

By Senator Brandes

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1 A bill to be entitled
2 An act relating to physician orders for life-
3 sustaining treatment; creating s. 408.064, F.S.;
4 defining terms; requiring the Department of Health to
5 develop, and adopt by rule, a physician order for
6 life-sustaining treatment (POLST) form; providing
7 requirements for the POLST form; requiring the
8 signature and attestation of a physician on a POLST
9 form; providing requirements for a POLST form to be
10 valid; prohibiting a POLST form from being required as
11 a condition for treatment; requiring the review of a
12 POLST form in certain circumstances; providing for the
13 expiration of a POLST form; requiring the Agency for
14 Health Care Administration to act as the state
15 clearinghouse for compassionate and palliative care
16 plans and information on those plans; requiring that
17 such plans and information be electronically
18 accessible to specified health care providers;
19 requiring the agency to develop and maintain a
20 database that allows the electronic submission of a
21 compassionate and palliative care plan by a resident
22 of this state which indicates his or her advance
23 directives for care, the electronic storage and
24 retrieval of such plans, and access to such plans by
25 specified health care providers; requiring the agency
26 to consult with advisers and experts as necessary and
27 appropriate to facilitate the development and
28 implementation of the database; authorizing the agency
29 to subscribe to or participate in a public or private

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30 clearinghouse, which may be nationwide, in lieu of
31 establishing and maintaining an independent database;
32 requiring the agency to publish and disseminate
33 certain information and provide certain training
34 relating to the database; amending ss. 395.1041,
35 400.142, and 400.487, F.S.; authorizing specified
36 personnel to withhold or withdraw cardiopulmonary
37 resuscitation if a patient has a POLST form that
38 contains such an order; providing immunity from civil
39 and criminal liability to such personnel for such
40 actions; providing that the absence of a POLST form
41 does not preclude a physician from withholding or
42 withdrawing cardiopulmonary resuscitation; amending s.
43 400.605, F.S.; requiring the Department of Elderly
44 Affairs, in consultation with the agency, to adopt by
45 rule procedures for the implementation of POLST forms
46 in hospice care; amending s. 400.6095, F.S.;

47 authorizing a hospice care team to withhold or
48 withdraw cardiopulmonary resuscitation if a patient
49 has a POLST form that contains such an order;
50 providing immunity from civil and criminal liability
51 to a provider for such actions; providing that the
52 absence of a POLST form does not preclude a physician
53 from withholding or withdrawing cardiopulmonary
54 resuscitation; amending s. 401.35, F.S.; requiring the
55 Department of Health to establish circumstances and
56 procedures for honoring a POLST form; amending s.
57 401.45, F.S.; authorizing emergency medical
58 transportation providers to withhold or withdraw

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59 cardiopulmonary resuscitation or other medical
60 interventions if a patient has a POLST form that
61 contains such an order; amending s. 429.255, F.S.;
62 authorizing assisted living facility personnel to
63 withhold or withdraw cardiopulmonary resuscitation if
64 a patient has a POLST form that contains such an
65 order; providing immunity from civil and criminal
66 liability to facility staff and facilities for such
67 actions; providing that the absence of a POLST form
68 does not preclude a physician from withholding or
69 withdrawing cardiopulmonary resuscitation; amending s.
70 429.73, F.S.; requiring the Department of Elderly
71 Affairs to adopt rules for the implementation of POLST
72 forms in adult family-care homes; authorizing a
73 provider of such home to withhold or withdraw
74 cardiopulmonary resuscitation if a patient has a POLST
75 form that contains such an order; providing immunity
76 from civil and criminal liability to a provider for
77 such actions; amending s. 456.072, F.S.; providing
78 that a licensee may withhold or withdraw
79 cardiopulmonary resuscitation or the use of an
80 external defibrillator if presented with an order not
81 to resuscitate or a POLST form that contains an order
82 not to resuscitate; requiring the Department of Health
83 to adopt rules providing for the implementation of
84 such orders; providing immunity to licensees for
85 withholding or withdrawing cardiopulmonary
86 resuscitation or the use of an automated defibrillator
87 pursuant to such orders; amending s. 765.205, F.S.;

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88 requiring a health care surrogate to provide written
89 consent for a POLST form under certain circumstances;
90 providing an effective date.

91

92 Be It Enacted by the Legislature of the State of Florida:

93

94 Section 1. Section 408.064, Florida Statutes, is created to
95 read:

96 408.064 Clearinghouse for compassionate and palliative care
97 plans; POLST form.—

98 (1) DEFINITIONS.—As used in this section, the term:

99 (a) "Advance directive" has the same meaning as in s.
100 765.101.

