

## SUMMARY OF HEALTH CARE DECISION STATUTES ENACTED IN 2012

### ABA Commission on Law and Aging

In 2012, 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 = Advanced Directives

AS = Assisted Suicide (Physician Aid in Dying)

DNR = Do Not Resuscitate Orders

DS = Default Surrogate

Hospice = Hospice care

Palliative Care = Palliative or pain-management care

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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#### **California** – Hospice

2012 Cal. Legis. Serv. Ch. 673 (S.B. 135) (WEST), approved September 27, 2012, amends Health and Safety Code, relating to hospice care.

- Responds to the growing number of hospice facilities by creating a health facility licensing category specifically for hospice facilities. The Health and Safety Code previously only provided a licensing category for at home hospice care. The new licensing category allows hospice facilities to provide end of life care without contracting with other kinds of licensed facilities, as they had previously been forced to do.
- Provides definitions for hospice facilities and hospice services, and creates regulations for hospice facilities to follow in order to be licensed by California.

#### **Georgia** – AS

2012 Georgia Laws Act 639 (H.B. 1114) (WEST), approved May 1, 2012, amends Article 1 of Chapter 5 of Title 16 of the Official Code of Georgia, to provide for exceptions to the definition of assisted suicide.

- Repeals previous section regarding offering to assist suicide, and creates a new, more comprehensive definition of assisted suicide.
- Defines assisted suicide as a homicide where any person with actual knowledge of a person's intent to commit suicide, knowingly and willingly assists that person in their suicide.
- Creates exception for any person prescribing, dispensing, or administering medications or medical procedures pursuant to patient consent or to a living will, advance directive or durable power of attorney.

- Creates exception for any person discontinuing or withholding medications, medical procedures, nourishment, or hydration pursuant to patient consent or to a living will, advance directive, or durable power of attorney.

### ***Idaho*** – POLST

2012 Idaho Laws Ch. 302 (S.B. 1294) (WEST), approved April 5, 2012, effective July 1, 2012, amends section 39 of the Idaho Code to make changes to the “Physician Order for Scope of Treatment” (POST) system.

- Changes standard for capacity to consent from “intelligence and awareness” to “comprehension”.
- Broadens definition of health care provider to include Advanced Practice Professional Nurses and Physician’s Assistants.
- Allows Durable Power of Attorney, Advance Directive, or POST to be suspended at any time by written, signed suspension by the maker of the device, or by oral expression by the maker; however, once termination terms of suspension are met, conditions resume.
- Creates specific guidelines for POST form.
- Removes requirement that where POST and expressed directives conflict, the health care provider must follow the POST.
- Gives additional rights to surrogate decision makers.
- Adds requirement that POST devices may only be worn by persons who have a POST form which complies with Idaho Code 39-4512A.

### ***Illinois*** – DNR, AD

2011 Ill. Legis. Serv. P.A. 97-382 (H.B. 3134) (WEST), approved August 15, 2011, effective January 1, 2012, changes Section 2310-600 of the Illinois Civil Administrative Code to create new responsibilities for the Illinois Department of Public Health regarding Advanced Directives and DNR Orders.

- Changes Civil Administrative Code to reflect that the Illinois Department of Public Health (DPH) has prepared a specific “DPH Uniform DNR Advance Directive” form. The previous law mandated the DPH to create such a form, so this legislative change reflects the actual creation of the form.
- Illinois Department of Public Health shall provide and publish “DPH Uniform DNR Advance Directive” forms online for Illinois residents.
- The form shall meet the minimum requirements to nationally be considered a POLST.

### ***Iowa*** – POLST

2012 Ia. Legis. Serv. Ch. 1008 (H.F. 2165) (WEST), approved March 7, 2012, creates a new section in Iowa Code 144D to establish an Iowa version of POLST called “Physicians Orders for Scope of Treatment” (POST).

- Includes definition section and detailed specifications for POST forms, based on the national POLST paradigm .
- Recognizes validity of POST forms executed out of state.
- Authorizes compliance with POST form even where signing physician does not have admitting privileges at hospital providing treatment.
- Allows for revocation at any time, but revocation is not effective unless it is communicated to a health care provider.

