

SUMMARY OF HEALTH CARE DECISION STATUTES ENACTED IN 2013-2014

ABA Commission on Law and Aging

From 2013 to 2014, 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.

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 = Advance Directives

AS = Assisted Suicide (Physical Aid in Dying)

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

PAD = Physician aid in dying legislation (also called physician-assisted suicide)

Health Care Decision Statutes

Arkansas – AD, DS

2013 Arkansas Laws Act 1264 (S.B. 1013) (WEST), approved April 16, 2013, amends Arkansas Code Title 20, Chapter 6 to add a comprehensive new “Arkansas Healthcare Decisions Act.”

Key provisions of the Act include:

- Authorization of advance directives (including living wills and durable powers of attorney for health care) that must be signed by the principal and either notarized or signed by two witnesses. There are no restrictions on who may serve as an agent. The appointed agent may not be a witness, and at least one witness must not be related to the principal by blood, marriage, or adoption, nor entitled to any portion of the principal's estate at the death of the principal.
- The appointment of an agent can be effective when specified in the directive; otherwise when the principal loses the capacity to make health care decisions.
- Recognition of out of state advance directives.
- Authorizes conscience objections by healthcare providers. This permits non-compliance with the instructions of the patient, agent, or surrogate as long as timely notice is given and “all reasonable efforts to assist in the transfer of the principal to another healthcare provider or healthcare institution that is willing to comply” are made. If a transfer cannot be made for whatever reason, the healthcare provider's non-compliance trumps the rights of the patient.

- Authorizes the appointment of default surrogate decision makers for patients who lack decision-making capacity where no agent or guardian is available to act as decision maker. The unique feature of this surrogacy provision is that it expressly places the authority to designate a surrogate in the hands of the supervising healthcare provider. The Act provides criteria the healthcare provider must follow to ensure that the surrogate is caring, knowledgeable about, and truly involved in the patient's care. A next-of-kin order of preference is specified as a consideration, but is not binding. If there is no one available to serve as surrogate, the physician may make healthcare decisions for the patient after either (1) consulting with and obtaining the recommendations of the institution's ethics officers, or (2) obtaining concurrence from a second independent physician as defined in the Act.
- The surrogacy provisions also include a variation of surrogacy borrowed from the Uniform Healthcare Decisions Act. It provides that an individual can himself or herself designate a surrogate by informing the supervising health care provider orally or in writing. No specific language or form is required.
- The role of surrogate under the Act is similar to that of an appointed agent but more restrictive in form and function. One's treating health care provider or facility and its employees are disqualified from serving as surrogates unless they are relatives of the patients. A surrogate's authority commences only upon a determination of incapacity of the principal, and authority to withhold or withdraw artificial nutrition and hydration is limited. Surrogates and appointed agents have the same standard of decision-making: they must follow the principal's instructions and other wishes to the extent known; otherwise, act in accordance with the principal's best interest.

California – DNR, POLST, AD, DS

2013 Cal. Legis. Serv. Ch. 591 (A.B. 633) (WEST), approved Oct. 5, 2013, adds §1799.103 to Chapter 591 – the Health and Safety Code relating to emergency medical services.

- The section prevents employers from prohibiting employees from performing emergency medical services in response to medical emergencies (pursuant to the state's Good Samaritan law). The new section, however, provides an exception to the ban and says that an employer may adopt and enforce a policy prohibiting an employee from performing emergency medical services on a person who has expressed the desire to forgo resuscitation through any legally recognized means, including an expression by way of a do-not-resuscitate order, a Physician Order for Life Sustaining Treatment form, an advance health care directive, or a legally recognized health care decision maker.

California – AD

2014 Cal. Legis. Serv. Ch. 568 (A.B. 2139) (WEST), approved Sept. 25, 2014, amends §§442.5 and 442.7 of Chapter 568 – the Health and Safety Code relating to terminal illness.

