

JAN 16 2014

A BILL FOR AN ACT

RELATING TO PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Act 186, Session
2 Laws of Hawaii 2009, established the Hawaii physician orders for
3 life-sustaining treatment (POLST) law. Act 186, codified as
4 chapter 327K, Hawaii Revised Statutes, enables patients or their
5 surrogates to create a POLST. POLST is a holistic method of
6 planning for end-of-life care and a specific set of medical
7 orders that ensure patients' wishes are honored.

8 The legislature further finds that completing a POLST form
9 encourages communication and conversations between patients and
10 health care providers. Patients may elect to create a POLST
11 based on conversations with their health care providers,
12 enabling patients to make informed decisions and translating
13 patients' wishes into actionable medical orders. POLST is
14 beneficial to people with serious illnesses, including dementia,
15 as it specifies the types of treatment that a patient wishes to
16 receive toward the end of life. A POLST form documents
17 patients' wishes in a clear manner and can be quickly understood
18 by all health care providers, including first responders and



1 emergency medical services personnel. A POLST form, which is
2 portable and recognized statewide, also ensures that a patient's
3 wishes can be honored across all settings of care. If a patient
4 no longer has the capacity to make decisions, the patient's
5 legal representative may complete a POLST form on the patient's
6 behalf.

7 The legislature additionally finds that the national
8 standard for authorized health care provider signatories
9 includes licensed physicians and advanced practice registered
10 nurses, both of whom are recognized in Hawaii as primary care
11 providers. However, chapter 327K, Hawaii Revised Statutes,
12 limits POLST to licensed physicians. This creates a barrier to
13 timely completion of POLST, especially in rural areas or on the
14 neighbor islands, where an advanced practice registered nurse
15 may be the only primary care provider a patient sees. Limiting
16 POLST to licensed physicians also affects long-term care
17 settings where an advanced practice registered nurse is the
18 primary care provider and visits from a licensed physician may
19 be several weeks apart. Although advanced practice registered
20 nurses are able to practice independently in Hawaii, bottlenecks
21 occur in certain health care settings, as advanced practice



1 registered nurses are currently unable to complete a POLST
2 directly with patients and families.

3 The legislature also finds that references within chapter
4 327K, Hawaii Revised Statutes, need to be amended from
5 "physician orders for life-sustaining treatment" to "provider
6 orders for life-sustaining treatment", to accurately reflect
7 that physicians are not the only primary care providers who may
8 sign a POLST form on behalf of a patient.

9 The legislature further finds that chapter 327K, Hawaii
10 Revised Statutes, uses the term "surrogate" to describe a
11 legally authorized health care decision maker, which is
12 inconsistent with terminology in chapter 327E, Hawaii Revised
13 Statutes, the Uniform Health-Care Decisions Act. Amendments are
14 therefore necessary to correct these inconsistencies.

15 Accordingly, the purpose of this Act is to increase access
16 to POLST by:

17 (1) Updating references from "physician orders for life-
18 sustaining treatment" to "provider orders for life-
19 sustaining treatment" throughout chapter 327K, Hawaii
20 Revised Statutes;

21 (2) Expanding health care provider signatory authority to
22 include advanced practice registered nurses; and



1 (3) Correcting inconsistencies over terms used to describe
2 who may sign a POLST form on behalf of a patient.

3 SECTION 2. Chapter 327K, Hawaii Revised Statutes, is
4 amended by amending its title to read as follows:

5 "~~PHYSICIAN~~ PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT"

6 SECTION 3. Section 327K-1, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By adding a new definition to be appropriately inserted
9 and to read:

10 "Legal representative" means an agent, guardian, power of
11 attorney for health care, or surrogate, as those terms are
12 defined in section 327E-2."

13 2. By amending the definitions of "patient's physician"
14 and "physician orders for life-sustaining treatment form" to
15 read:

16 "'Patient's ~~physician~~ provider" means a physician
17 licensed pursuant to chapter 453 or an advanced practice
18 registered nurse recognized pursuant to chapter 457 who has
19 examined the patient.