101 (b) "Compassionate and palliative care plan" or "plan"
102 means an end-of-life document or any medical directive document
103 recognized by this state and executed by a resident of this
104 state, including, but not limited to, an advance directive, do-
105 not-resuscitate order, physician order for life-sustaining
106 treatment (POLST), or health care surrogate designation.

107 (c) "Department" means the Department of Health.

108 (d) "Do-not-resuscitate order" means an order issued
109 pursuant to s. 401.45(3).

110 (e) "End-stage condition" has the same meaning as in s.
111 765.101.

112 (f) "Physician order for life-sustaining treatment" or
113 "POLST" means a voluntary document, executed on a form adopted
114 by department rule, which specifies a patient's desired end-of-
115 life care and medical treatment to ensure that his or her wishes
116 are honored. A POLST emphasizes advance care planning and shared

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117 decision-making among a patient and his or her health care
118 professionals and loved ones about the medical care the patient
119 would like to receive upon the occurrence of specified
120 conditions at or near the end of his or her life.

121 (2) POLST FORM.—The department shall develop and adopt by
122 rule a POLST form. The form must be signed by the patient's
123 physician after consultation with the patient or, if the patient
124 is incapacitated, with the patient's legally authorized health
125 care surrogate or proxy as provided in chapter 765 or with the
126 patient's court-appointed guardian as provided in chapter 744.

127 (a) A POLST form is not valid unless the patient's
128 physician attests in a signed, written statement that, in his or
129 her good faith clinical judgment, at the time the POLST form is
130 completed, the patient has the ability to make and communicate
131 health care decisions or, in the event of the incapacity of the
132 patient, that the patient's health care surrogate or other legal
133 representative has such ability.

134 (b) A POLST form must prominently state in a conspicuous
135 location on the document that completion of a POLST is
136 voluntary, the use of a POLST form may not be required as a
137 condition for treatment of any kind, and a POLST form may not be
138 given effect if the patient is conscious and competent to make
139 health care decisions. Such decisions will determine the
140 patient's treatment, notwithstanding any directives included in
141 the form.

142 (c) Decisions and instructions may not be preselected on a
143 POLST form.

144 (d) A POLST form may be completed only by or for a patient
145 determined by the patient's physician to have an end-stage

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146 condition or a patient who, in the good faith clinical judgment
147 of his or her physician, is suffering from at least one life-
148 limiting medical condition that will likely result in the death
149 of the patient within 1 year.

150 (e) A POLST form must include information on hydration in
151 the context of the patient's actual condition at the time the
152 POLST is executed.

153 (f) At a minimum, a POLST form must be reviewed by the
154 patient's physician when the patient:

155 1. Is transferred from one health care setting or level of
156 care to another;

157 2. Is discharged from a health care setting to return home;

158 3. Experiences a substantial change in his or her condition
159 as determined by that physician; or

160 4. Changes his or her treatment preferences.

161 (g) A POLST form expires 1 year after the patient or the
162 patient's health care surrogate or other legal representative
163 signs the form or through the end of the course of treatment
164 addressed by the POLST, whichever occurs first.

165 (3) INFORMATION CLEARINGHOUSE AND ESTABLISHMENT OF
166 ELECTRONIC DATABASE.—The agency shall act as a clearinghouse of
167 information on compassionate and palliative care plans, which
168 must be accessible to health care providers. The agency shall
169 develop and maintain as part of the clearinghouse a reliable and
170 secure database that allows the electronic submission, storage,
171 indexing, and retrieval of plans submitted by residents of this
172 state, which plans may be accessed by a resident's treating
173 health care provider. The agency shall consult with
174 compassionate and palliative care providers, health care

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175 facilities, and residents of this state as necessary and
 176 appropriate to facilitate the development and implementation of
 177 the database. The agency may subscribe to or otherwise
 178 participate in a public or private clearinghouse, which may be
 179 nationwide, to meet the requirements of this subsection. The
 180 agency shall publish and disseminate to residents of this state
 181 information regarding its role as a clearinghouse and the
 182 availability of the database. The agency shall also provide
 183 training to health care providers and health care facilities in
 184 this state as to how to access plans through the database.