- Requires that a health care provider, in the case of a patient who has been diagnosed with a terminal illness, notify the patient or another person authorized to make health care decisions for the patient of the patient's right to comprehensive information and counseling regarding legal end-of-life options. [Note: The law already requires this information to be given to these patients but only on their request. This additional language ensures that they know they have that right.]

Colorado – POLST

2013 Colo. Legis. Serv. Ch. 117 (H.B. 13-1202) (WEST), approved April 8, 2013, amends § 25.5-5-303 relating to counseling by Medicaid providers relating to medical orders for scope of treatment.

- Provides for Medicaid coverage and reimbursement of counseling relating to Medical Orders for Scope of Treatment for persons with serious illnesses. The counseling may be reimbursed if all necessary federal approvals have been obtained.

Connecticut – POLST

2014 Conn. Legis. Serv. P.A. 14-231 (H.B. 5537) (WEST), approved June 13, 2014, amends §§ 19a-576, 19a-577, 19a-490, 19a-175, 19a-495, 19a-580d, 11-4a of the public act relating to public health statutes.

- Adds the requirement that, if the Commissioner of Public Health chooses to establish a pilot program to implement the use of Medical Orders for Life-Sustaining Treatment, he or she must implement policies for that program to ensure that any procedures and forms developed for recording Medical Orders for Life-Sustaining Treatment are developed *after* considering the Physician Orders for Life-Sustaining Treatment paradigm.
- Requires a Medical Order for Life-Sustaining Treatment to be signed by a witness to be valid.

Delaware – DS

2013 Delaware Laws Ch. 28 (H.B. 42) (WEST), approved May 28, 2013, amends § 2507, Title 16 of the Delaware Code, relating to health care decisions.

- Allows for an adult aunt or uncle to act, when permitted by section 2507, as a surrogate to make health care decisions. In the priority listing of surrogates, aunt or uncle comes after adult niece or nephew and before close friend.
- Removes the requirement that an individual who is otherwise qualified to make health care decisions as a close friend must first be appointed as a guardian for that purpose by the Court of Chancery.
- Adds the requirement that a person qualified to make health care decisions as a close friend must provide an affidavit to the health care facility or to the attending or treating physician including statements and facts demonstrating that he or she is a close friend of the patient, is willing to become involved in the patient's care, and has maintained regular contact with the patient.

Delaware – DS, AD

2014 Delaware Laws Ch. 204 (S.B. 13) (WEST), approved April 4, 2014, amends § 2505 and §2511 of Title 16 of the Delaware Code relating to health care decisions.

- Appoints the Department of Health and Social Services as the entity whose patient advocates or ombudsmen must oversee and witness the execution of advance health-care directives done by residents of any sanitarium, rest home, nursing home, boarding home, or related institution. The Department of Health and Social Services replaces the Division of Services for Aging and Adults with Physical Disabilities in these roles.

Georgia – POLST

2013 Georgia Laws Act 218 (S.B. 158) (WEST), approved May 6, 2013, amends Code Section 29-4-18 of the Official Code of Georgia Annotated, relating to signatures on a Physician Order for Life-sustaining Treatment.

- Changes the requirements to execute a Physician Order for Life-Sustaining Treatment from requiring both a patient and his or her authorized person to sign the order to requiring only one or the other to sign.
- Changes the term “authorized representative” to “authorized person,” now defined in Code Section 31-39-2.

Hawaii – POLST

2014 Hawaii Laws Act 154 (H.B. 2052) (WEST), approved July 1, 2014, amends Chapter 327K of the Hawaii Revised Statutes, relating to provider orders for life-sustaining treatment.

- Changes “Physician Orders for Life-Sustaining Treatment” to “Provider Orders for Life-Sustaining Treatment.”
- Changes “surrogate” to “legally authorized representative.” “Legally authorized representative” is defined as an agent, guardian, or surrogate, as those terms are defined in section 327E-2, or agent designated through a power of attorney for health care, as defined in section 327E-2.
- Adds advanced practice registered nurses to the definition of “patient provider” and adds advanced practice registered nurses to the list of those who are immune from criminal prosecution, civil liability, and findings of unprofessional conduct for compliance with treatment orders.

