

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

In the first seven months of 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

<b>Health Care Decision Statutes</b>
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***Colorado***—DNR, AD

2010 Colo. Legis. Serv. Ch. 113 (H.B. 10-1025), approved April 12, 2010, effective August 11, 2010, amends and updates the state's 20 year-old living will law (the "Colorado Medical Treatment Decision Act"):

- Several definitions are added or updated (e.g. using "decisional capacity" rather than "incompetent")
- The optional statutory form in the old law, "Declaration as to Medical or Surgical Treatment" is deleted from the statute.
- The statute expressly allows for a Living Will to be combined with a HIPAA Release, an organ donation form, and a Medical Power of Attorney, in the same document. This encourages the practice of combining all of these documents into one master directive.
- Incorporates reference to designated individuals under the "Colorado Designated Beneficiary Agreement Act" in conjunction with all references to one's spouse. (The "Colorado Designated Beneficiary Agreement Act" was enacted in 2009.)

***Colorado***—POLST, REGISTRY

2010 Colo. Legis. Serv. Ch. 279 (H.B. 10-1122) (WEST), approved May 26, 2010, effective August 11, 2010, creates a new article 18.7 in title 15 of the code to establish a

Colorado version of POLST, called “Medical Orders for Scope of Treatment” or “MOST” (Co. St. § 15-18.7-101).

- Includes an extensive definitional section; detailed specifications for the MOST form; immunity provisions for compliance; a requirement that EMS personnel, health care providers and health care facilities comply with MOST, absent specified reasons for non-compliance including moral convictions and religious beliefs. If a patient with MOST is being transferred, the transferring party must communicate the existence of the form to the receiving party before the transfer.
- Recognizes consent to MOST by authorized surrogates.
- Includes authorization for recognition of a MOST form signed by medical personnel who do not have admitting privileges at the hospital where the adult patient is being treated.
- Recognizes MOST forms executed in another state
- In executing MOST, a good faith effort must be made to locate and incorporate as appropriate the preferences documented in the patient’s advance directive. In case of a conflict between a MOST form and an adult’s advance medical directive, the most recently executed document takes precedence.
- Does not replace the state’s “CPR Directive” in article 18.6 of Title 15.
- Authorizes a voluntary online MOST registry to facilitate the exchange of health information.

**Colorado – AD (electronic records)**

2010 Colo. Legis. Serv. Ch. 80 (H.B. 10-1050) (WEST), Approved April 12, 2010, effective August 11, 2010, makes a couple miscellaneous changes regarding advance directives:

- Adds a provision (§25-1-1204) to state law sections regarding medical records confidentiality to permit secure, and confidential exchange of forms containing advanced directives via health information technology.
- Provides for the Department of Public Health and Environment to include on its web site home page a link to forms containing advanced directives for download by the public (§25-1.5-101).

**Georgia—DS, POLST**

2010 Georgia Laws Act 616 (S.B. 367) (WEST), approved June 3, 2010 amends the state’s default surrogate law to clarify and extend the range of authorized surrogates:

- Clarifies that in the absence of an agent under an advance directive, one’s spouse has priority as the default decision-maker for health care.
- After one’s spouse, the existing act provides the following priority of default surrogates:
  - A parent for his/her minor child
  - a person standing in loco parentis, for a minor; and any guardian, for his or her ward;
  - an individual, regardless of age or marital status, for herself when given in connection with her own pregnancy, or the prevention thereof, or childbirth;
  - an adult child for his or her parents;

- a parent for his or her adult child;
- an adult for his or her brother or sister;
- a grandparent for his or her grandchild;
- The amendment adds as authorized surrogates, next in priority after the above list, the following in the order indicated: 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.
- Provides that a person authorized to give consent on behalf of the patient shall also have the right to visit the patient in accordance with the hospital or health care facility's visitation policy.
- Provides immunity for providers relying in good faith on any direction or decision by any person reasonably believed to be an authorized surrogate.
- Establishes definitions and procedures for the appointment of a “temporary medical consent guardian,” an individual judicially appointed for a limited time and only for the purposes of consenting to surgical or medical treatment or procedures not prohibited by law.