185 Section 2. Paragraph (1) of subsection (3) of section
 186 395.1041, Florida Statutes, is amended to read:

187 395.1041 Access to emergency services and care.—

188 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
 189 FACILITY OR HEALTH CARE PERSONNEL.—

190 (1) Hospital personnel may withhold or withdraw
 191 cardiopulmonary resuscitation if presented with an order not to
 192 resuscitate executed pursuant to s. 401.45 or a physician order
 193 for life-sustaining treatment (POLST) form executed pursuant to
 194 s. 408.064 which contains an order not to resuscitate. Facility
 195 staff and facilities are shall not be subject to criminal
 196 prosecution or civil liability, and may not ~~not~~ be considered to
 197 have engaged in negligent or unprofessional conduct, for
 198 withholding or withdrawing cardiopulmonary resuscitation
 199 pursuant to such an order or a POLST form. The absence of an
 200 order not to resuscitate executed pursuant to s. 401.45 or a
 201 POLST form executed pursuant to s. 408.064 does not preclude a
 202 physician from withholding or withdrawing cardiopulmonary
 203 resuscitation as otherwise allowed ~~permitted~~ by law.

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204 Section 3. Subsection (3) of section 400.142, Florida
205 Statutes, is amended to read:

206 400.142 Emergency medication kits; orders not to
207 resuscitate.—

208 (3) Facility staff may withhold or withdraw cardiopulmonary
209 resuscitation if presented with an order not to resuscitate
210 executed pursuant to s. 401.45 or a physician order for life-
211 sustaining treatment (POLST) form executed pursuant to s.
212 408.064 which contains an order not to resuscitate. Facility
213 staff and facilities are not subject to criminal prosecution or
214 civil liability, or considered to have engaged in negligent or
215 unprofessional conduct, for withholding or withdrawing
216 cardiopulmonary resuscitation pursuant to such an order or a
217 POLST form. The absence of an order not to resuscitate executed
218 pursuant to s. 401.45 or a POLST form executed pursuant to s.
219 408.064 does not preclude a physician from withholding or
220 withdrawing cardiopulmonary resuscitation as otherwise allowed
221 ~~permitted~~ by law.

222 Section 4. Section 400.487, Florida Statutes, is amended to
223 read:

224 400.487 Home health service agreements; physician's,
225 physician assistant's, and advanced registered nurse
226 practitioner's treatment orders; patient assessment;
227 establishment and review of plan of care; provision of services;
228 orders not to resuscitate; physician orders for life-sustaining
229 treatment.—

230 (1) Services provided by a home health agency must be
231 covered by an agreement between the home health agency and the
232 patient or the patient's legal representative specifying the

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233 home health services to be provided, the rates or charges for
234 services paid with private funds, and the sources of payment,
235 which may include Medicare, Medicaid, private insurance,
236 personal funds, or a combination thereof. A home health agency
237 providing skilled care must make an assessment of the patient's
238 needs within 48 hours after the start of services.

239 (2) If ~~When~~ required by ~~the provisions of~~ chapter 464; part
240 I, part III, or part V of chapter 468; or chapter 486, the
241 attending physician, physician assistant, or advanced registered
242 nurse practitioner, acting within his or her respective scope of
243 practice, shall establish treatment orders for a patient who is
244 to receive skilled care. The treatment orders must be signed by
245 the physician, physician assistant, or advanced registered nurse
246 practitioner before a claim for payment for the skilled services
247 is submitted by the home health agency. If the claim is
248 submitted to a managed care organization, the treatment orders
249 must be signed within the time allowed under the provider
250 agreement. The treatment orders shall be reviewed, as frequently
251 as the patient's illness requires, by the physician, physician
252 assistant, or advanced registered nurse practitioner in
253 consultation with the home health agency.

254 (3) A home health agency shall arrange for supervisory
255 visits by a registered nurse to the home of a patient receiving
256 home health aide services in accordance with the patient's
257 direction, approval, and agreement to pay the charge for the
258 visits.

259 (4) Each patient has the right to be informed of and to
260 participate in the planning of his or her care. Each patient
261 must be provided, upon request, a copy of the plan of care

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262 established and maintained for that patient by the home health
263 agency.

264 (5) ~~If~~ When nursing services are ordered, the home health
265 agency to which a patient has been admitted for care must
266 provide the initial admission visit, all service evaluation
267 visits, and the discharge visit by a direct employee. Services
268 provided by others under contractual arrangements to a home
269 health agency must be monitored and managed by the admitting
270 home health agency. The admitting home health agency is fully
271 responsible for ensuring that all care provided through its
272 employees or contract staff is delivered in accordance with this
273 part and applicable rules.

