

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 474

INTRODUCER: Senator Brandes

SUBJECT: Physician Orders for Life-sustaining Treatment

DATE: January 12, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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## I. Summary:

SB 474 recognizes a Physician Order for Life Sustaining Treatment (POLST) and establishes a Clearinghouse for Compassionate and Palliative Care Plans (clearinghouse) for state residents as a central registry for advance directives for health care. The Agency for Health Care Administration (AHCA) is directed to establish and maintain the registry, either independently or through a national or private clearinghouse. Plans are required to be electronically accessible. The AHCA is also directed to disseminate information about the clearinghouse once available.

The bill also provides requirements for the contents of the POLST form and its proper execution, and addresses the relationship of a POLST with other advance directives. The Department of Health (DOH) is required to develop the form by rule.

The effective date of the bill is July 1, 2018.

## II. Present Situation:

### End of Life Decision-Making

Individuals may express their end of life health care decisions through one or more different mechanisms such as formal or informal discussions with a health care provider or a loved one or through one of several recognized legal documents. Such discussions may occur because of an individual's particular medical condition, age, or as part of an annual medical examination. Sometimes, the conversation may be the result of a recent hospitalization and the health care provider seeks guidance from the patient or the patient's caregiver about how to treat the individual's condition next, such as when and if to change to comfort (palliative or hospice) care rather than care that is aimed at a cure for the patient's illness.<sup>1</sup>

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<sup>1</sup> Information from Your Family Doctor: *End of Life Choices for Families*, Am Fam Physician, 2004 Aug 15; 70(4): 725-726, <https://www.aafp.org/afp/2004/0815/p725.html> (last visited: Dec. 22, 2017).

Florida law defines an advance directive as any witnessed, oral statements or written instructions that express a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.<sup>2</sup> Designation of a health care surrogate, a living will, or an anatomical gift each serve different purposes and have their own unique requirements and specifications under the law.

One type of advance directive, a "do not resuscitate order" (DNRO) results in the withholding of cardiopulmonary resuscitation (CPR) from an individual if a DNRO is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the DOH, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.<sup>3</sup> Florida's DNRO form is printed on yellow paper.<sup>4</sup> It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.<sup>5</sup> A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.<sup>6</sup>

Not available in Florida, a Physician Order for Life-Sustaining Treatment (POLST), documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including CPR.<sup>7</sup> A DNRO is limited only to the withholding of CPR. The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.<sup>8</sup> It is suggested that the form be completed when an individual has a serious illness or frailty, regardless of age, as the POLST serves as a medical order for a current, life-threatening illness where the patient has a life expectancy of a year or less.<sup>9</sup> The POLST is intended to express the patient's treatment wishes when the patient is unable to speak for himself or herself during a medical crisis.

Other states' POLST forms include questions relating to what level of care is wanted for CPR (attempt or do not attempt); medical intervention (comfort only, limited additional intervention, or full treatment); and artificially administered nutrition (none, trial, or long-term). Many POLST forms also include information on how to void the authorization before the expiration date, contact information for the surrogate, and information about the medical professionals who may have completed the form. At least 22 other states have implemented or endorsed a POLST program, with California, Oregon and West Virginia being identified as having mature programs.<sup>10</sup>

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<sup>2</sup> See s. 765.101, F.S.

<sup>3</sup> See ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, and 7665.205, F.S.

<sup>4</sup> Rule 64J-2.018, F.A.C.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> POLST.ORG, *About the National POLST Paradigm*, <http://www.polst.org/about-the-national-polst-paradigm/> (last visited Jan. 8, 2018).

<sup>8</sup> POLST.ORG, *FAQ*, <http://www.polst.org/advance-care-planning/faq/> (last visited Dec. 22, 2017).

<sup>9</sup> POLST.ORG, *POLST v. Advance Directives*, <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited Dec. 22, 2017).

<sup>10</sup> POLST.ORG, *Programs in Your State*, <http://www.polst.org/programs-in-your-state/> (last visited Dec. 22, 2017).

