

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 142 Session of 2019

INTRODUCED BY YAW, BLAKE, FOLMER, BAKER, COSTA, J. WARD AND BROWNE, JANUARY 31, 2019

REFERRED TO HEALTH AND HUMAN SERVICES, JANUARY 31, 2019

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,"
 23 "order" and "patient" in section 5422 of Title 20 are amended

1 and the section is amended by adding definitions to read:

2 § 5422. Definitions.

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

6 * * *

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

12 * * *

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

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

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

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

25 * * *

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

28 § 5432. Criminal penalties.

29 (a) Criminal homicide.--A person shall be subject to
30 prosecution for criminal homicide as provided in 18 Pa.C.S. Ch.

1 25 (relating to criminal homicide) if the person intends to
2 cause the withholding or withdrawal of life-sustaining treatment
3 contrary to the wishes of the principal or patient and, because
4 of that action, directly causes life-sustaining treatment to be
5 withheld or withdrawn and death to be hastened and:

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

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

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

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

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

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

26 § 5445. Emergency medical services.

27 * * *

28 (b) Applicability.--This section is applicable only in those
29 instances where an out-of-hospital DNR order is not in effect
30 under section 5484 (relating to OOH-DNR orders, bracelets and

1 necklaces).

2 § 5483. Definitions.

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

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

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

14 "EMS." Emergency medical services.

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

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

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

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

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

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

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

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

25 § 5484. [**Orders**] OOH-DNR orders, bracelets and necklaces.

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

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

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

13 PENNSYLVANIA OUT-OF-HOSPITAL

14 DO-NOT-RESUSCITATE ORDER

15 Patient's full legal name:

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

21 has an end-stage medical condition.

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

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

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

8 Signature of attending physician:

9 Printed name of attending physician:

10 Dated:

11 Attending physician's emergency telephone number:

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

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

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

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

3 * * *

4 § 5485. Revocation.

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

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

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

14 § 5486. Absence of OOH-DNR order, bracelet or necklace.

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

19 § 5487. Emergency medical services.

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

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

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

30 (2) Emergency medical services providers shall provide

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

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

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

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

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

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

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

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

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

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

11 [~~§ 5488. Advisory committee.~~

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

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

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

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

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

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

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

4 § 5489. Discontinuance.

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

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

12 SUBCHAPTER F

13 PENNSYLVANIA ORDERS FOR LIFE-SUSTAINING TREATMENT

14 Sec.

15 5491. Scope of subchapter.

16 5492. Legislative findings and intent.

17 5493. Definitions.

18 5494. Prohibitions on use.

19 5495. Voluntary consent requirement.

20 5496. POLST Advisory Committee.

21 5497. Administration of POLST program.

22 5498. POLST form.

23 5498.1. Education about POLST.

24 5498.2. Requirements for valid POLST.

25 5498.3. Portability.

26 5498.4. Team care.

27 5498.5. Copies of orders.

28 5498.6. Signature options.

29 5498.7. Standards for surrogate decision makers.

30 5498.8. Revocation.

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

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

14 § 5492. Legislative findings and intent.

15 The General Assembly finds and declares as follows:

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

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

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

30 (4) The use of POLST may overcome many of the

1 limitations and problems associated with advance health care
2 directives and existing orders regarding cardiopulmonary
3 resuscitation and other end-of-life care, including out-of-
4 hospital do-not-resuscitate orders.

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

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

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

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

29 (9) A key step in the POLST process is the health care
30 practitioner's review with the patient or the patient's

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

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

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

15 (12) It should not be assumed that all patients in any
16 facility, including a nursing home, should have or would
17 desire POLST.

18 (13) The well-being of the patient is paramount in
19 considering a POLST, not cost savings to the government or
20 insurers.

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

27 (15) Conversations about POLST must avoid any bias
28 against continuation of care and must not characterize the
29 continuation of life as burdensome. When appropriate, these
30 conversations should emphasize palliative care and hospice

1 availability.

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

7 (17) Advance health care directives remain critically
8 important for adults from the age of majority until death. An
9 advance health care directive, rather than a POLST, is the
10 appropriate advance care planning tool for healthy patients.

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

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

18 § 5493. Definitions.

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

22 "Committee." The POLST Advisory Committee established under
23 this subchapter.

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

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

26 (1) A facility that is licensed as a health care
27 facility by the department under Chapter 8 of the act of July
28 19, 1979 (P.L.130, No.48), known as the Health Care
29 Facilities Act, including, but not limited to, a hospital,
30 long term care facility, home health care agency or hospice.

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

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

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

15 (1) An insurance company, association, exchange or
16 fraternal benefit society subject to the act of May 17, 1921
17 (P.L.682, No.284), known as The Insurance Company Law of
18 1921.

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

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

24 (4) A professional health service corporation subject to
25 40 Pa.C.S. Ch. 63 (relating to professional health services
26 plan corporations).

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

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

30 (7) A Federal, State or local government sponsored or

1 operated program.

2 "Health care practitioner." A physician, physician assistant
3 or certified registered nurse practitioner acting in accordance
4 with applicable law, including, but not limited to, their
5 respective licensing acts and regulations.

6 "Health care provider." As defined in section 5483 (relating
7 to definitions).

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

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

19 "PLSWC form." The form for a POLST previously approved by
20 the department on the recommendation of the Patient Life-
21 Sustaining Wishes Committee.

22 "POLST form." The form for a POLST adopted under section
23 5498 (relating to POLST form).

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

25 "Surrogate decision maker." A health care agent, health care
26 representative, guardian of the person or parent of a minor who
27 is legally authorized to make a health care decision for a
28 patient.