Illinois – POA

2014 Ill. Legis. Serv. P.A. 98-1113 (S.B. 3228) (WEST), approved Aug. 26, 2014, amends Chapter 755 §§ 4-4, 4-5, 4-5.1, 4-10, and 4-12 relating to powers of attorney for health care.

- For the statutory form, removes the requirements of any specific formatting for a valid health care power of attorney except for the requirement that the notice must precede the form.
- Unchanged is the option that a principal need not use the statutory form to successfully execute a health care power of attorney.
- Provides a more detailed list of health care providers who are prohibited from being witnesses and adds a witnessing age requirement (at least 18 years of age).
- Rewrites the short form power of attorney for health care:
 - Makes the form much more colloquial and less technical. The new form is simpler in construction and language and much easier to read.
 - Adds user-friendly headings.
 - Removes the instruction to consult an attorney about the form.
 - Provides a sample conversation a principal should have with his or her agent.
 - Encourages open dialogue surrounding end-of-life care.
 - Substitutes a clear list of what kinds of decisions an agent can make for the former description of the legal abilities and duties of an appointed agent.
 - Adds a list of suggested considerations a principal should make when deciding who to appoint as his or her agent.

- Adds a section regarding what a principal should do if he or she chooses not to appoint an agent or does not have a person he or she wishes to appoint as an agent.
- Adds instructions for what to do with the power of attorney form once completed.
- Creates options to be checked by the principal in order to grant individual powers instead of providing space for exceptions to be made to a prescribed list of powers granted by the power of attorney.
- Allows for the form to appoint successor agents by way of an addendum.

Illinois – POLST, AD, DNR

2014 Ill. Legis. Serv. P.A. 98-1110 (S.B. 3076) (WEST), approved Aug. 26, 2014, amends Act 98-1110 relating to health care.

- Requires the Department of Public Health to include the Department of Public Health Uniform DNR/POLST form in its summary of advance directives law.
- Changes “DNR Advance Directive form” to “DNR/POLST form.” [Note: This eliminates the misimpression that a POLST form is an advance directive]
- Changes the meaning of POLST to “practitioner orders for life-sustaining treatment” (formerly “physician orders for life-sustaining treatment”).
- Defines “health care practitioner” as a physician, advanced practice nurse, physician assistant, or resident who is selected by or assigned to the patient and has primary responsibility for treatment and care of the patient. [Formerly, only a physician could sign the form.]
- Directs the Department of Health to create a combined DNR/POLST form that meets the minimum requirements to nationally be considered a POLST form. Other DNR forms are still permissible.
- Requires facilities to establish policies for the implementation of DNR/POLST.
- Adds the policy that, where more than one practitioner is in a position to execute a DNR/POLST form, any such practitioner may act under this section.
- Provides that completion of a DNR/POLST form must be voluntary and that no person can be required to execute the form.

Kentucky – AD

2013 Kentucky Laws Ch. 127 (HB 385) (WEST), approved April 5, 2013, amends Section 2, KRS 311.625 relating to living will directives.

- Changes the witnessing requirements for advance directives to permit an employee, owner, director, or officer of the treating health care facility to serve as a witness to an advance directive if the person is a member of the same fraternal order as the patient. [Note: The law already provides a similar exception if the witness is a family member within the 4th degree of consanguinity or a member of the same religious order]

Louisiana – AD

2014 La. Sess. Law Serv. Act 850 (H.B. 1274) (WEST), approved June 23, 2014, amends and reenacts R.S. 40:1299.58.10 and 1299.64.6 relating to life-sustaining procedures.