In comparison to a POLST, an advance directive's purpose is to give instructions on the appointment of a health care representative, express intentions for future treatment or health care, or for an anatomical gift.<sup>11</sup> Florida law allows such advance directives to be expressed in writing or by an oral designation of another person to make health care decisions upon that person's incapacity.<sup>12</sup>

A living will is another mechanism used by individuals to express life-prolonging wishes through a written document or a witnessed oral statement.<sup>13</sup> Any competent adult may make a living will or written declaration, at any given time, to address the providing, withholding, or withdrawing of life-prolonging procedures should that individual have a terminal or end-stage condition.<sup>14</sup> A living will requires the signature of the individual in the presence of two witnesses, one of whom is not the spouse nor a blood relative. It becomes the individual's responsibility to notify health care providers about the living will, so it can be made a part of the individual's medical record.

The statute also provides a suggested form, but in all capital letters, makes clear that a living will does not need to follow the form to be accepted as part of the patient's medical records.<sup>15</sup> Many non-profit organizations also make similar advance directive forms easily available online or in hard copy formats for the designation of health care surrogates or the creation of living wills.<sup>16</sup>

Effective January 1, 2016, advance care planning (ACP) services from physicians and other health care professionals was available as a separate billed service covered by Medicare.<sup>17</sup> If a Medicare beneficiary wants to discuss advance care planning at his or her first annual visit with a physician and then any updates during any subsequent annual wellness visit, physicians and other health care professionals may provide the service during those visits and bill Medicare separately for it. Such services can be provided in both facility and non-facility settings. Previous to this date, ACP services could only be billed as part of another visit; it could not be the sole reason for the physician visit.<sup>18</sup> Providers must also notify their patients if they are unwilling to follow the individual's wishes as expressed in an advance directive document.

### **Clearinghouse for Compassionate and Palliative Care Plans**

In addition to the availability of the POLST form, several states also have registries for the collection of advance directives.

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<sup>11</sup> See s. 765.101, F.S.

<sup>12</sup> See s. 765.101(2), F.S.

<sup>13</sup> See s. 765.101(13), F.S.

<sup>14</sup> Section 765.302, F.S.

<sup>15</sup> Section 765.303, F.S.

<sup>16</sup> See Aging with Dignity, *Five Wishes – Florida*, <https://www.agingwithdignity.org/Florida>, (last visited: Dec. 22, 2017); Florida Health Care Association, [http://www.fhca.org/consumers/health\\_care\\_advanced\\_directives/](http://www.fhca.org/consumers/health_care_advanced_directives/), (last visited: Dec. 22, 2017); and AARP-Florida, <http://www.caringinfo.org/files/public/ad/Florida.pdf> (last visited: Dec. 22, 2017).

<sup>17</sup> 42 CFR 410.15.

<sup>18</sup> Henry J. Kaiser Family Foundation, *10 FAQs: Medicare's Role in End of Life Care*, <http://kff.org/medicare/fact-sheet/10-faqs-medicares-role-in-end-of-life-care/> (last visited Jan. 8, 2018).

The Oregon Legislature followed its POLST form creation with its registry in July 2009.<sup>19</sup> Overseen by the Oregon Health Authority, the Oregon POLST Registry received more than 55,000 POLST forms via fax, eFax, mail, electronic files transfer, or other secure messaging means in 2015.<sup>20</sup> In total, Oregon's registry had an estimated 300,000 forms representing almost 200,000 registrants as of the end of 2015.<sup>21</sup>

An individual is not required to send a completed POLST form to the registry. If an individual does not want his or her form in the registry, the Oregon POLST form contains an "opt-out" box that can be checked.<sup>22</sup> When a POLST form is submitted to the registry by the primary care physician, the individual receives a confirmation letter in return, a magnet, and a set of stickers with their registry identification number for future access.<sup>23</sup> The number is to be given to the individual's primary care physician and the magnet and stickers put in prominent places, including something the person might usually carry with them. Beginning in January 2018, Naturopathic Physicians became authorized to sign POLST forms.

West Virginia has its WV e-Directive Registry which makes advance directives, DNROs, West Virginia Physician Orders for Scope of Treatments (POSTs), living wills, and medical powers of attorney available online 24/7 to health care practitioners and facilities when the individual specifically opts in to the registry. While the registry is currently under re-construction, providers must make a request for information via fax sheet and records are distributed between 8:00 a.m. and 4:00 p.m. via a toll-free fax number.<sup>24</sup> Usually, the e-Directive Registry accepts new forms through its direct upload process online or toll-free fax.<sup>25</sup>

Idaho's Health Care Directives Registry is offered through its Secretary of State's office. Individuals may submit several types of health care directive documents, including a Physician Order for Scope of Treatment (POST) form, living will, or durable power of attorney for health care.<sup>26</sup> Documents can be submitted online to the Secretary of State or via the mail. Once registration is confirmed, individuals receive a wallet sized registration card with an individualized filing number and password and information about using the registry.<sup>27</sup>