***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.
- The notice must include a declaration form the resident can use to name of one or more potential health care surrogates. The facility must maintain in the resident’s clinical record a signed copy of the resident's declaration form, or the resident’s decision to decline to make such a declaration, or documentation by the facility of the resident's inability to make such a declaration

***Illinois***—DS

2009 Ill. Legis. Serv. P.A. 96-492 (S.B. 2258) (WEST), approved and effective August 14, 2009, adds a sentence addressing termination of a default surrogates authority:

- 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 a “Do-not-resuscitate” advanced directive to include one witness, rather than two, who can attest the individual or surrogate

had the opportunity to read the form, and 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 (LaPOST). Requires a periodic review of the LaPost form by the patient and his or her physician. A patient's informed consent is required to execute the form. Any attending physician who refuses to honor LaPost should make reasonable efforts to transfer the patient, and will be immune from liability and questions of professional conduct. Physicians and health care providers have no duty to make a search of whether the patient has an executed form. Certified medical emergency medical technicians and certified first responders should make a reasonable effort to detect the presence of an executed LaPOST form. Any medical provider, physician or person acting under their direction has immunity from civil and criminal prosecution and questions of professional conduct as a result of complying with a LaPost form.

***Maine***—AD

2010 Me. Legis. Serv. Ch. 651 (S.P. 495) (L.D. 1360) (WEST), approved April 14, 2010.

- Requires any law enforcement officer who knows that a person has an advance health care directive authorizing mental health treatment and probable cause 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.

- Authorizes the court 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. This amendment removes the power to declare a health care directive unenforceable from the guardian.

- Amends the Bill of Rights for Wards and Protected Persons to include the right to execute a health care directive, including both health care instructions and the appointment of a health care agent, if the court has not granted a guardian any of those powers or duties.

***New York***—DS, DNR

2010 Sess. Laws News of N.Y. Ch. 8 (A. 7729-D) (McKINNEY'S), 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).
- Authorizes an attending physician to decide medical treatment when the patient lacks capacity and no other surrogates are available. A court or second independent physician must approve any decision to withhold or withdraw life sustaining treatment.
- Provides for the establishment of an interdisciplinary ethics review committee (NY ST § 2994-m).
- Requires non-hospital orders not to resuscitate to be issued upon a standard form prescribed by the Commissioner of Health. The patient has the option to wear a bracelet identifying that status.

***Vermont*** AD, Palliative Care

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

- Expands its “Blueprint for Health” to include 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 March 1, 2010, amends VA ST § 54.1-2995.

- Removed 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 and effective April 21, 2010, amends Va. St. § 2.2-713.

- Amends laws regarding capacity determination that a second physician is no longer required for capacity determinations. A second assessment should be performed by a “Capacity reviewer” who can be either a licensed physician or a clinical psychologist.

- Establishes if any provision of a patient's advance directive conflicts with the authority conferred by any outpatient treatment order or by any other provision of law, the provisions of the patient's advance directive that create the conflict shall have no effect. (§ 54.1-2983.3).
- Authorizes licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission to follow Durable Do Not Resuscitate Orders.
- 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).
- Establishes procedure for cases in which a patient has not explicitly authorized his or her agent to make the health care decision at issue over the patient's later protest, a patient's agent, or person authorized to make decisions may make a decision over the protest of a patient who is incapable of making an informed decision if the decision does not involve withholding or withdrawing life-prolonging procedures.

<b>Other Notable Changes</b>
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***Vermont***

2010 Vermont Laws No. 119 (S. 205), effective July 1, 2010.

- Requires the agency of human services to issue a request for proposals to conduct an independent evaluation of the adult protective services provided by the department of disabilities, aging, and independent living's division of licensing and protection.

***Wisconsin***

2010 Wisc. Legis Serv. (2010 A.B. 302.1135) (WEST), approved April 21, 2010, effective May 6, 2010.

- Amends the law to allow an inmate serving a bifurcated sentence release to extended supervision for an “extraordinary health condition” such as advanced age, infirmity, or a need for medical treatment or services not available within a correctional institution. The condition no longer needs to be terminal.

<b>States Adopting the Revised Uniform Anatomical Gifts Act in 2010</b>
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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.

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