20 "[~~Physician~~ Provider orders for life-sustaining treatment
21 form" means a form signed by a patient, or if incapacitated, by
22 the patient's [~~surrogate~~] legal representative and the patient's



1 ~~[physician,]~~ provider, that records the patient's wishes and
2 that directs a health care provider regarding the provision of
3 resuscitative and life-sustaining measures. A ~~[physician]~~
4 provider orders for life-sustaining treatment form is not an
5 advance health-care directive."

6 3. By deleting the definition of "surrogate".

7 ~~["Surrogate" shall have the same meaning as in section~~
8 ~~327E-2."]~~

9 SECTION 4. Section 327K-2, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) The following may execute a form:

13 (1) The patient;

14 (2) The patient's ~~[physician,]~~ provider; and

15 (3) The ~~[surrogate,]~~ legal representative, but only if the
16 patient:

17 (A) Lacks capacity; or

18 (B) Has designated that the ~~[surrogate]~~ legal

19 representative is authorized to execute the form.

20 The patient's ~~[physician]~~ provider may medically evaluate the
21 patient and, based upon the evaluation, may recommend new orders
22 consistent with the most current information available about the



1 individual's health status and goals of care. The patient's
2 [~~physician~~] provider shall consult with the patient or the
3 patient's [~~surrogate~~] legal representative before issuing any
4 new orders on a form. The patient or the patient's [~~surrogate~~]
5 legal representative may choose to execute or not execute any
6 new form. If a patient is incapacitated, the patient's
7 [~~surrogate~~] legal representative shall consult with the
8 patient's [~~physician~~] provider before requesting the patient's
9 [~~physician~~] provider to modify treatment orders on the form. To
10 be valid, a form shall be signed by the patient's [~~physician~~]
11 provider and the patient, or the patient's [~~physician~~] provider
12 and the patient's [~~surrogate~~] legal representative. At any
13 time, a patient, or, if incapacitated, the patient's
14 [~~surrogate~~] legal representative, may request alternative
15 treatment that differs from the treatment indicated on the
16 form."

17 2. By amending subsection (d) to read:

18 "(d) A patient having capacity, or, if the patient is
19 incapacitated, the patient's [~~surrogate~~] legal representative,
20 may revoke a form at any time and in any manner that
21 communicates intent to revoke."



1 SECTION 5. Section 327K-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) No physician, advanced practice registered nurse,
4 health care professional, nurse's aide, hospice provider, home
5 care provider, including private duty and medicare home health
6 providers, emergency medical services provider, adult
7 residential care home operator, skilled nursing facility
8 operator, hospital, or person employed by or under contract with
9 a hospital shall be subject to criminal prosecution, civil
10 liability, or be deemed to have engaged in unprofessional
11 conduct for:

12 (1) Carrying out in good faith, a decision regarding
13 treatment orders, including cardiopulmonary
14 resuscitation by or on behalf of a patient pursuant to
15 orders in a form and in compliance with the standards
16 and procedures set forth in this chapter; or

17 (2) Providing cardiopulmonary resuscitation to a patient
18 for whom an order not to resuscitate has been issued
19 on a form; provided the person reasonably and in good
20 faith:

21 (A) Was unaware of the issuance of an order not to
22 resuscitate; or



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1 (B) Believed that any consent to treatment orders,
 2 including the order not to resuscitate, had been
 3 revoked or canceled."

4 SECTION 6. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *Randy De Bell*
Thomas Crum Oakland
Joe Deane Jr
John De
Will Eyer
Clarence K. Nicholas
W
W.C. Oyle
Michael



S.B. NO. 2227

Report Title:

Provider Orders for Life-Sustaining Treatment; Advanced Practice Registered Nurses; Legal Representatives

Description:

Increases access to POLST by updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, HRS; expanding health care provider signatory authority to include advanced practice registered nurses; and correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient.

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