New York utilizes a secure web-based application for its electronic Medical Orders for Life-Sustaining Treating (eMOLST) forms. The forms can be printed for the medical record and then stored and linked to the electronic eMOLST registry. The forms can be accessed by emergency

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<sup>19</sup> Oregon POLST Registry 2015 Annual Report, <http://polst.org/wp-content/uploads/2016/09/2015OregonPOLSTRegistryAnnualReport.pdf>, p. 5, (last visited Jan. 2, 2018).

<sup>20</sup> Id at 7.

<sup>21</sup> Id at 20.

<sup>22</sup> POLST Oregon, <http://www.or.polst.org/registry-resources> (last visited Dec. 22, 2017).

<sup>23</sup> Id.

<sup>24</sup> West Virginia Center for End-of-Life Care, *e-Directive Registry, Request for Release of Records from the WV e-Directive Registry*, <http://wvendlife.org/media/1113/registry-treating-provider-release-of-information-rev-july2017.pdf> (last visited Dec. 27, 2017).

<sup>25</sup> West Virginia Center for End-of-Life Care, *Introducing the WV E-Directive Registry*, <http://wvendlife.org/providers/e-directive-registry/> (last visited: Dec. 27, 2017).

<sup>26</sup> Idaho Secretary of State, *Health Care Directive Registry*, <https://sos.idaho.gov/hcdr/index.html> (last visited Dec. 22, 2017).

<sup>27</sup> Id.

medical services, hospitals, nursing homes, and most all health care providers in the community via the online portal.<sup>28</sup> The eMOLST form may also be used for minor patients.<sup>29</sup>

### III. Effect of Proposed Changes:

#### Physician Orders for Life-Sustaining Treatment (POLST) Program (Section 1)

The bill creates s. 401.451, F.S., the Physician Order for Life-Sustaining Treatment (POLST) program, within the DOH. The DOH is directed to implement and administer the program and to collaborate with the AHCA on the implementation and operation of the Clearinghouse for Compassionate and Palliative Care plans (clearinghouse).

Under s. 401.451, F.S., definitions are provided for the following terms:

- “Advance directive” means the same as in s. 765.101, F.S.;<sup>30</sup>
- “Agency” means the Agency for Health Care Administration;
- “Clearinghouse for Compassionate and Palliative Care Plans”<sup>31</sup> or “clearinghouse” means the same as in s. 408.064, F.S.,<sup>32</sup>(which is created in this bill);
- “End-stage condition” means the same as in s. 765.101, F.S.;<sup>33</sup>
- “Examining physician” means a physician who examines a patient who wishes, or whose legal representative wishes, to execute a POLST form; who attests to the patient’s or the patient’s representative’s ability to make and communicate health care decisions; who signs the POLST form; and who attests to the patient’s or the patient’s legal representative’s execution of the POLST form;
- “Health care provider” means the same as in s. 408.07, F.S.;
- “Legal representative” means a patient’s legally authorized health care surrogate or proxy as provided in ch. 765, F.S., a patient’s court-appointed guardian as provided in ch. 744, F.S., who has been delegated authority to make health care decisions on behalf of the patient; an attorney in fact under a durable power of attorney as provided in ch. 709, F.S., who has been delegated authority to make health care decisions on behalf of the patient, or a patient’s parent if the patient is a minor;
- “Order not to resuscitate ” means an order issued pursuant to s. 401.45(3), F.S.; and

<sup>28</sup> eMOLST - Electronic Medical Orders for Life Sustaining Treatment in New York State, *available at* [http://www.compassionandsupport.org/index.php/for\\_professionals/molst\\_training\\_center/emolst](http://www.compassionandsupport.org/index.php/for_professionals/molst_training_center/emolst) (last visited Dec. 22, 2017).

<sup>29</sup> Medical Orders for Life Sustaining Treatment - Professionals (FAQS), *available at* [http://www.compassionandsupport.org/index.php/for\\_professionals/molst\\_training\\_center/frequently\\_asked\\_questions/molst\\_faqs\\_page\\_1](http://www.compassionandsupport.org/index.php/for_professionals/molst_training_center/frequently_asked_questions/molst_faqs_page_1) (last visited Dec. 22, 2017).