- State law already provides for interpreting any ambiguity about patient wishes in favor of the preservation of human life. This amendment further specifies that this presumption applies to situations in which a pregnant woman has a terminal or irreversible condition

and an obstetrician reasonably determines that the woman is twenty or more weeks along in her pregnancy and her life can be reasonably maintained so as to support continued growth and live birth of the child.

Louisiana – DS

2014 La. Sess. Law Serv. Act 601 (S.B. 302) (WEST), approved June 12, 2014, amends and reenacts R.R. 40:1299.53 relating to persons who may consent to surgical or medical treatment.

- Allows for an adult friend of a patient to consent to surgical or medical treatment for that patient. In the priority listing of those with the authority to consent on behalf of a patient, adult friend comes after the patient’s ascendants or descendants and before any person temporarily standing in the place of the patient’s guardian.
- Defines adult friend as an adult who has shown special care and concern for the patient, who knows the patient’s health care views and desires, and who is willing to be involved in health care decision making. The individual must certify that he or she qualifies as an adult friend on a form provided by the facility.
- Mandates that, before treating a patient, a physician must document a good-faith effort to find an authorized person and to search for any advance directive.
 - Sets forth standards to make a good-faith effort: search of the Louisiana Secretary of State’s Living Will Registry, contact the patient’s primary care physician, and contact any known facility in which the patient has recently resided.
 - Requires a physician, during this search, to document the name of any potentially authorized person and the physician’s efforts to make contact with that person.
- Provides that if the persons explicitly authorized to consent to medical procedures are not reasonably available, the attending physician has the discretion to decide what medical treatment is necessary and to provide that treatment without consent so long as he or she first obtains confirmation from another physician. There are no requirements on who can be confirming physician, but the confirming physician must personally examine the patient and document the assessment, findings, and recommendations in the patient’s chart prior to acting, absent an emergency.

Maryland – DNR, AD, POLST

2013 Maryland Laws Ch. 274 (H.B. 723) (WEST), approved May 2, 2013, amends Maryland’s General Health Article relating to the rights and privileges of physician assistants, authorizing physician assistants to:

- Complete a “Do Not Resuscitate order.”
- Serve as a witness to an advance directive.
- Witness and document oral advance directives.
- Execute an emergency medical services “do not resuscitate order.”
- Consult on updates of “Medical Orders for Life-Sustaining Treatment” forms.

Maryland – Registry

2013 Maryland Laws Ch. 549 (S.B. 790) (WEST), approved May 16, 2013, amends Maryland’s General Health Article §5-622 relating to the Advance Directive Registry.

- Requires the Secretary of Health and Mental Hygiene to impose fees on citizens wishing to utilize the Advance Directive Registry. The Secretary must set fees both for initial use of the Registry and for renewals.

Michigan – AD

2013 Mich. Legis. Serv. P.A. 107 (H.B. 4714) (WEST), approved Sept. 16, 2013, adds § 400.105d to M.C.L.A. relating to enrollments into contracted health plans.

- Requires that, upon enrollment into a contracted health plan, enrollees are informed about advanced directives and required to complete advance directive forms.
- Mandates that all completed advance directives be filed with the peace of mind registry. [The peace of mind registry is the state advance directive and organ donation registry, defined at M.C.L.A. 333.10301.]

Minnesota – POA

2013 Minn. Sess. Law Serv. Ch. 23 (H.F. 2320) (WEST), approved April 24, 2013, amends chapter 523 of Minnesota Statutes relating to statutory powers of attorney.

- Revises the statutory power of attorney to state expressly that the form does not grant any powers to make health care decisions. To give an agent power to make health care decisions, one must use a health care directive under the state’s advance directive statute, chapter 145C.

Minnesota – AD

2013 Minn. Sess. Law Serv. Ch. 108 (H.F. 1233) (WEST), approved May 23, 2013, amends Article 11 Section 22 relating to Home Care Providers.

