

## SB0083S03 compared with SB0083S02

~~{deleted text}~~ shows text that was in SB0083S02 but was deleted in SB0083S03.

inserted text shows text that was not in SB0083S02 but was inserted into SB0083S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

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#### 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, under limited circumstances, to satisfy the requirement for a signature on a POLST order ~~{under limited circumstances}~~.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

As used in this chapter:

- (1) "Adult" means a person who is:
  - (a) at least 18 years of age; or
  - (b) an emancipated minor.
- (2) "Advance health care directive":
  - (a) includes:
    - (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or
    - (ii) an expression of preferences about health care decisions;
  - (b) may take one of the following forms:
    - (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or
    - (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and
  - (c) does not include a [~~life with dignity~~] POLST order.
- (3) "Agent" means a person designated in an advance health care directive to make health care decisions for the declarant.
- (4) "APRN" means a person who is:
  - (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(d);

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- (b) an independent practitioner;
- (c) acting under a consultation and referral plan with a physician; and
- (d) acting within the scope of practice for that person, as provided by law, rule, and specialized certification and training in that person's area of practice.

(5) "Best interest" means that the benefits to the person resulting from a treatment outweigh the burdens to the person resulting from the treatment, taking into account:

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Generally accepted health care standards":

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(a) is defined only for the purpose of:

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

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

(b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:

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

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

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

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

(12) "Health care decision":

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

(b) includes:

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

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

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

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

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

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

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

(c) the ability to communicate a decision.

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(14) "Health care facility" means:

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

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

(15) "Health care provider" is as defined in Section 78B-3-403, except that it does not include an emergency medical services provider.

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

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

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

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

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

(b) is not an emancipated minor.

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

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

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

(21) "Reasonably available" means:

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

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

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circumstances.

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

- (a) specific preferences expressed by the adult:
  - (i) when the adult had the capacity to make health care decisions; and
  - (ii) at the time the decision is being made;
- (b) the surrogate's understanding of the adult's health care preferences;
- (c) the surrogate's understanding of what the adult would have wanted under the

circumstances; and

(d) to the extent that the preferences described in Subsections (22)(a) through (c) are unknown, the best interest of the adult.

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

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

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

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

(1) A [~~life with dignity~~] POLST order may be created by or on behalf of a person as described in this section.

(2) A [~~life with dignity~~] POLST order shall, in consultation with the person authorized to consent to the order pursuant to this section, be prepared by:

(a) the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the [~~life with dignity~~] POLST order relates; or

- (b) a health care provider who:
  - (i) is acting under the supervision of a person described in Subsection (2)(a); and
  - (ii) is:

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

(B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;

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

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Professional Practice Act; or

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

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

(a) personally, by the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the ~~[life with dignity]~~ POLST order relates; and

(b) (i) if the person to whom the ~~[life with dignity]~~ POLST order relates is an adult with health care decision making capacity, by:

(A) the person; or

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

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

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

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

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

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

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

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

(a) shall be in writing ~~{f}, {t}~~

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

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

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

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

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

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

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

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

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

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

(a) orally informing emergency service personnel;

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

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

(i) the POLST order form; or

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

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

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

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

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

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

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

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

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

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

(10) (a) The Department of Health shall ~~[adopt]~~ make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

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

~~—— (ii) designate a POLST order form as described in Subsection (5)(a)(ii); and~~

~~—— [(ii) (iii)] this section; and~~

(ii) develop uniform instructions for the form established in Section 75-2a-117.

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

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

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

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

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

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

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

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

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(b) The health care provider described in Subsection (12)(a)(ii)(B):

(i) may not be the same individual who signs the POLST order under Subsection

(3)(a); and

(ii) shall verify, in accordance with HIPAA as defined in Section 26-18-17, the identity of the individual who is providing the verbal confirmation.