

2010 (through July)
SUMMARY OF HEALTH CARE DECISION STATUTES ENACTED IN 2010
ABA Commission on Law and Aging

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In 2010, states adopted the following legislation creating, modifying and amending rights and procedures affecting health care decision-making. The statutes affect advanced directives, default surrogate laws, Physicians Orders for Life-Sustaining Treatment (POLST), and registries.

Colorado and Louisiana adopted versions of POLST statewide in 2010, joining twelve other states authorizing versions of POLST (CA, HI, ID, MD, NY, NC, OR, TN, UT, VT, WA, WV).

Each piece of legislation is coded to indicate the potential areas of health care decision making affected by the statute. The coding system is:

AD = Advanced Directives

DNR = Do Not Resuscitate Orders

DS = Default Surrogate

POLST = Physician's Orders for Life Sustaining Treatment, or its variants (e.g. MOLST, POST, and MOST).

Registry = State electronic registry for Advance Directives or POLST

Health Care Decision Statutes

Colorado— DNR, AD

2010 Colo. Legis. Serv. Ch. 113 (H.B. 10-1025), approved April 12, 2010, effective August 11, 2010.

- Establishes the “Colorado Medical Treatment Decision Act” which affirms a patient’s right to accept or reject medical or surgical treatment, and creates a procedure by which an adult with decisional capacity may make such decisions in advance of medical need (Co. St. § 15-18-101).
- Recognizes medical treatment declarations executed by adult patients with decisional capacity directing that life-sustaining procedures be withheld or withdrawn if, at some future time, he or she has a terminal condition or is in a persistent vegetative state, and lacks decisional capacity to accept or reject medical or surgical treatment.
- Authorizes declarations to be combined in the same document with organ and tissue donation, medical power of attorney designations, HIPPA (Health Insurance Portability and Accountability) releases, and medical directives.
- Requires two physicians to certify the validity of the declarations, and designated individuals under the “Colorado Designated Beneficiary Agreement Act” have forty-eight hours to challenge the certification in court (Co. St. §15-18-108).

Colorado— POLST, AD, REGISTRY

2010 Colo. Legis. Serv. Ch. 279 (H.B. 10-1122) (West), approved May 26, 2010, effective August 11, 2010.

- Establishes the Colorado version of POLST, called “Medical Orders for Scope of Treatment” or “MOST” (Co. St. § 15-18.7-101). Includes authorization for use of a MOST form executed in Colorado, executed in another state, or signed by medical personnel who do not have admitting privileges at the hospital where the adult patient is being treated. If an adult who is known to have properly executed and signed a MOST form is transferred from one health care facility or health care provider to another, the transferring party must communicate the existence of the form to the receiving party before the transfer. Provides immunity for good faith compliance with the order. The most recently executed document takes precedence in case of a conflict between a MOST form and an adult’s advance medical directive.
- Authorizes a voluntary online MOST registry to facilitate the exchange of health information.

Georgia— DS, POLST

2010 Georgia Laws Act 616 (S.B. 367) (West), approved June 3, 2010.

- Amends the definition of surrogates to include a patient’s adult (1) grandchild, (2) niece, (3) nephew, (4) aunt, (5) uncle, or (6) friend who has exhibited special care and concern for the patient and is generally familiar with the patient's health care views and desires.
- Authorizes the Department of Community Health to develop and make available a voluntary POLST form to be executed by a patient or surrogate and a physician.

Illinois— DS

2009 Ill. Legis. Serv. P.A. 96-448 (H.B. 748) (West), approved August 14, 2009, effective January 1, 2010.

- Amends the “Nursing Home Care Act” to provide new residents who do not have a guardian or power of attorney for healthcare written notice of their right to name one or more potential health care surrogates that a treating physician should consider in selecting a surrogate to act on the resident's behalf should the resident lose decision-making capacity. A decision to decline to make such a declaration, or inability to make such a declaration, must be documented in the patient’s clinical record.
- Amends the “Health Care Surrogate Act” to require health care facilities to maintain a declaration of a potential surrogate should the person become incapacitated or impaired.

Illinois— DS

2009 Ill. Legis. Serv. P.A. 96-492 (S.B. 2258) (West), approved and effective August 14, 2009.

- Authorizes any surrogate, as defined by the statute, to have the authority to make decisions for the patient until removed by the patient who no longer lacks decisional capacity, appointment of a guardian of the person, or the patient's death.

