

UTAH COMMISSION ON AGING

POLST

UTAH PHYSICIAN ORDER
FOR LIFE-SUSTAINING
TREATMENT

A LIFE WITH DIGNITY ORDER

Utah Code §75-2a-106



JANUARY 2011

BACKGROUND

WHAT IS A POLST?

The POLST is a standing **medical order** directing a patient's end-of-life care treatment. POLST forms are authorized as Life With Dignity Orders under Utah law, §75-2a-106. The POLST enables an authorized provider to put **transferable** orders in place addressing **specific** life-sustaining treatments. The POLST encourages communication between providers and patients about difficult end-of-life care decisions. In addition, it is the only legal mechanism that allows a Utahn to have a DNR/DNAR order outside of a licensed health care facility. It is a tool that providers can — and **should** — use to help their patients get the end-of-life care they want.

In contrast to an Advance Healthcare Directive, which typically becomes effective only after certain future events occur, a POLST becomes effective the moment it is signed. The directions in a POLST should not be contingent on a future changes in condition; the POLST applies as soon as the treatment is medically indicated.

The POLST should be used to document patient preferences. The form should be completed only after the provider has thoroughly explored the patient's preferences.

No person can be forced to complete a POLST.

WHO BENEFITS FROM A POLST?

Providers should discuss the POLST with patients:

- Who are facing life-threatening illness
- Who have specific preferences about life-sustaining measures (e.g. Jehovah Witness preference for no transfusion)
- Who want a DNR order when living outside of a licensed health facility

In contrast to Advance Directives, which benefit all adults, the POLST is less helpful to individuals who are not in these three categories.

LIABILITY PROTECTION

The POLST law provides criminal and civil liability protection for providers who follow a completed POLST in good faith. It also protects providers who provide life-sustaining care if there is reason to question the validity of a POLST or if there is reason to think a patient's wishes are not reflected in the document. The POLST does not provide liability protection for providers who fail to provide life-sustaining treatment when a POLST contains an order expressing a preference for life-sustaining treatment.

HEALTHCARE FACILITY OBLIGATIONS

Utah Department of Health regulations (R432-31-11) require licensed health care facilities to ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders that comply with current rule and law requirements by January 31, 2011.

POLICIES AND PROCEDURES

Most health care facilities are obligated to have policies and procedures that address how they will:

- Determine upon admission whether an individual has a current POLST form
- Identify individuals who do not have a POLST but who should be offered the opportunity to complete one
- Identify circumstances under which the individual will be offered the opportunity to amend an existing POLST form
- Maintain the POLST form in a prominent location in the individual's medical record
- Identify circumstances under which it would decline to follow a POLST form

TRAINING

Licensed health care facilities must train relevant health care, quality improvement, and record keeping staff on the requirements of Title 75, Chapter 2a, of the Advance Health Care Directive Act, the requirements of Utah Administrative Rule 432-31, and on the facility's policies and procedures established pursuant to Rule 432-31.

TRANSFERRING PATIENTS

A POLST is fully transferable between all health care facilities

- The health care providers in the receiving facility must read the POLST and determine next steps in accordance with the facility's policies and procedures
- A facility that discharges an individual with a POLST form must provide a copy of the POLST to the individual or to the individual's surrogate decision-maker, when appropriate.
- A facility that transfers an individual with a POLST to another facility must provide a copy of the POLST to the receiving facility.
- A facility shall allow an individual to complete, amend, or revoke a POLST at any time upon request.

HIPAA permits the transfer of the POLST form to the receiving facility.

THE FORM

THE FORM

The POLST form is available on the forms page of the Utah Department of Health, Health Facility Licensing Certification and Resident Assessment forms web page, www.health.utah.gov/hflcra. Only POLST forms approved by the Department of Health may be used, and form may not be altered in layout or style, including font style and size.

WHO AUTHORIZES ?

A Patient with Capacity

If the patient has the capacity to make health care decisions (see statutory definition and procedures before a patient is deemed to lack capacity), the patient should authorize and sign the POLST. Family or friends can be involved in discussing the POLST to the extent the patient wants, but a surrogate should not authorize a POLST if the patient has medical decision-making capacity.

A Patient Who Lacks Capacity

If the patient lacks decision-making capacity, the highest-ranking surrogate who is reasonably available can authorize the POLST. The patient must be included in the process of making the decisions, to the greatest extent possible.

PREPARING THE FORM

The POLST must be prepared by:

1. A physician
2. An APRN
3. A physician assistant

OR

A licensed nurse or a licensed social worker, acting, under the supervision of the physician, APRN, or PA who will sign the form, may prepare the form with the patient or surrogate, but the form must be signed by the physician, APRN or physician assistant.