29 § 5494. Prohibitions on use.

30 (a) Stable medical conditions.--A POLST is not recommended

1 for individuals with stable, even if chronic, medical conditions
2 and years of life expectancy.

3 (b) Construction.--Nothing in this subchapter shall be
4 construed to advance or support euthanasia, suicide or health
5 care practitioner-assisted suicide.

6 § 5495. Voluntary consent requirement.

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

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

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

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

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

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

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

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

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

29 (1) A health care provider and a health care facility
30 may not make consent to a POLST or having a POLST a condition

1 of admission to, continued occupancy at, or the provision of
2 health care services by the health care provider or a health
3 care facility.

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

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

14 § 5496. POLST Advisory Committee.

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

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

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

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

26 (i) The Pennsylvania Medical Society.

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

29 (iii) The Pennsylvania Homecare Association.

30 (iv) The Pennsylvania Bar Association.

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

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

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

7 (viii) Patient advocates.

8 (ix) Disability rights advocates.

9 (x) Faith-based health care providers.

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

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

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

17 (i) community POLST coalition efforts; and

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

21 § 5497. Administration of POLST program.

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

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

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

29 (3) Make the POLST form and its educational materials
30 available and accessible through the department's publicly

1 accessible Internet website.

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

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

13 § 5498. POLST form.

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

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

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

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

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

1 requirements shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 department's publicly accessible Internet website.

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

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

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

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

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

14 (iv) Section 612 of the act of April 9, 1929
15 (P.L.177, No.175), known as The Administrative Code of
16 1929.

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

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

26 § 5498.1. Education about POLST.

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

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

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

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

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

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

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

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

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

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

24 (9) Legal requirements for surrogate decision making.

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

29 (c) Training recommendations.--The department's educational
30 materials shall include recommendations for training of health

1 care practitioners and others who educate patients about POLST
2 or assist in completion of a POLST form to assure that they have
3 the practiced skills of those conversations and understand the
4 applicable law, medical issues and treatments covered by a
5 POLST. These materials shall incorporate information consistent
6 with the findings in section 5492(9), (10), (11), (12), (13),
7 (14), (15) and (16) (relating to legislative findings and
8 intent).

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

13 § 5498.2. Requirements for valid POLST.

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

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

22 (2) Completion of the medical order section regarding
23 cardiopulmonary resuscitation.

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

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

30 (b) Verbal orders.--A verbal order is effective from the

1 date given without countersignature until the expiration of the
2 period of countersignature set forth under paragraph (2) or (3).
3 A health care practitioner's verbal order for a POLST shall be
4 deemed to meet the requirements of subsection (a)(2) if all of
5 the following requirements are met:

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

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

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

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

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

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

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

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

30 § 5498.3. Portability.

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

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

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

17 § 5498.4. Team care.

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

24 § 5498.5. Copies of orders.

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

27 § 5498.6. Signature options.

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

1 section.

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

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

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

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

16 § 5498.7. Standards for surrogate decision makers.

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

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

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

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

30 (ii) Section 5461(c) (relating to decisions by

1 health care representative).

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

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

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

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

11 § 5498.8. Revocation.

12 (a) Consent.--A patient or a surrogate decision maker acting
13 within his decision-making authority may revoke consent to all
14 or part of a POLST at any time and in any manner that
15 communicates an intent to revoke.

16 (b) Notice.--A health care provider or surrogate decision
17 maker who is informed of a revocation shall promptly communicate
18 the fact of the revocation to any attending health care provider
19 and to any health care facility from which the patient is
20 receiving care.

21 (c) Implementation.--A health care provider that is notified
22 of a POLST revocation shall record that the POLST is void in any
23 medical records containing the order that are maintained by the
24 health care provider.

25 § 5498.9. Transfer requirements.

26 (a) Notice of POLST.--A health care facility that transfers
27 a patient with a POLST to another health care facility shall
28 provide the POLST to the receiving facility and any health care
29 providers who are responsible for the patient's care during
30 transport to the receiving facility. The notice of the order

1 shall be provided prior to the transfer, or, if prior notice is
2 not feasible, as soon as feasible thereafter.

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

9 § 5498.10. Review requirements.

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

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

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

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

25 § 5498.11. Compliance.

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

1 inform the patient, if the patient is competent, and any
2 surrogate decision maker who consented to the order on behalf of
3 the patient.

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

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

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

16 § 5498.12. Emergency medical services.

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

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

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

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

1 or

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

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

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

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

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

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

29 § 5498.13. Immunity.

30 (a) Compliance.--A health care provider or other person may

1 not be subject to civil or criminal liability or to discipline
2 for unprofessional conduct for complying with a POLST based upon
3 the good faith assumption that the orders therein were valid
4 when made and have not been revoked or terminated.

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

9 (1) The POLST is not valid.

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

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

21 § 5498.14. Conflict with advance health care directive.

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

25 § 5498.15. POLST executed under prior POLST form.

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

29 § 5498.16. POLST executed under PLSWC form.

30 (a) Validity.--Except as provided under subsection (b), a

1 POLST executed on the PLSWC form prior to the adoption of a
2 POLST form under this subchapter is effective to the same extent
3 as it would be effective if executed on the POLST form.

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

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

12 § 5498.17. POLST executed in another state or jurisdiction.

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

18 (1) the order meets the requirements of section
19 5498.2(a)(2), (3) and (4) (relating to requirements for valid
20 POLST); and

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

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

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

7 § 5498.18. POLST registry study.

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

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

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

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

22 (i) This section.

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

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