procedures of the facility and is consistent
29 with the laws governing the facility, including, but not limited
30 to, a digitized signature or a digital signature. A copy of the

1 POLST shall show a representative image of the signature in the
2 applicable signature field.

3 § 5498.7. Standards for surrogate decision makers.

4 (a) General rule.--When making a decision about a POLST on
5 behalf of a patient, a surrogate decision maker shall comply
6 with all applicable legal requirements for health care decision
7 making by a surrogate decision maker, including, but not limited
8 to, those provided under subsection (b), and the decisions of
9 the surrogate decision maker are subject to all applicable legal
10 restrictions on decisions by a surrogate decision maker.

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

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

15 (i) Section 5456(c) (relating to authority of health
16 care agent).

17 (ii) Section 5461(c) (relating to decisions by
18 health care representative).

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

21 (2) Chapter 55 (relating to incapacitated persons).

22 (c) Minors.--A surrogate decision maker for an unemancipated
23 minor shall be subject to the requirements and restrictions
24 applicable to a health care representative for an adult when
25 making a decision about a POLST on behalf of the minor.

26 (d) Competent patient.--This section does not limit the
27 right of a competent patient to consent to a POLST.

28 § 5498.8. Revocation.

29 (a) Consent.--A patient or a surrogate decision maker acting
30 within his or her decision-making authority may revoke consent

1 to all or part of a POLST at any time and in any manner that
2 communicates an intent to revoke.

3 (b) Notice.--A health care provider or surrogate decision
4 maker who is informed of a revocation shall promptly communicate
5 the fact of the revocation to any attending health care provider
6 and to any health care facility from which the patient is
7 receiving care.

8 (c) Implementation.--A health care provider that is notified
9 of a POLST revocation shall record that the POLST is void in any
10 medical records containing the order that are maintained by the
11 health care provider.

12 § 5498.9. Transfer requirements.

13 (a) Notice of POLST.--A health care facility that transfers
14 a patient with a POLST to another health care facility shall
15 provide the POLST to the receiving facility and any health care
16 providers who are responsible for the patient's care during
17 transport to the receiving facility. The notice of the order
18 shall be provided prior to the transfer, or, if prior notice is
19 not feasible, as soon as feasible thereafter.

20 (b) Compliance.--The requirements of section 5498.11
21 (relating to compliance) shall apply in the event that the
22 receiving health care provider or health care provider involved
23 in the transfer is unable in good conscience to comply with the
24 POLST or the policies of the health care provider preclude
25 compliance.

26 § 5498.10. Review requirements.

27 (a) Mandatory review.--In the event a patient with a POLST
28 is admitted or transferred to a health care facility, the
29 treating health care provider at the health care facility shall
30 review the POLST as soon as feasible with the patient or the

1 patient's authorized surrogate decision maker. The POLST shall
2 remain effective unless and until modified or voided as a result
3 of the review.

4 (b) Recommended review.--In consultation with the committee,
5 the department shall develop recommendations for other
6 situations in which it is appropriate or advisable for a POLST
7 to be reviewed, giving consideration to the following
8 circumstances:

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

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

12 § 5498.11. Compliance.

13 (a) Notification by attending physician or health care
14 provider.--If an attending physician or other health care
15 provider cannot in good conscience comply with a POLST or if the
16 policies of a health care provider preclude compliance with a
17 POLST, the attending physician or health care provider shall so
18 inform the patient, if the patient is competent, and any
19 surrogate decision maker who consented to the order on behalf of
20 the patient.

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

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

30 (d) Policies.--The department shall require health care

1 facilities to have policies and procedures for implementation of
2 a POLST.

3 § 5498.12. Emergency medical services.

4 (a) Medical command instructions.--Notwithstanding the
5 absence of a do-not-resuscitate order in a POLST, emergency
6 medical services providers shall at all times comply with the
7 instructions of an authorized medical command physician to
8 withhold or discontinue resuscitation.