The POLST may not be prepared by any person who does not meet these requirements. ***The POLST is NOT a "do it yourself" form.***

REVIEWING THE FORM

The POLST should be reviewed at least annually, and

1. When the person is transferred from one care setting or care level to another,
2. When there is a substantial change in the person's health status, and
3. When the person's preferences change.

THE FORM

VOIDING THE FORM

The patient or surrogate may revoke a POLST by:

- a. Orally informing emergency service personnel;
- b. Writing "void" across the form;
- c. Burning, tearing, or otherwise destroying or defacing the form
- d. Asking another adult to void or destroy the form for the patient
- e. Signing or directing another adult to sign a written revocation on the person's behalf;
- f. Stating, in the presence of an adult witness, that the person wishes to revoke the order; or
- g. Completing a new life with dignity order.

A surrogate can revoke or change a POLST completed by the patient only if doing so is consistent with the patient's preferences. A surrogate's instructions may not override a patient's previously expressed preferences.

SIGNING THE FORM

If the surrogate who is authorizing the POLST is doing so on the phone, a person at the patient's location may sign at the direction of the surrogate.

COPIES AND FAXES

Copies and faxes of POLST forms are valid. A provider should make sure that, if a POLST is changed, copies of the new form are provided to others who may still have the version that has been revoked.

OUT-OF-STATE USE

A POLST may or may not be legally enforceable in other states, but an individual with a POLST should travel with it when out-of-state.

A Utah provider may honor a POLST from another state that either meets the requirements of Utah's law or that meets the requirements of the law of the state in which it was made.

HEALTH CARE DECISION-MAKING CAPACITY

75-2a-103(13) Definitions

Health care decision making

capacity means an adult's ability to make an informed decision about receiving or refusing health care, including:

(a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;

(b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and

(c) the ability to communicate a decision.

75-2a-104. Capacity to make health care decisions – Presumption – Overcoming presumption.

(1) An adult is presumed to have:

(a) health care decision making capacity; and

(b) capacity to make or revoke an advance health care directive.

(2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must:

(a) find that the adult lacks health care decision making capacity;

(b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and

(c) make a reasonable effort to communicate the determination to:

(i) the adult;

(ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and

(iii) if the adult has a surrogate, any known surrogate.

(3) (a) An adult who is found to lack health care decision making

HEALTH CARE DECISION-MAKING CAPACITY

75-2a-104. Capacity to make health care decisions – Presumption – Overcoming presumption. (Cont.)

capacity in accordance with Subsection (2) may, at any time, challenge the finding by:

(i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's finding; or

(ii) orally informing the health care provider that the adult disagrees with the finding.

(b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.

(c) A surrogate informed of a challenge to a finding under this section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:

(i) any other health care providers involved in the adult's care; and

(ii) the health care facility, if any, in which the adult is receiving care.

(d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding under Subsection (3)(a).

(e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.

(4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity.

(5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.

(6) A physician assistant may not make a finding described in Subsection (2), unless the physician assistant is permitted to make the finding under the physician assistant's delegation of services agreement, as defined in Section **58-70a-102**.

PRIORITY OF SURROGATE DECISION-MAKERS

1. Agent appointed in an Advance Health Care Directive or in a Power of Attorney for Healthcare document. in Subsection (1) may act as a surrogate if the person:
 - (a) has health care decision making capacity;
 - (b) has exhibited special care and concern for the patient;
 - (c) knows the patient and the patient's personal values; and
 - (d) is reasonably available to act as a surrogate.
2. Court-appointed guardian who has been granted the authority to make health care decisions.
3. The adult's spouse, unless the adult is divorced or legally separated; or
4. The following family members:
 - (A) a child;
 - (B) a parent;
 - (C) a sibling;
 - (D) a grandchild; or
 - (E) a grandparent.

No person may direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult.

A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed.

If no person named above is reasonably available to act as a surrogate, a person who is 18 years of age or older, other than those designated

FOR MORE INFORMATION

Go to the Utah Commission on Aging tab at www.aging.utah.edu
or email maureen.henry@utah.edu.

Health facilities should contact the Utah Department of Health, Health Facility
Licensing, Certification, and Resident Assessment

Toll Free: (800) 662-4157

Salt Lake Area: (801) 538-6158

Emergency medical services questions should be directed to:

Toll-free: (800) 284-1131

Salt Lake Area: (801) 273-6666