- If revocation is not communicated to a health care provider, the provider who complies with the existing POST is not subject to any liability.
- If a health care provider is unwilling to comply with POST, then they must take all reasonable steps to transfer the patient to another health care provider.
- A patient's POST will not supersede their Durable Power of Attorney or their Out of Hospital DNR Order.
- POST will not affect a patient's existing life insurance policy or their eligibility to apply for a life insurance policy.
- Patients are not required to have a POST in order to be treated.
- There is no presumption of intent for a patient that has not executed a POST.
- Death, resulting from complying with a POST, does not constitute a homicide/suicide.

***Massachusetts*** – Palliative Care

2012 Mass. Legis. Serv. Ch. 244 (S.B. 2125) (WEST), approved August 18, 2012, effective January 1, 2013, mandates study on pain management and substance abuse among seniors.

- Study to be carried out by Executive Office of Elder Affairs and Bureau of Substance Abuse Services, investigating pain management, drug abuse, and addiction among seniors.
- Study will be submitted to the general court, no later than January 31, 2013.

***Michigan*** – Registry, AD

2012 Mich. Legis. Serv. P.A. 179 (S.B. 723) (WEST), approved June 19, 2012, effective June 19, 2012, adds section 10301 to MCL Section 333.

- Allows for creation of a Peace of Mind Registry for directives, including durable powers of attorney, designations of patient advocates, and signed or authorized records concerning anatomical gifts.
- Gives Department of Community Health authority to create, operate, and maintain the Peace of Mind Registry.
- Peace of Mind Registry will be provided at no cost to health care providers or individuals who register their directives. All costs will be incurred by the Peace of Mind Registry organization, as created by the Department of Community Health.

***New Jersey*** – AD, Hospice

2011 NJ Sess. Law Serv. Ch. 113 (SENATE 2199) (WEST), approved August 18, 2011, effective August 18, 2011, establishes New Jersey Advisory Council on End of Life Care.

- Council will have 21 multidisciplinary members, who will disseminate information to the general public regarding palliative care and end of life care.
- Council will also report to the governor and state legislature and provide recommendations for administrative or legislative actions regarding end of life care.

***New Jersey*** – POLST

2011 NJ Sess. Law Serv. Ch. 145 (SENATE 2197) (WEST), approved December 20, 2011, effective July 1, 2012, creates the "Physicians Orders for Life-Sustaining Treatment Act" (POLST).

- Creates requirement for Commissioner of Department of Health and Senior Services to designate a Patient Safety Organization to prescribe a POLST form and all requisite

procedures; promote awareness about the POLST option; provide ongoing training of health care providers about POLST; prescribe additional requirements for POLST form for persons with mental illness or developmental disabilities; provide ongoing evaluation of the use and design of POLST; and minimize the record-keeping burden of POLST.

- Recognizes validity of out of state POLST forms.
- Allows for POLST modification and revocation by patient or patient representative.
- If the orders of a POLST conflict with more recent verbal directives, the health care provider is to honor the more recent directive.
- In interpreting POLST, if the patient, patient representative, and the health care provider disagree, the parties may resolve the conflict using the procedures or practices of the hospital, or by seeking court resolution.
- Creates penalties for intentional failure to comply with POLST.

#### ***New York*** – AD, Hospice

2012 Session Law News of N.Y. Ch. 256 (S. 7596) (WEST), approved July 18, 2012, effective July 18, 2012, amends public health law, in relation to counseling on treatment options.

- Amends law to require health care practitioners to provide patients with terminal illnesses information regarding other appropriate treatment options, should the patient wish to initiate or continue treatment.
- Also allows health care practitioners who do not feel qualified to provide information, to arrange for another practitioner to provide the information and counseling.

#### ***Rhode Island*** – POLST

2012 Rhode Island Laws Ch. 12-187 (12-H7735B) (WEST), approved June 11, 2012, effective June 11, 2012, amends the Rights of the Terminally Ill Act to establish “Medical Orders for Life Sustaining Treatment” (MOLST).

- Adds extensive definition section and adopts MOLST.
- Allows MOLST qualified health care provider to conduct an evaluation of a patient and if necessary, issue a new MOLST with patient consultation.
- Requires health care decision maker to consult with MOLST qualified health care provider before requesting to modify a patient’s MOLST.
- Requires that the MOLST be on an easily identifiable form, but provides no sample form.
- Allows revocation of MOLST in any manner at any time that communicates an intent to revoke.

**States that Have Adopted the Revised Uniform Anatomical Gift Act  
according to the Uniform Law Commissioners (January 2013)**

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