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

11 (1) Emergency medical services providers shall comply
12 with a do-not-resuscitate order in a POLST if made aware of
13 the order. In order to be in compliance with the do-not-
14 resuscitate order in a POLST, an emergency medical service
15 provider must:

16 (i) withhold cardiopulmonary resuscitation from the
17 patient in the event of respiratory and cardiac arrest;
18 or

19 (ii) discontinue and cease cardiopulmonary
20 resuscitation, in the event the emergency medical
21 services provider is presented with a do-not-resuscitate
22 order in a POLST after initiating cardiopulmonary
23 resuscitation.

24 (2) Emergency medical services providers shall provide
25 other medical interventions necessary and appropriate to
26 provide comfort and alleviate pain, including intravenous
27 fluids, medications, oxygen and any other intervention
28 appropriate to the level of the certification of the
29 emergency medical services provider, unless otherwise
30 directed by the patient or the emergency medical services

1 provider's authorized medical command physician.

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

4 (1) Emergency medical services providers who in good
5 faith are uncertain about the validity or applicability of a
6 do-not-resuscitate order in a POLST shall render care in
7 accordance with the emergency medical services providers'
8 level of certification.

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

13 (d) Uncertainty regarding validity or applicability of
14 POLST.--Emergency medical services providers are not required
15 to, but may, contact their medical command physician prior to
16 complying with a POLST.

17 § 5498.13. Immunity.

18 (a) Compliance.--A health care provider or other person may
19 not be subject to civil or criminal liability or to discipline
20 for unprofessional conduct for complying with a POLST based upon
21 the good faith assumption that the orders therein were valid
22 when made and have not been revoked or terminated.

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

27 (1) The POLST is not valid.

28 (2) Compliance with the POLST would be unethical or, to
29 a reasonable degree of medical certainty, would result in
30 medical care having no medical basis in addressing any

1 medical need or condition of the patient, provided that the
2 health care provider complies in good faith with sections
3 5462(c) (relating to duties of attending physician and health
4 care provider) and 5498.11 (relating to compliance).

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

9 § 5498.14. Conflict with advance health care directive.

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

13 § 5498.15. POLST executed under prior POLST form.

14 A POLST executed on a POLST form that was valid when executed
15 shall remain valid even if the department subsequently adopts a
16 revised form.

17 § 5498.16. POLST executed under PLSWC form.

18 (a) Validity.--Except as provided under subsection (b), a
19 POLST executed on the PLSWC form prior to the adoption of a
20 POLST form under this subchapter is effective to the same extent
21 as it would be effective if executed on the POLST form.

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

26 (c) Immunity.--For purposes of the immunity under sections
27 5431 (relating to liability) and 5498.13 (relating to immunity),
28 a POLST executed on the PLSWC form shall be deemed to be a POLST
29 executed under this subchapter.

30 § 5498.17. POLST executed in another state or jurisdiction.

1 (a) Validity.--Except as provided under subsection (b), a
2 health care provider may comply with a POLST, or a substantial
3 equivalent order executed under the laws of another state or
4 jurisdiction and in conformity with the laws of that state or
5 jurisdiction, if:

6 (1) the order meets the requirements of section
7 5498.2(a)(2), (3) and (4) (relating to requirements for valid
8 POLST); and

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

12 (b) Exception.--Subsection (a) shall not apply to orders
13 executed in another state or jurisdiction to the extent that the
14 order directs procedures or the withholding or withdrawal of
15 procedures under circumstances that are inconsistent with the
16 laws of this Commonwealth, including, but not limited to,
17 section 5498.7 (relating to standards for surrogate decision
18 makers).

19 (c) Immunity.--For purposes of the immunity under section
20 5431 (relating to liability) and section 5498.13 (relating to
21 immunity), a POLST, or its substantial equivalent that was
22 executed under the laws of another state or jurisdiction and is
23 valid under subsections (a) and (b), shall be deemed to be a
24 POLST executed under this subchapter.

25 § 5498.18. POLST registry study.

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

1 (b) Report.--The department shall report the results of its
2 study to the Health and Human Services Committee of the Senate
3 and the Health Committee of the House of Representatives. The
4 department shall report the status of the study to the
5 committees at least every 180 days until the final results are
6 reported.

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

8 (1) The following provisions shall take effect
9 immediately:

10 (i) This section.

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

12 (2) The remainder of this act shall take effect in 90
13 days.