- Provides that if a client, family member, or other caregiver of the client requests that life-sustaining treatment be discontinued, the home care provider shall take no action to discontinue the treatment and shall promptly inform the client that the request will be made known to the physician who ordered the client’s treatment. The provider must inform the physician of the client’s request and work with the client and the client’s physician to comply with the provisions of the state’s Health Care Directive Act in chapter 145C.
- Requires home care providers to maintain records for each of their clients and specifies that any advance directive must be included in such records.

Mississippi – POLST

2014 Miss. Laws Ch. 470 (H.B. 1014) (WEST), approved March 31, 2014, creates § 41-41-301 called the Physician Order for Sustaining Treatment (POST) Act.

- Establishes Mississippi Physician Orders for Sustaining Treatment (POST) and directs the State Board of Medical Licensure to promulgate a standard POST form.
- The signature of the physician and the patient or the patient's representative is required for a valid POST. The POST program may be used with adults and minors.

North Dakota- Registry

2013 North Dakota Laws Ch. 209 (S.B. 2065) (WEST), approved April 3, 2013, amends subsection 5 of § 23-06.5-19 of the North Dakota Century Code relating to the health care record registry of health care directives.

- Adds that a health care record may be released to the patient who executed it, that person's agent, or that person's health care provider.

New Hampshire – DS, AD

2014 New Hampshire Laws Ch. 239 (H.B. 1434) (WEST), approved July 21, 2014, amends NH ST § 137 relating to surrogate health care decision making by a family member or friend.

- Adds that the purpose of the chapter is to enable a surrogate – designated by an established process – to make health care decisions for another person in a timely manner and without court intervention.
- Clarifies within the section's definition of capacity that a diagnosis of mental illness, brain injury, or intellectual disability does not automatically mean a person is incapacitated.
- Provides for default surrogate decision-makers in the following order of priority:
 - (a) The patient's spouse, civil union partner, or common law spouse, unless there is a divorce proceeding, separation agreement, or restraining order limiting that person's relationship with the patient.
 - (b) Any adult son or daughter of the patient.
 - (c) Either parent of the patient.
 - (d) Any adult brother or sister of the patient.
 - (e) Any adult grandchild of the patient.
 - (f) Any grandparent of the patient.
 - (g) Any adult aunt, uncle, niece, or nephew of the patient.
 - (h) A close friend of the patient.
 - (i) The agent with financial power of attorney or a conservator appointed in accordance with RSA 464–A.
 - (j) The guardian of the patient's estate.
- Defines close friend as any person over 21 who is a close friend of the patient, is willing and able to make health care decisions, and is familiar with the patient's wishes and beliefs.
- Extends the Act's grants of authority and restrictions to surrogates in the same ways as they apply to agents.
- Adds the limitation that neither an agent nor a surrogate may consent to psychosurgery, shock therapy, sterilization, or experimental treatment on behalf of the patient.
- An unusual feature of the surrogacy provision is that a surrogates authority is limited to 90 days.

New Hampshire – AD

2013 New Hampshire Laws Ch. 224 (S.B. 170) (WEST), approved July 12, 2013, amends NH ST § 137 relating to advance directives pertaining to life-sustaining treatment.

- Adds “medically administered nutrition and hydration” to the definition of life-sustaining treatment. [This may eliminate the need to give separate instructions for nutrition and hydration.]

New Hampshire – POLST

2014 New Hampshire Laws Ch. 328 (S.B. 213) (WEST), approved Aug. 2, 2014, creates the New Hampshire POLST Registry Act relating to the establishment of a registry for provider orders for life-sustaining treatment.