<sup>30</sup> “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of ch. 765, F.S.

<sup>31</sup> “Compassionate and palliative care plan” means any end-of-life document or medical care directive document recognized by this state and executed by a resident of this state, including, but not limited to, an advance directive, an order not to resuscitate, a physician order for life-sustaining treatment, or a health care surrogate designation.

<sup>32</sup> “Clearinghouse” means the state’s electronic database of compassionate and palliative care plans submitted by residents of this state and managed by the agency pursuant to s. 408.064, F.S.

<sup>33</sup> “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

- “Physician order for life-sustaining treatment” or “POLST” means an order issued pursuant to s. 401.451, F.S., which specifies a patient with an end stage condition and provides directives for that patient’s medical treatment under certain conditions.

The bill establishes specific duties for the DOH for the POLST program. These duties include the requirement to:

- Adopt rules to implement and administer the POLST program;
- Prescribe a standardized POLST form;
- Provide the POLST form in an electronic format on the DOH’s website and prominently state the requirements for a POLST form;
- Consult with health care professional licensing groups, provider advocacy groups, medical ethicists, and other appropriate stakeholders on the development of rules and forms;
- Collaborate with the AHCA to develop and maintain the clearinghouse;
- Ensure that the DOH staff receive ongoing training on the POLST program and the availability of POLST forms;
- Recommend a statewide, uniform process through which a patient that has, or whose legal representative has, executed a POLST form is identified and the health care providers currently treating the patient are provided with contact information for the examining physician who signed the POLST form;
- Adopt POLST-related continuing education requirements for health care providers licensed by the DOH; and
- Develop a process for collecting provider feedback to facilitate the periodic re-design of the POLST form consistent with current health care best practices.

### **POLST Form (Section 1)**

The form must be voluntarily executed by the patient, or if the patient is incapacitated or a minor, by the patient’s legal representative. All directives included in the form must be made by the patient, or if the patient is a minor, the patient’s legal representative.

To be valid and to be included in a patient’s medical records, the POLST form must meet all of the following requirements:

- Be printed on one or both sides of a single piece of paper as determined by the DOH rule;
- Include the signatures of the patient and the patient’s examining physician or, if the patient is incapacitated or a minor, the patient’s legal representative and the patient’s examining physician, executed after consultation with the patient or the patient’s legal representative as appropriate;
- Indicate prominently that completion of the form is voluntary, the use of the form is not a condition of any treatment, and the form cannot be given any affect if the patient is conscious and competent to make health care decisions;
- Prominently provide in a conspicuous location on the form a space for the examining physician to attest and affirm that, in his or her good faith clinical judgment, at the time the POLST form is completed and signed, the patient has the ability to make and communicate health care decisions or, if the patient is incapacitated or a minor, that the patient’s legal representative has such an ability;

- Provide an expiration date, provided by the patient's examining physician, that is within one year after the patient or the patient's legal representative signs the form or that is contingent on the completion of the course of treatment addressed in the POLST form, whichever occurs first;
- Identify the medical condition or conditions, provided by the patient's examining physician, that necessitate the POLST form; and
- Not include a directive regarding hydration or the preselection of any decisions or directives.

The POLST form may only be used by a patient whose examining physician has determined that the patient has an end-stage condition or who, in the good faith clinical judgment of the examining physician, is suffering from at least one life-limiting medical condition that will likely result in the death of the patient within one year.

At a minimum, the patient's physician must review the POLST form with the patient or the patient's representative, when the patient:

- Is transferred from one health care setting or level of care to another;
- Is discharged from a health care setting to return home before the expiration of the POLST form;
- Experiences a substantial change in his or her condition as determined by the patient's examining physician, in which case the review must occur within 24 hours of the substantial change; or
- Expresses an intent to change his or her treatment preferences.

A POLST form may be revoked at any time by a patient, or the patient's legal representative if the patient is a minor or the patient is incapacitated or and the authority to revoke a POLST form has been granted by the patient to his or her legal representative. The execution of a subsequent POLST form by a patient and his or her examining physician under this section automatically revokes any prior POLST form previously executed by the patient.

In addition, if any directive on a patient's POLST form conflicts with another advance directive of the patient which addresses a substantially similar health care condition or treatment, the document most recently signed by the patient takes precedence. Such directives may include, but are not limited to:

- Living wills;
- Health care powers of attorney;
- POLST forms for the specific medical condition of treatment; or
- An order not-to-resuscitate.

