



New Law Creates Life-Sustaining Care Form for New Jerseyans

Client Advisories

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On December 20, 2011, Governor Christie signed into law bi-partisan legislation creating a POLST program in New Jersey. POLST stands for "Physician Orders for Life-Sustaining Treatment."

The concept of POLST began in 1991, at the Oregon Health Sciences University (OHSU). The centerpiece of the POLST program is a written form that converts a person's wishes regarding medical treatment into a medical order. The POLST form will contain immediately actionable, signed medical orders, which apply across the health care spectrum: in hospitals, nursing homes, and even to emergency care personnel. The form itself is an easily identifiable document, typically brightly colored in order to stand out from the rest of the patient's medical record.

The New Jersey law requires the Commissioner of Health to designate a Patient Safety Organization (PSO) operating pursuant to the Federal "Patient Safety and Quality Improvement Act of 2005" (P.L. 109-41) to prescribe the form for use in New Jersey; to define the procedures for completion, modification and revocation of the form; and to provide on-going training for health professionals in the use of the form. The Commissioner has selected the Institute for Quality and Patient Safety at the New Jersey Hospital Association as the PSO to function in this regard.

Valid POLST Form

A POLST form is considered completed, and therefore valid, if it contains information indicating a patient's health care preferences; has been voluntarily signed by a patient with decision-making capacity, or by the patient's representative in accordance with the patient's known preferences or in the best interests of the patient; and includes the signature of the patient's attending physician or advanced practice nurse (APN) and the date of that signature. A document executed in another state, which meets the requirements of the New Jersey act for a POLST form, shall be deemed to be completed and valid to the same extent as a POLST form completed in New Jersey.

Modification or Supersedure

It is, of course, possible that the treatment goals of a patient may change. The Act permits the patient's attending physician or APN, after evaluating the patient and obtaining the informed consent of the patient or patient's representative, if so authorized, to issue a new order, which modifies or supersedes the original POLST. At any time, a patient with decision-making capacity may modify or revoke the POLST, or request alternative treatment. The POLST form gives the patient the choice to authorize a representative to revoke or modify the patient's completed POLST form if the patient loses decision-making capacity. If the patient so authorizes his/her representative, the representative may, at any time after the patient loses decision-making capacity, and after consultation with the patient's attending physician or APN, request the physician or APN to modify or revoke the completed POLST form, or otherwise request alternative treatment.

In the event of a disagreement between or among the patient, his/her representative and the attending physician or APN, the parties may turn to procedures and practices established by a health care institution, such as consultation with an ethics committee, or may seek resolution in court.

Patient and Provider Rights

The law preserves a patient's right to refuse treatment, and does not require health care professionals or emergency care providers to act contrary to law or medical standards. Private, religiously-affiliated institutions are not required to act contrary to their policies or practices, as long as such policies and practices are properly communicated, and the patient is not abandoned or treated disrespectfully.

Comparison to Advance Directives

POLST is intended to be a complement to Advance Directives. Whereas an Advance Directive expresses an individual's wishes regarding future health care issues, POLST can provide clear instructions regarding a current medical condition. An Advance Directive is necessary to appoint a legal health care representative or proxy, since such designation is personal, and not in the nature of a medical order. A POLST form should accompany an Advance Directive when appropriate. Most importantly, an Advance Directive may not guide actions by emergency care personnel when it is produced outside of an institutional setting, such as a hospital. Because POLST is a medical order, it is specifically intended to provide direction to emergency care personnel.

Simply put, an advanced directive is a document that an adult can use to express his/her desires regarding end-of-life decision making. It does not have the same authority as a POLST since it is not a medical order. The POLST document is a medical order that healthcare workers must follow. Because they serve different purposes, it is recommended that patients have both documents.

One of the concerns identified in the past regarding the use of Advance Directives was that physicians were not always well-trained in dealing with end-of-life decision making. In a very significant provision, the New Jersey legislature has required that the continuing education provisions applicable to physicians and APNs include at least two credits of educational programs or topics related to end-of-life care.

Conclusion



POLST is the next step in a maturing approach to end-of-life care. It is a vehicle for patients and their healthcare providers to spell out for both caregivers and family members the patient's health care goals, particularly at the end-of-life. The experience of other states has been that POLST is followed by other caregivers. Although not bound by medical orders in the same way as health professionals, family members can be more comfortable with a decision, knowing that their loved one actively participated in the process. And finally, POLST will empower patients. Additional information about POLST can be found at www.POLST.org.

If you have any questions or concerns regarding the POLST program or any related issue, please contact William P. Isele of Archer's Health Care Group at 609.580.3780 or wisele@archerlaw.com.

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