Illinois— AD

2009 Ill. Legis. Serv. P.A. 96-765 (S.B. 2256) (West), approved August 25, 2009 and effective January 1, 2010.

- Amends the witnessing requirement for an advanced directive to include one witness who can attend the individual or surrogate (1) had the opportunity to read the form, and (2) signed or acknowledged the form in the witness's presence.

Iowa— POLST

2010 Ia. Legis. Serv. H.F. 2526 (West), approved April 11, 2010, effective July 1, 2010.

- Extends the POLST pilot program enacted in 2008 until June 30, 2012 to prepare for statewide implementation. The pilot project will include a county with a population between one hundred seventy-five thousand and two hundred twenty-five thousand and one contiguous rural county.

Louisiana— POLST

2010 La. Legis. Serv. Ch. 5 (H.B. 1485), approved July 2, 2010, effective August 15, 2010, establishes the Louisiana version of POLST, called "Louisiana Physician Order for Scope of Treatment" or LaPOST. The legislation:

- Provides detailed specifications for the contents and format of the LaPOST form and procedure.
- Requires a periodic review of the LaPOST form by the patient and his or her physician.
- Requires a physician's and patient's signatures (or that of the patient's health care representative)
- Provides immunity to any medical provider, physician or person acting under their direction from civil and criminal prosecution and questions of professional conduct as a result of complying with a LaPOST form.
- Certified EMS technicians and first responders must make a reasonable effort to detect the presence of an executed LaPOST form, but physicians and health care providers have no duty to make a search of whether the patient has an executed form.
- Any attending physician who refuses to honor LaPOST must make "a reasonable effort" to transfer the patient to another physician.

Maine— AD

2010 Me. Legis. Serv. Ch. 651 (S.P. 495) (L.D. 1360) (West), approved and effective April 14, 2010, amends the state's law governing psychiatric admissions and commitments.

- One provision related to advance directives requires any law enforcement officer who knows that a person has an advance health care directive authorizing mental health treatment and “probable cause” (previously “reasonable grounds”) to believe the person lacks capacity, to immediately deliver the person for examination by a medical practitioner to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.
- Amends the definition for medical practitioner to include a licensed physician, registered physician assistant, certified psychiatric clinical nurse specialist, certified nurse practitioner, or licensed clinical psychologist.

Minnesota— AD

2010 Minn. Sess. Law Serv. Ch. 254 (H.F. 3128) (West), approved April 15, 2010, effective August 1, 2010, amends several details in the state’s guardianship/conservatorship statute, including certain provisions regarding advance directives. The legislation:

- Clarifies the court’s authority to declare a health care directive unenforceable if it finds by clear and convincing evidence that the health care directive was executed under coercion or fraudulent inducement, or if it finds that the health care directive is not legally sufficient under the advance directive statute.
- Amends the Bill of Rights for Wards and Protected Persons to include the ward’s right to execute a health care advance directive if the court has not granted a guardian health decisions powers.
- Clarifies that if the court grants the guardian any of the health decisions powers or duties under section 524.5-313 of the guardianship statute, the authority of a previously appointed health care agent to make health care decisions is suspended.
- Clarifies that a health care agent appointed by the ward to control final disposition of the ward's remains, or a health care agent authorized to make organ or tissue donations, may make health care decisions for the purpose of preparing the ward's body for organ or tissue donation or final disposition of the ward's remains.

New York— DS

2010 Sess. Laws News of N.Y. Ch. 8 (A. 7729-D) (McKinneys), approved and effective March 16, 2010 :

- Establishes a decision-making process in general hospitals and nursing homes empowering surrogates to make health care decisions for patients who lack the capacity to make their own health care decisions and who have not otherwise appointed an agent or made his or her treatment wishes known:
- Authorizes a prioritized list of surrogates where the patient did not sign a health care proxy, including: (1) a court appointed guardian, (2) spouse or domestic partner, (3) child over 18 years old, (4) parent, (5) sibling over 18 years old, (6) or a close friend (NY ST § 2994-d). If there is a guardian for someone with Developmental Disabilities, then decisions for that patient are governed by the guardianship law.