If a family member of the patient, the health care facility providing services to the patient, or the patient's physician who may reasonably be expected to be affected by the patient's POLST form directives believes the directives executed by the patient's legal representative are in conflict with the patient's prior expressed desires regarding end-of-life care, he or she or the facility may seek expedited judicial intervention pursuant to the Florida Probate Rules.

The bill establishes immunity from criminal prosecution, civil liability, or professional discipline for a licensee, physician, medical director, emergency medical technician, or paramedic who in

good faith complies with or carries out the directives of a POLST form. Also, any person, acting in good faith as a legal representative, is not subject to civil liability or criminal prosecution for executing a POLST form pursuant to this law.

If medical orders on a POLST form are carried out to withhold life-sustaining treatment for a minor, the order must include certification by a health care provider in addition to the physician executing the POLST form that, in their clinical judgement, the order is in the best interest of the minor patient. A POLST form for a minor patient must also be signed by the minor patient's legal representative. The minor patient's physician must certify the basis for the authority of the minor patient's legal representative to execute the POLST form, including his or her compliance with the relevant statutory provisions of ch. 765, F.S., relating to health care advance directives and ch. 744, F.S., relating to guardianship.

The bill further requires that when a patient who has executed a valid POLST form is transferred from one health care facility to another, the health care facility initiating the transfer must communicate the existence of the POLST form to the receiving facility before the transfer. Upon the patient's transfer, the receiving facility's treating physician must review the POLST form with the patient or if the patient is incapacitated or a minor, the patient's legal representative.

Facilities and providers may not require a person to complete, revise, or revoke a POLST as a prerequisite or condition of receiving services or treatment or as a condition of admission. The execution, revision, or revocation of a POLST form must be a voluntary decision of the patient, or if incapacitated or a minor, the patient's legal representative.

The presence or absence of a POLST form does not affect, impair, or modify a contract of life or health insurance or annuity to which an individual is a party and may not serve as the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or for an increase or decrease in premiums charged to an individual.

A POLST form is invalid if payment or other remuneration was offered or made in exchange for its execution.

The bill specifies that the act may not be construed to condone, authorize, or approve mercy killing or euthanasia. A statement of legislative intent provides that this act is not to be construed as permitting any affirmative or deliberate act to end a person's life, except to permit the natural process of dying.

### **Clearinghouse for Compassionate and Palliative Care Plans (Section 2)**

Section 2 creates s. 408.064, F.S., which establishes the Clearinghouse for Compassionate and Palliative Care Plans (clearinghouse) within the AHCA. The AHCA is responsible for establishing and maintaining the clearinghouse directly or through a designee. The clearinghouse must be a reliable and secure database that will allow Florida residents to electronically submit their individual plans for compassionate and palliative care. The database may only be accessed by a health care provider who is treating the patient-resident.

As used in this section, the bill provides definitions for these terms:



- “Advance directive” means the same as in s. 765.101, F.S.;<sup>34</sup>
- “Clearinghouse for Compassionate and Palliative Care Plans” or “clearinghouse” means the state’s electronic database of compassionate and palliative care plans submitted by residents of this state and managed by the agency pursuant to this section;
- “Compassionate and palliative care plan” or “plan” means any end-of-life document or medical directive document recognized by this state and executed by a resident of this state, including, but not limited to, an advance directive, an order to do-not-resuscitate, a physician order for life-sustaining treatment, or a health care surrogate designation;
- “Department” means the Department of Health;
- “End-stage condition” means the same as in s. 765.101, F.S.;<sup>35</sup>
- “Order not to resuscitate” means an order issued pursuant to s. 401.45(3), F.S.; and
- “Physician order for life-sustaining treatment” or “POLST” means an order issued pursuant to s. 401.451, F.S., which specifies the care and medical treatment under certain medical conditions for a patient with an end stage conditions.

The AHCA is required to establish and maintain the clearinghouse by January 1, 2019. The database must allow for electronic submission, storage, indexing, and retrieval of compassionate and palliative care plans. The AHCA must also develop and maintain an identity validation system that confirms the identity of the facility, health care provider, or other authorized individual seeking retrieval of plans while protecting the privacy of patient’s personal and medical information. The system must meet all applicable state and federal privacy and security standards.

