On December 21, 2011, New Jersey Governor Christie signed the Physician Orders for Life-Sustaining Treatment Act (“POLST Act”). The POLST Act is designed to provide a mechanism for patients who (1) have advanced chronic progressive illness; or (2) a life expectancy of less than five years; or (3) who otherwise wish to further define their preferences for health care, to make their preferences concerning life-sustaining treatment or other interventions known in advance. The POLST form is intended to accompany the patient, and to be honored by all personnel attending the patient across the full range of possible health care settings, including the patient’s home, a health care institution, or otherwise at the scene of a medical emergency. The legislation was prompted (at least in part) by the Dartmouth Atlas study findings that New Jersey patients near the end of life are treated more aggressively than patients in any other state.

A POLST form is intended to provide direction to emergency care personnel regarding the use of emergency care, and to a health care professional regarding the use of life-sustaining treatment, by indicating the patient’s preference concerning the use of specified interventions and the intensity of treatment for each intervention. The POLST form may also be used to designate anatomical gifts. The POLST form contains immediately actionable, signed medical orders on a standardized form; that address a range of life-sustaining interventions as well as the patient’s preferred intensity of treatment for each intervention. It will be designed so that it is a brightly colored, clearly identifiable form which is recognized and honored across various health care settings.

Responsibility for development of the POLST form is delegated to New Jersey’s Patient Safety Organization, which will also be required to develop the procedures for completion, modification, and revocation of the POLST form. A POLST form shall be deemed to be completed, and therefore valid for the purposes of the POLST law if: (1) contains information indicating a patient’s health care preferences; (2) 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; (3) includes the signature of the patient’s attending physician or advanced practice nurse and the date of that signature; and (4) meets any other requirements to be deemed valid for the purposes of the POLST Act. A patient with decision-making capacity, may, at any time, modify or revoke the patient’s completed POLST form or otherwise request alternative treatment to the treatment that was ordered on the form. A health care professional may honor a POLST form that has been completed in another state.

The POLST form must provide the patient with the choice to authorize the patient’s representative to revoke or modify the patient’s completed POLST form if the patient loses decision-making capacity. If the patient so authorizes their representative, the patient’s representative may, at any time after the patient loses decision-making capacity and after consultation with the patient’s attending physician or advanced practice nurse, request the physician or advanced practice nurse to modify or revoke the completed POLST form, or otherwise request alternative treatment to the treatment that was ordered on the POLST form, as deemed necessary to reflect the patient’s health status or goals of care. If the patient does not authorize the patient’s representative to revoke or modify the patient’s completed POLST form, the patient’s representative may not revoke or modify the patient’s completed POLST form.

In the event of a disagreement among the patient, the patient’s representative, and the patient’s attending
physician or advanced practice nurse concerning the patient’s decision-making capacity or the appropriate interpretation and application of the terms of a completed POLST form to the patient’s course of treatment, the parties may seek to resolve the disagreement by means of procedures and practices established by the applicable health care institution, including, but not limited to, consultation with an institutional ethics committee, or with a person designated by the health care institution for this purpose. If they cannot resolve the dispute using these procedures, they may seek resolution by a court of competent jurisdiction.

The POLST Act is modeled on legislation that has already been enacted in a number of other states. Hopefully, it will provide both patients, their representatives and health care providers with better clarity concerning end of life decision making issues.

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