

**ACT 154**

H.B. NO. 2052

A Bill for an Act Relating to Provider Orders for Life-Sustaining Treatment.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

The legislature further finds that completing a POLST form encourages communication and conversations between patients and health care providers. Patients may elect to create a POLST based on conversations with their health care providers, enabling patients to make informed decisions and translating patients' wishes into actionable medical orders. POLST is beneficial to people with serious illnesses, including dementia, as it specifies the types of treatment that a

patient wishes to receive toward the end of life. A POLST form documents patients' wishes in a clear manner and can be quickly understood by all health care providers, including first responders and emergency medical services personnel. A POLST form, which is portable and recognized statewide, also ensures that a patient's wishes can be honored across all settings of care. If a patient no longer has the capacity to make decisions, the patient's legally authorized representative may complete a POLST form on the patient's behalf.

The legislature additionally finds that the national standard for authorized health care provider signatories includes licensed physicians and advanced practice registered nurses, both of whom are recognized in Hawaii as primary care providers. However, chapter 327K, Hawaii Revised Statutes, limits POLST to licensed physicians. This creates a barrier to timely completion of POLST, especially in rural areas or on the neighbor islands, where an advanced practice registered nurse may be the only primary care provider a patient sees. Limiting POLST to licensed physicians also affects long-term care settings where an advanced practice registered nurse is the primary care provider and visits from a licensed physician may be several weeks apart. Although advanced practice registered nurses are able to practice independently in Hawaii, bottlenecks occur in certain health care settings, as advanced practice registered nurses are currently unable to complete a POLST directly with patients and families.

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

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

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

- (1) Updating references from "physician orders for life-sustaining treatment" to "provider orders for life-sustaining treatment" throughout chapter 327K, Hawaii Revised Statutes;
- (2) Expanding health care provider signatory authority to include advanced practice registered nurses; and
- (3) Correcting inconsistencies over terms used to describe who may sign a POLST form on behalf of a patient.

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

**"[PHYSICIAN] PROVIDER ORDERS FOR LIFE-SUSTAINING TREATMENT"**

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

1. By adding a new definition to be appropriately inserted and to read: "'Legally authorized representative' means 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."

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

"Form" means a [physician] provider orders for life-sustaining treatment form adopted by the department.

“Patient’s [physician] provider” means a physician licensed pursuant to chapter 453 or an advanced practice registered nurse recognized pursuant to chapter 457 who has examined the patient.

“[Physician] Provider orders for life-sustaining treatment form” means a form signed by a patient, or if incapacitated, by the patient’s [surrogate] legally authorized representative and the patient’s [physician,] provider, that records the patient’s wishes and that directs a health care provider regarding the provision of resuscitative and life-sustaining measures. A [physician] provider orders for life-sustaining treatment form is not an advance health<sup>1</sup> care directive.”

3. By deleting the definition of “surrogate”.

[““Surrogate” shall have the same meaning as in section 327E-2.”]

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

1. By amending subsection (a) to read:

“(a) The following may execute a form:

- (1) The patient;
- (2) The patient’s [physician,] provider; and
- (3) The [surrogate,] legally authorized representative, but only if the patient:
  - (A) Lacks capacity; or
  - (B) Has designated that the [surrogate] legally authorized representative is authorized to execute the form.

The patient’s [physician] provider may medically evaluate the patient and, based upon the evaluation, may recommend new orders consistent with the most current information available about the individual’s health status and goals of care. The patient’s [physician] provider shall consult with the patient or the patient’s [surrogate] legally authorized representative before issuing any new orders on a form. The patient or the patient’s [surrogate] legally authorized representative may choose to execute or not execute any new form. If a patient is incapacitated, the patient’s [surrogate] legally authorized representative shall consult with the patient’s [physician] provider before requesting the patient’s [physician] provider to modify treatment orders on the form. To be valid, a form shall be signed by the patient’s [physician] provider and the patient, or the patient’s [physician] provider and the patient’s [surrogate,] legally authorized representative. At any time, a patient, or, if incapacitated, the patient’s [surrogate,] legally authorized representative, may request alternative treatment that differs from the treatment indicated on the form.”

2. By amending subsection (d) to read:

“(d) A patient having capacity, or, if the patient is incapacitated, the patient’s [surrogate,] legally authorized representative, may revoke a form at any time and in any manner that communicates intent to revoke.”

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

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

- (1) Carrying out in good faith, a decision regarding treatment orders, including cardiopulmonary resuscitation by or on behalf of a pa-

- tient pursuant to orders in a form and in compliance with the standards and procedures set forth in this chapter; or
- (2) Providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued on a form; provided the person reasonably and in good faith:
    - (A) Was unaware of the issuance of an order not to resuscitate; or
    - (B) Believed that any consent to treatment orders, including the order not to resuscitate, had been revoked or canceled.”

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

SECTION 7. This Act shall take effect on July 1, 2014.

(Approved June 30, 2014.)

**Note**

- 1. Prior to amendment a hyphen appeared here.