The AHCA is directed to seek input on the clearinghouse from state residents, compassionate and palliative care providers, and health care facilities for its development and implementation. The AHCA may subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse. Once clearinghouse information is available, the AHCA is required to publish and disseminate information regarding the availability of the clearinghouse to Floridians. The AHCA must also provide training to health care providers and health care facilities on how to access plans.

### **Statutory Revisions to Include POLST (Sections 3-10 and 12)**

Provisions in statute requiring health professional staff to honor “do not resuscitate” orders (DNROs) are revised to include recognition of a POLST document in the same manner.

The table below reflects the statutes impacted by these revisions.

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<sup>34</sup> “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of ch. 765, F.S.

<sup>35</sup> “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

<b>Statutory Revisions - Addition of POLST Language</b>		
<b>Bill Section</b>	<b>F.S. Citation</b>	<b>Description</b>
3	§400.142	Nursing Homes; Emergency medication kits; DNROs
4	§400.487	Home Health Service Agreements; DNROs
5	§400.605	Hospices; Administration; forms; fees
6	§400.6095	Hospice; patient admission; assessment; plan of care; discharge; death
7	§401.35	Medical Transportation Services: Rules
8	§401.45	Denial of emergency treatment; civil liability
9	§429.255	Assisted Living Facilities; Use of personnel; emergency care
10	§429.73	Rules and standards relating to adult family-care homes
11	§456.072	Grounds for discipline; penalties; enforcement
12	§765.205	Responsibility of the surrogate

**Section 11** - amends s. 456.072, F.S., relating to discipline for health care practitioners generally, to allow a licensee to withhold or withdraw cardiopulmonary resuscitation (CPR) or the use of an automated external defibrillator if presented with an order not to resuscitate or a POLST which includes a DNRO. The DOH is directed to adopt rules for the implementation of such orders. Additionally, the bill provides that licensees who withhold CPR or the use of an automated external defibrillator may not be subject to criminal prosecution and may not be considered to have acted in a negligent or unprofessional manner for carrying out DNRO or POLST orders.

The bill further provides that the absence of an order [not] to resuscitate pursuant to s. 408.064, F.S., or a POLST form executed pursuant to s. 408.064, F.S., does not preclude a licensee from withholding or withdrawing CPR or the use of an external automated defibrillator or otherwise carrying out medical orders allowed by law.

The effective date of the bill is July 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A separate public records exemption bill for the Clearinghouse for Compassionate and Palliative Care Plans (SB 476) is linked to this bill to ensure that the personally identifying information contained on the POLST forms is kept confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The POLST forms contain sensitive medical information and personal identifying information.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The AHCA anticipates that a private sector vendor would be selected to operate the clearinghouse. The estimated fiscal impact for implementation would be \$661,101 for the first year and \$618,434 for the second year.<sup>36</sup> Based on initial research conducted by the AHCA, there are no currently existing national databases that exist or regional databases that cover all of Florida that meet the requirements outlined in the bill, although it is possible that there might be one that could be customized to meet the requirements.<sup>37</sup>

Patients might request their providers complete and submit POLST forms on their behalf to the clearinghouse which could increase a provider's administrative costs.

C. Government Sector Impact:

The AHCA estimates the overall costs for SB 474 to be \$1,084,143 for the first year of implementation and \$1,041,476 for the second year of operations as detailed in the chart below.<sup>38</sup> Cost estimates for the clearinghouse were based on experiences of Washington State and adjusted for Florida's population size and inflation, according to the AHCA.<sup>39</sup>

The AHCA requested 3.00 FTEs for the implementation and administration of the clearinghouse under the alternative option as a contracted service. The 3.00 FTEs would also be responsible for educating and conducting outreach activities for residents and providers about the availability of the POLST and the clearinghouse statewide.

The AHCA has also noted that it does not believe that the clearinghouse can be implemented in the 6 month timeframe outlined in the bill and recommends a one year timeframe.

The DOH estimated its fiscal impact based on significant personnel time relating to developing rules and procedures for the POLST form and orders not to resuscitate pursuant to a POLST form and to create and maintain the clearinghouse in coordination

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<sup>36</sup> Agency for Health Care Administration, *Senate Bill 474 Analysis*, p. 7-9, (Oct. 13, 2017) (on file with the Senate Committee on Health Policy).

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 2.

with the AHCA and DOEA.<sup>40</sup> The DOH indicated these costs are estimated at \$232,230 for the first year and \$218,808 for the second year.<sup>41</sup> To conduct these activities, the DOH requested 3 FTEs and their associated expenses as shown in the chart below.