- Requires a determination that the patient lacks capacity by the attending physician. In a residential health care facility, at least one other health or social service practitioner must concur. In a general hospital, this concurrence is required for a surrogate decision to forgo life-sustaining treatment.
- Establishes a procedure for making health care decisions for adult patients who have lost decision-making capacity and have no available family member or friend to act as a surrogate. The section authorizes the attending physician to decide about routine medical treatment for patients without surrogates.
- For decisions about major medical treatment, the attending physician must consult with hospital staff involved with the patient's care and at least one other physician selected by the hospital must concur in the appropriateness of the decision. There are special requirements for withholding or withdrawing life-sustaining treatment.
- Provides for the establishment of an interdisciplinary ethics review committee (NY ST § 2994-m).

Vermont— AD, Palliative Care

2010 Vermont Laws No. 128 (S. 88), approved and effective May 27, 2010:

- Establishes state principles for health care reform and a commission on health care reform, and amends the state's "Blueprint for Health." Among changes to the latter is a provision for education for patients on health care decision-making, including education related to advance directives, palliative care, and hospice care to improve chronic care management that encourages the use of the medical home and the community health teams.

Virginia— Registry

2010 Virginia Laws Ch. 16 (H.B. 267), approved and effective March 1, 2010, amends Va. Code § 54.1-2995:

- Removes the notarization requirement for documents filed in the Advance Healthcare Directive Registry.

Virginia— AD, DNR

2010 Virginia Laws Ch. 792 (S.B. 275) (West) approved April 21, 2010, and effective July 1, 2010, amends several provisions in the state's advance directive law, Va. Code §§ 54.1-2981 to -2993:

- Amends the capacity determination process to require that a second physician or licensed clinical psychologist (now referred to as the "capacity reviewer") who makes the second capacity evaluation be qualified by training or experience to assess capacity. §54.1-2982 and -2983.2B.
- Establishes a definition and requirement for health facilities to have "patient care consulting committees." §54.1-2982.
- Provides immunity from criminal prosecution and civil liability for any individual serving on a facility's patient care consulting committee and physician rendering a determination or affirmation in cases in which no patient care consulting committee for any act or omission done or made in good faith in the performance of such functions (§ 54.1-2988).
- Adds close friend to the end of the priority list of default decision-makers in the

absence of an appointed agent. However, this surrogate is not permitted to make decisions about withholding or withdrawing life-prolonging procedures. In addition, a patient care consulting committee or two qualified physicians must make the determination that the person meets the criteria for close friend.

- Revises the provisions permitting agents or other surrogates to make health care decisions over the patient's protest (use of so called "Ulysses clauses").
 - An appointed agent may be given such power if: (1) the advance directive explicitly authorizes the agent to make the health decision at issue, even over the patient's protest; and (2) the attending physician or licensed clinical psychologist attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision; and (3) the decision does not involve withholding or withdrawing life-prolonging procedures; and (4) the attending physician determines that the health care to be provided is medically appropriate and otherwise permitted by law.
 - If the patient does not have an appointed agent, a default surrogate may make such decisions if (3) and (4) above are met and also: (1) the decision does not involve admission to a psychiatric facility or treatment or care that is governed by state mental health law, and (2) the decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed, or if they are unknown, is in the patient's best interest.
- Authorizes licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission to follow Durable Do Not Resuscitate Orders.

States Adopting the Revised Uniform Anatomical Gifts Act in 2010

- 2010 Kentucky Laws Ch. 161 (SB 4) (West), approved April 26, 2010.
- 2010 Nebraska Session Law Serv. L.B. 1036 (West), approved April 1, 2010.
- 2010 New Hampshire Laws Ch. 111 (H.B. 1430) (West), approved June 1, 2010, effective July 31, 2010.
- 2010 Vermont Laws No. 119 (S. 205) (West), approved May 24, 2010, effective July 1, 2010.

States that Have Adopted the Revised Uniform Anatomical Gift Act according to the Uniform Law Commissioners (July 2010)

Alabama	Kentucky	Oklahoma
Alaska	Maine	Oregon
Arizona	Michigan	Rhode Island
Arkansas	Minnesota	South Carolina
California	Mississippi	South Dakota
Colorado	Missouri	Tennessee
Connecticut	Montana	Texas
District of Columbia	Nebraska	Utah
Florida	Nevada	Vermont
Georgia	New Hampshire	Virginia
Hawaii	New Jersey	Washington
Idaho	New Mexico	West Virginia
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	Wyoming
Kansas	Ohio	