- Requires the Department of Health and Human Services to establish and operate a registry of Provider Orders for Life-Sustaining Treatment.
- Mandates that the registry release POLST information to authorized users for treatment purposes.
- Authorizes researchers to access information within the POLST registry except for identifying information regarding health care providers or facilities or individual patients.
- Clarifies that the Department need not prescribe POLST forms, educate the public about POLSTs, or train health care providers about POLSTs.
- Affirms that the enactment of the registry does not require any citizen of the state to execute a POLST.
- Establishes a POLST registry advisory committee to oversee the implementation, operation, and evaluation of the POLST registry.
 - Prescribes the members of the committee including: a health professional; a physician; representatives from the hospital community, long-term care community, and hospice community; an emergency medical services provider; two members of the public; and the director of the division of fire standards and training and emergency medical services.
 - Limits the terms of each committee member to three years.
- Immunizes actors who, in good faith, abide by the terms of a registered POLST.
- Shields registered POLSTs from discoverability in litigation.

Nevada – POA

2013 Nevada Laws Ch. 224 (S.B. 78) (WEST), approved May 28, 2013, amends NV ST 162A.790 and 162A.860 relating to durable powers of attorney for healthcare decisions.

- Expands the certification of competency requirement to more facilities so that if a principal resides in a hospital, residential facility for groups, facility for skilled nursing, or home for individual residential care, a physician, psychologist, or psychiatrist must certify that principal's competency and attach such certification to the executed power of attorney in order for the power of attorney to be valid.
- Expressly recognizes powers of attorney executed in other states if the documents are executed according to the laws of those states.
- Makes the state's statutory form optional rather than mandatory.
- Retains the requirement that durable powers of attorney for health care decisions must be witnessed or executed in the manner prescribed by the statutory form.

Nevada – POLST

2013 Nevada Laws Ch. 417 (A.B. 344) (WEST), approved June 16, 2013, amends §§ 449-451 and §129 relating to Physician Orders for Life-Sustaining Treatment.

- Establishes a Physician Orders for Life-Sustaining Treatment (POLST) program under the oversight of the State Board of Health. The POLST form must be signed by a physician and the patient or the patient's representative. POLST may be used with adults and minors.

New Jersey – DS

2013 NJ Sess. Law Serv. Ch. 103 (ASSEMBLY 3357) (WEST), approved Aug. 7, 2013, amends NJ ST 26:2H relating to capacity and surrogacy.

- Changes the language surrounding advance directives and appointment of surrogates from “incompetent patients” to “patients who lack mental capacity.”
- Grants “patient’s partner in a civil union” the same treatment as the patient’s spouse and the patient’s domestic partner with respect to surrogacy roles.

New Jersey – AD

2013 NJ Sess. Law Serv. Ch. 167 (SENATE 2052) (WEST), approved Oct. 16, 2013, creates “Bill of Rights for Continuing Care Retirement Community Residents in Independent Living.”

- Requires facilities to provide prospective residents with explanations of resident rights and responsibilities.
- Lists those rights and responsibilities.
 - Includes that each resident may execute an advance directive and may appoint someone to make health care decisions on his or her behalf.
 - Explains that each resident has a right to expect his or her directions communicated in an advance directive will be followed as closely as possible.

New York – DS

2014 Sess. Law News of N.Y. Ch. 93 (A. 5309-A) (McKINNEY’S), approved July 22, 2014, amends Subdivision 2 of § 2994-r of the public health law relating to court orders designating surrogates.

- Prescribes the circumstances under which a court may remove a surrogate:
 - If the surrogate is not reasonably available.
 - If the surrogate has acted in bad faith.
 - If the surrogate is the subject of an order of protection protecting the principal or is accused of criminal act causing harm to the health status of the principal.

Ohio – POA, Registry

2013 Ohio Laws File 52 (Sub. H.B. 126) (WEST), approved Dec. 19, 2013, amends §§ 1337.12, 1337.13, 1337.28, 2111.121, and 2133.04 of the Revised Code relating to durable powers of attorney.