<b>FISCAL IMPACT – SB 474</b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Department of Health<sup>42</sup></b>		
<b>Professional Positions</b>		
Program Administrator	\$64,598	\$64,598
Program Manager	\$64,598	\$64,598
Administrative Assistant II	41,962	41,962
<b>Total Salary &amp; Fringe:</b>	<b>\$171,159</b>	<b>\$171,159</b>
<b>Non-Recurring Expense Std.</b>		
Professional:	\$13,422	-
<b>Total Non-Recurring Expense:</b>	<b>\$13,422</b>	<b>-</b>
<b>Recurring Expense Std.</b>		
Professional:	\$17,844	\$17,844
<b>Total Recurring Expense Standard:</b>	<b>\$17,844</b>	<b>\$17,844</b>
<b>Recurring Professional Travel Std.</b>		
Medium Travel	\$28,818	\$28,818
<b>Total Recurring Expense – Travel:</b>	<b>\$28,818</b>	<b>\$28,818</b>
<b>HR Outsourcing</b>		
FTE	\$987	\$987
CHD	\$-	\$-
OPS	\$-	\$-
<b>Total HR Outsourcing:</b>	<b>\$987</b>	<b>\$987</b>
Total Recurring Costs – DOH	\$218,808	\$218,808
<b>Total Non-Recurring &amp; Recurring Costs – DOH</b>	<b>\$232,230</b>	<b>\$232,808</b>
<b>Agency for Health Care Administration<sup>43</sup></b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Professional Staff</b>		
3 FTEs Professional Staff	\$13,422	\$-
<b>Total Non-Recurring Expense – 3 FTEs</b>	<b>\$13,422</b>	<b>\$-</b>
<b>Salaries</b>		
Government Ops Consultant II (1 FTE)	\$62,128	\$62,128
Health Services & Facility Consultant (2 FTEs)	116,948	116,948
<b>Total Salary and Benefits (3 FTEs):</b>	<b>\$179,076</b>	<b>\$179,076</b>
<b>Expenses</b>		
Professional Staff (3 FTEs @ \$5,993)	\$17,979	\$17,979
Educational Materials (facilities and providers)	75,000	75,000
Educational Materials (consumers)	150,000	150,000
<b>Total Expenses:</b>	<b>\$242,979</b>	<b>\$242,979</b>
<b>Human Resources Services</b>		
FTE Positions (3 FTEs @ \$329):	\$987	\$987

<sup>40</sup> Department of Health, *Senate Bill 474 Analysis*, pp. 4-5 (Oct. 10, 2017) (on file with the Senate Committee on Health Policy).

<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Supra* note 40.

<sup>43</sup> Agency for Health Care Administration, *Senate Bill 474 Analysis*, pp. 7-9, (Oct. 13, 2017) (on file with the Senate Committee of Health Policy).

<b>FISCAL IMPACT – SB 474</b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Total Human Resources Services:</b>	<b>\$987</b>	<b>\$987</b>
<b>Special Categories/Contracted Services</b>		
Contracted Services	\$611,101	\$618,434
Contracted Services (Customized Services)	50,000	\$-
<b>Total Special Categories/Contracted Services:</b>	<b>\$661,101</b>	<b>\$618,434</b>
Total Recurring Costs – AHCA:	\$1,084,143	1,041,476
Total Non-Recurring Costs – AHCA:	\$13,422	\$-
<b>Total Net Impact – AHCA:</b>	<b>\$1,097,565</b>	<b>\$1,041,476</b>

In 2016 under an identical bill, the Department of Elderly Affairs (DOEA) estimated a minimal fiscal impact related to rulemaking for implementation of the POLST forms at hospices, assisted living facilities, and adult family day cares.<sup>44</sup> The DOEA indicated these costs could be absorbed within existing resources.<sup>45</sup> No fiscal impact has been received from DOEA for SB 474.

**VI. Technical Deficiencies:**

SB 474 does not amend s. 395.1041(3)(l), F.S., to protect hospital personnel for honoring a POLST form.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 456.072, and 765.205.

This bill creates the following sections of the Florida Statutes: 401.451 and 408.064.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

<sup>44</sup> Department of Elderly Affairs, *Senate Bill 664 Analysis*, p. 2 (Dec. 15, 2015) (on file with the Senate Committee on Health Policy).

<sup>45</sup> *Id* at 4.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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