

Senator Jani Iwamoto proposes the following substitute bill:

POLST ORDER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Raymond P. Ward

LONG TITLE

General Description:

This bill amends provisions relating to POLST orders.

Highlighted Provisions:

This bill:

- ▶ renames the life with dignity order as the POLST order;
- ▶ requires the Department of Health to designate a POLST order that is recognized by other states;
- ▶ applies the provisions of the Uniform Electronic Transactions Act to signatures that are required on a POLST order; and
- ▶ allows a verbal confirmation to satisfy the requirement for a signature on a POLST order under limited circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-2a-103, as last amended by Laws of Utah 2009, Chapter 99



26 **75-2a-106**, as last amended by Laws of Utah 2009, Chapter 99



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **75-2a-103** is amended to read:

30 **75-2a-103. Definitions.**

31 As used in this chapter:

32 (1) "Adult" means a person who is:

33 (a) at least 18 years of age; or

34 (b) an emancipated minor.

35 (2) "Advance health care directive":

36 (a) includes:

37 (i) a designation of an agent to make health care decisions for an adult when the adult

38 cannot make or communicate health care decisions; or

39 (ii) an expression of preferences about health care decisions;

40 (b) may take one of the following forms:

41 (i) a written document, voluntarily executed by an adult in accordance with the

42 requirements of this chapter; or

43 (ii) a witnessed oral statement, made in accordance with the requirements of this

44 chapter; and

45 (c) does not include a [~~life with dignity~~] POLST order.

46 (3) "Agent" means a person designated in an advance health care directive to make

47 health care decisions for the declarant.

48 (4) "APRN" means a person who is:

49 (a) certified or licensed as an advance practice registered nurse under Subsection

50 **58-31b-301(2)(d)**;

51 (b) an independent practitioner;

52 (c) acting under a consultation and referral plan with a physician; and

53 (d) acting within the scope of practice for that person, as provided by law, rule, and

54 specialized certification and training in that person's area of practice.

55 (5) "Best interest" means that the benefits to the person resulting from a treatment

56 outweigh the burdens to the person resulting from the treatment, taking into account:

57 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the
58 person;

59 (b) the degree of physical pain or discomfort caused to the person by the treatment or
60 the withholding or withdrawal of treatment;

61 (c) the degree to which the person's medical condition, the treatment, or the
62 withholding or withdrawal of treatment, result in a severe and continuing impairment of the
63 dignity of the person by subjecting the person to humiliation and dependency;

64 (d) the effect of the treatment on the life expectancy of the person;

65 (e) the prognosis of the person for recovery with and without the treatment;

66 (f) the risks, side effects, and benefits of the treatment, or the withholding or
67 withdrawal of treatment; and

68 (g) the religious beliefs and basic values of the person receiving treatment, to the extent
69 these may assist the decision maker in determining the best interest.

70 (6) "Capacity to appoint an agent" means that the adult understands the consequences
71 of appointing a particular person as agent.

72 (7) "Declarant" means an adult who has completed and signed or directed the signing
73 of an advance health care directive.

74 (8) "Default surrogate" means the adult who may make decisions for an individual
75 when either:

76 (a) an agent or guardian has not been appointed; or

77 (b) an agent is not able, available, or willing to make decisions for an adult.

78 (9) "Emergency medical services provider" means a person who is licensed,
79 designated, or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System
80 Act.

81 (10) "Generally accepted health care standards":

82 (a) is defined only for the purpose of:

83 (i) this chapter and does not define the standard of care for any other purpose under
84 Utah law; and

85 (ii) enabling health care providers to interpret the statutory form set forth in Section
86 [75-2a-117](#); and

87 (b) means the standard of care that justifies a provider in declining to provide life

88 sustaining care because the proposed life sustaining care:

89 (i) will not prevent or reduce the deterioration in the health or functional status of a
90 person;

91 (ii) will not prevent the impending death of a person; or

92 (iii) will impose more burden on the person than any expected benefit to the person.

93 (11) "Health care" means any care, treatment, service, or procedure to improve,
94 maintain, diagnose, or otherwise affect a person's physical or mental condition.

95 (12) "Health care decision":

96 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that
97 is communicated to a health care provider;

98 (b) includes:

99 (i) selection and discharge of a health care provider and a health care facility;

100 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,
101 and orders not to resuscitate; and

102 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
103 all other forms of health care; and

104 (c) does not include decisions about an adult's financial affairs or social interactions
105 other than as indirectly affected by the health care decision.

106 (13) "Health care decision making capacity" means an adult's ability to make an
107 informed decision about receiving or refusing health care, including:

108 (a) the ability to understand the nature, extent, or probable consequences of health
109 status and health care alternatives;

110 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
111 alternatives of accepting or rejecting health care; and

112 (c) the ability to communicate a decision.