- Allows for an attorney-in-fact who is appointed by a power of attorney to access the principal’s health information at any time after the power of attorney is executed, regardless of whether the principal has lost capacity to make health care decisions.
- Provides that a power of attorney for health care may nominate a guardian of the principal’s person, estate, or both. Should the need for a guardian arise, the court shall make its appointment in accordance with the principal’s most recent nomination, absent good cause. The principal may also direct that bond be waived for a person nominated as guardian
- A power of attorney for health care that contains the nomination of a person to be the guardian may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.

- Provides that, where a court designates a guardian for a principal, if that principal had previously designated an attorney-in-fact by way of a durable power of attorney, the attorney-in-fact will retain health care decision making power over the court-appointed guardian unless the court limits, suspends, or terminates the power of attorney.

Pennsylvania – POA

2014 Pa. Legis. Serv. Act 2014-95 (H.B. 1492) (PURDON’S), approved July 2, 2014, amends Title 20 of the Pennsylvania Consolidated Statutes relating to powers of attorney for property.

- Clarifies that key provisions of the law relating to powers of attorney for property do not extend to health care or mental health care powers of attorney.
- Specifies that the agent under a power of attorney for property is obligated to cooperate with the person who has authority to make health care decisions on behalf of the principal.

Texas – POA

2013 Tex. Sess. Law Serv. Ch. 134 (S.B. 651) (VERNON’S), approved May 24, 2013, amends Section 166 of the Health and Safety Code relating to a medical powers of attorney.

- Adds the option of signing a medical power of attorney before a notary public as a permissible alternative to signing in the presence of two competent witnesses.

Virginia – Registry

2014 Virginia Laws Ch. 715 (S.B. 575) (WEST), approved April 6, 2014, amends § 54.1 – 2995 of the Code of Virginia relating to Advance Health Care Directive Registry.

- Extends the authority to submit documents to the advance directive/organ donation registry to principal’s legal representative or designee. [Before only the principal had the authority to file his or her own advance directive with the registry.]

Vermont – POLST

2014 Vermont Laws No. 127 (H. 874) (WEST), approved May 10, 2014, amends VT ST T. 14 §3075 relating to consent to clinician orders for life-sustaining treatment.

- Adds the requirement that a guardian who is not acting pursuant to an advance directive must obtain written court approval before he or she consents to a Clinician Order for Life-Sustaining Treatment on behalf of a patient. [NOTE: This is already the rule for DNR orders.]
- Provides for surrogate consent to hospice care in the absence of an appointed agent or guardian. The person consenting must be a family member of the patient or a person with a known close relationship to the patient.

Vermont – AD

2014 Vermont Laws No. 192 (S. 287) (WEST), approved June 16, 2014, amends 18 V.S.A. §§ 7624- 7627, 7629, 9701, 9703, 9706-9707 relating to involuntary mental health treatment and commitments.

- Confirms the terminology previously referencing “durable power of attorney” to “advance directive” to be consistent with other state law.

- Requires the Commissioner of Mental Health to develop a protocol for hospitals to educate staff on the use of advance directives and other patient expressions of treatment preferences.
- Requires psychiatric hospitals to provide patients with information regarding advance directives before those patients are discharged.
- Adds to the institutional witness requirements the option to have a “patient representative” sign the required attestation needed for a valid advance directive. Defines “patient representative” as a mental health patient representative established by Vermont Law section 7253 of Title 18. [NOTE: Institutional witnessing requirements apply to nursing homes, residential facilities, and psychiatric hospitals. Others already authorized to sign the attestation are an ombudsman, a recognized member of the clergy, an attorney, and a court representative.

Vermont – PAD

2013 Vermont Laws No. 39 (S. 77) (WEST), approved May 20, 2013, creates Sec. 1 18 V.S.A. chapter 113 relating to patient choice and end of life control.

- This is a new act permitting physician aid in dying for individuals with terminal conditions, defined as “incurable and irreversible disease[s] which would, within reasonable medical judgment, result in death within six months.” The Act specifies detailed conditions, procedural steps, documentation requirements, limitations, and protections.