113 (14) "Health care facility" means:

114 (a) a health care facility as defined in Title 26, Chapter 21, Health Care Facility
115 Licensing and Inspection Act; and

116 (b) private offices of physicians, dentists, and other health care providers licensed to
117 provide health care under Title 58, Occupations and Professions.

118 (15) "Health care provider" is as defined in Section [78B-3-403](#), except that it does not

119 include an emergency medical services provider.

120 (16) (a) "Life sustaining care" means any medical intervention, including procedures,
121 administration of medication, or use of a medical device, that maintains life by sustaining,
122 restoring, or supplanting a vital function.

123 (b) "Life sustaining care" does not include care provided for the purpose of keeping a
124 person comfortable.

125 ~~[(17) "Life with dignity order" means an order, designated by the Department of Health~~
126 ~~under Section 75-2a-106(5)(a), that gives direction to health care providers, health care~~
127 ~~facilities, and emergency medical services providers regarding the specific health care~~
128 ~~decisions of the person to whom the order relates.]~~

129 [(18)] (17) "Minor" means a person who:

130 (a) is under 18 years ~~[of age]~~ old; and

131 (b) is not an emancipated minor.

132 [(19)] (18) "Physician" means a physician and surgeon or osteopathic surgeon licensed
133 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic
134 Medical Practice Act.

135 [(20)] (19) "Physician assistant" means a person licensed as a physician assistant under
136 Title 58, Chapter 70a, Utah Physician Assistant Act.

137 (20) "POLST order" means an order, on a form designated by the Department of Health
138 under Section 75-2a-106(5)(a), that gives direction to health care providers, health care
139 facilities, and emergency medical services providers regarding the specific health care
140 decisions of the person to whom the order relates.

141 (21) "Reasonably available" means:

142 (a) readily able to be contacted without undue effort; and

143 (b) willing and able to act in a timely manner considering the urgency of the
144 circumstances.

145 (22) "Substituted judgment" means the standard to be applied by a surrogate when
146 making a health care decision for an adult who previously had the capacity to make health care
147 decisions, which requires the surrogate to consider:

148 (a) specific preferences expressed by the adult:

149 (i) when the adult had the capacity to make health care decisions; and

- 150 (ii) at the time the decision is being made;
- 151 (b) the surrogate's understanding of the adult's health care preferences;
- 152 (c) the surrogate's understanding of what the adult would have wanted under the
- 153 circumstances; and
- 154 (d) to the extent that the preferences described in Subsections (22)(a) through (c) are
- 155 unknown, the best interest of the adult.

156 (23) "Surrogate" means a health care decision maker who is:

- 157 (a) an appointed agent;
- 158 (b) a default surrogate under the provisions of Section 75-2a-108; or
- 159 (c) a guardian.

160 Section 2. Section 75-2a-106 is amended to read:

161 **75-2a-106. Emergency medical services -- POLST order.**

162 (1) A ~~[life with dignity]~~ POLST order may be created by or on behalf of a person as

163 described in this section.

164 (2) A ~~[life with dignity]~~ POLST order shall, in consultation with the person authorized

165 to consent to the order pursuant to this section, be prepared by:

166 (a) the physician, APRN, or, subject to Subsection (11), physician assistant of the

167 person to whom the ~~[life with dignity]~~ POLST order relates; or

168 (b) a health care provider who:

- 169 (i) is acting under the supervision of a person described in Subsection (2)(a); and
- 170 (ii) is:

171 (A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;

172 (B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician

173 Assistant Act;

174 (C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health

175 Professional Practice Act; or

176 (D) another health care provider, designated by rule as described in Subsection (10).

177 (3) A ~~[life with dignity]~~ POLST order shall be signed:

178 (a) personally, by the physician, APRN, or, subject to Subsection (11), physician

179 assistant of the person to whom the ~~[life with dignity]~~ POLST order relates; and

180 (b) (i) if the person to whom the ~~[life with dignity]~~ POLST order relates is an adult

181 with health care decision making capacity, by:

182 (A) the person; or

183 (B) an adult who is directed by the person to sign the [~~life with dignity~~] POLST order
184 on behalf of the person;

185 (ii) if the person to whom the [~~life with dignity~~] POLST order relates is an adult who
186 lacks health care decision making capacity, by:

187 (A) the surrogate with the highest priority under Section 75-2a-111;

188 (B) the majority of the class of surrogates with the highest priority under Section
189 75-2a-111; or

190 (C) a person directed to sign the POLST order by, and on behalf of, the persons
191 described in Subsection (3)(b)(ii)(A) or (B); or

192 (iii) if the person to whom the [~~life with dignity~~] POLST order relates is a minor, by a
193 parent or guardian of the minor.

194 (4) If a [~~life with dignity~~] POLST order relates to a minor and directs that life
195 sustaining treatment be withheld or withdrawn from the minor, the order shall include a
196 certification by two physicians that, in their clinical judgment, an order to withhold or
197 withdraw life sustaining treatment is in the best interest of the minor.

198 (5) A [~~life with dignity~~] POLST order:

199 (a) shall be in writing[;];

200 (i) on a form [~~approved~~] designated by the Department of Health; or

201 (ii) on a physical or electronic uniform POLST order form that is recognized by at least
202 three other states and designated by the Department of Health.

203 (b) shall state the date on which the POLST order was made;

204 (c) may specify the level of life sustaining care to be provided to the person to whom
205 the order relates; and

206 (d) may direct that life sustaining care be withheld or withdrawn from the person to
207 whom the order relates.

208 (6) A health care provider or emergency medical service provider, licensed or certified
209 under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, is immune from
210 civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

211 (a) complying with a [~~life with dignity~~] POLST order in good faith; or

212 (b) providing life sustaining treatment to a person when a [~~life with dignity~~] POLST
213 order directs that the life sustaining treatment be withheld or withdrawn.

214 (7) To the extent that the provisions of a [~~life with dignity~~] POLST order described in
215 this section conflict with the provisions of an advance health care directive made under Section
216 75-2a-107, the provisions of the [~~life with dignity~~] POLST order take precedence.

217 (8) An adult, or a parent or guardian of a minor, may revoke a [~~life with dignity~~]
218 POLST order by:

219 (a) orally informing emergency service personnel;

220 (b) writing "void" across the POLST order form;

221 (c) burning, tearing, or otherwise destroying or defacing:

222 (i) the POLST order form; or

223 (ii) a bracelet or other evidence of the [~~life with dignity~~] POLST order;

224 (d) asking another adult to take the action described in this Subsection (8) on the
225 person's behalf;

226 (e) signing or directing another adult to sign a written revocation on the person's
227 behalf;

228 (f) stating, in the presence of an adult witness, that the person wishes to revoke the
229 order; or

230 (g) completing a new [~~life with dignity~~] POLST order.

231 (9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks
232 health care decision making capacity may only revoke a [~~life with dignity~~] POLST order if the
233 revocation is consistent with the substituted judgment standard.

234 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this
235 section to sign a [~~life with dignity~~] POLST order may revoke a [~~life with dignity~~] POLST
236 order, in accordance with Subsection (9)(a), by:

237 (i) signing a written revocation of the [~~life with dignity~~] POLST order; or

238 (ii) completing and signing a new [~~life with dignity~~] POLST order.

239 (c) A surrogate may not revoke a [~~life with dignity~~] POLST order during the period of
240 time beginning when an emergency service provider is contacted for assistance, and ending
241 when the emergency ends.

242 (10) (a) The Department of Health shall [~~adopt~~] make rules, in accordance with Title

243 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

244 (i) create the forms and systems described in Subsection (5)(a)(i) in accordance with
245 the provisions of this section; [and]

246 (ii) designate a POLST order form as described in Subsection (5)(a)(ii); and
247 [(ii)] (iii) develop uniform instructions for the form established in Section 75-2a-117.

248 (b) The Department of Health may [adopt] make rules, in accordance with Title 63G,
249 Chapter 3, Utah Administrative Rulemaking Act, to designate health care professionals, in
250 addition to those described in Subsection (2)(b)(ii), who may prepare a [life with dignity]
251 POLST order.

252 (c) The Department of Health may assist others with training of health care
253 professionals regarding this chapter.

254 (11) A physician assistant may not prepare or sign a [life with dignity] POLST order,
255 unless the physician assistant is permitted to prepare or sign the [life with dignity] POLST
256 order under the physician assistant's delegation of services agreement, as defined in Section
257 58-70a-102.

258 (12) (a) Notwithstanding any other provision of this section:

259 (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to
260 any signature required on the POLST order; and

261 (ii) a verbal confirmation satisfies the requirement for a signature from an individual
262 under Subsection (3)(b)(ii) or (iii), if:

263 (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to sign the
264 POLST order in person or electronically would require significant difficulty or expense; and

265 (B) a licensed health care provider witnesses the verbal confirmation and signs the
266 POLST order attesting that the health care provider witnessed the verbal confirmation.

267 (b) The health care provider described in Subsection (12)(a)(ii)(B) may not be the same
268 individual who signs the POLST order under Subsection (3)(a).