274 (6) The skilled care services provided by a home health
275 agency, directly or under contract, must be supervised and
276 coordinated in accordance with the plan of care.

277 (7) Home health agency personnel may withhold or withdraw
278 cardiopulmonary resuscitation if presented with an order not to
279 resuscitate executed pursuant to s. 401.45 or a physician order
280 for life-sustaining treatment (POLST) form executed pursuant to
281 s. 408.064 which contains an order not to resuscitate. The
282 agency shall adopt rules providing for the implementation of
283 such orders. Home health personnel and agencies are ~~shall~~ not be
284 subject to criminal prosecution or civil liability, and may not
285 ~~not~~ be considered to have engaged in negligent or unprofessional
286 conduct, for withholding or withdrawing cardiopulmonary
287 resuscitation pursuant to such an order or a POLST form and
288 rules adopted by the agency.

289 Section 5. Paragraph (e) of subsection (1) of section
290 400.605, Florida Statutes, is amended to read:

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291 400.605 Administration; forms; fees; rules; inspections;
 292 fines.—

293 (1) The agency, in consultation with the department, may
 294 adopt rules to administer the requirements of part II of chapter
 295 408. The department, in consultation with the agency, shall by
 296 rule establish minimum standards and procedures for a hospice
 297 pursuant to this part. The rules must include:

298 (e) Procedures relating to the implementation of advance
 299 ~~advanced~~ directives; physician orders for life-sustaining
 300 treatment (POLST) forms executed pursuant to s. 408.064; and do-
 301 not-resuscitate orders.

302 Section 6. Subsection (8) of section 400.6095, Florida
 303 Statutes, is amended to read:

304 400.6095 Patient admission; assessment; plan of care;
 305 discharge; death.—

306 (8) The hospice care team may withhold or withdraw
 307 cardiopulmonary resuscitation if presented with an order not to
 308 resuscitate executed pursuant to s. 401.45 or a physician order
 309 for life-sustaining treatment (POLST) form executed pursuant to
 310 s. 408.064 which contains an order not to resuscitate. The
 311 department shall adopt rules providing for the implementation of
 312 such orders. Hospice staff are ~~shall~~ not be subject to criminal
 313 prosecution or civil liability, and may not ~~nor~~ be considered to
 314 have engaged in negligent or unprofessional conduct, for
 315 withholding or withdrawing cardiopulmonary resuscitation
 316 pursuant to such an order or a POLST form and applicable rules.
 317 The absence of an order to resuscitate executed pursuant to s.
 318 401.45 or a POLST form executed pursuant to s. 408.064 does not
 319 preclude a physician from withholding or withdrawing

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320 cardiopulmonary resuscitation as otherwise allowed ~~permitted~~ by
321 law.

322 Section 7. Subsection (4) of section 401.35, Florida
323 Statutes, is amended to read:

324 401.35 Rules.—The department shall adopt rules, including
325 definitions of terms, necessary to carry out the purposes of
326 this part.

327 (4) The rules must establish circumstances and procedures
328 under which emergency medical technicians and paramedics may
329 honor orders by the patient's physician not to resuscitate
330 executed pursuant to s. 401.45 or under a physician order for
331 life-sustaining treatment (POLST) form executed pursuant to s.
332 408.064 which contains an order not to resuscitate and the
333 documentation and reporting requirements for handling such
334 requests.

335 Section 8. Paragraph (a) of subsection (3) of section
336 401.45, Florida Statutes, is amended to read:

337 401.45 Denial of emergency treatment; civil liability.—

338 (3) (a) Resuscitation or other forms of medical intervention
339 may be withheld or withdrawn from a patient by an emergency
340 medical technician, ~~or~~ paramedic, or other health care
341 professional if he or she is presented with evidence of a
342 physician order for life-sustaining treatment (POLST) form
343 executed pursuant to s. 408.064 which contains an order not to
344 resuscitate or perform other medical intervention, as
345 applicable, or an order not to resuscitate by the patient's
346 physician ~~is presented to the emergency medical technician or~~
347 ~~paramedic.~~ To be valid, an order not to resuscitate, ~~to be~~
348 ~~valid,~~ must be on the form adopted by rule of the department.

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349 The form must be signed by the patient's physician and by the
350 patient or, if the patient is incapacitated, the patient's
351 health care surrogate or proxy as provided in chapter 765,
352 court-appointed guardian as provided in chapter 744, or attorney
353 in fact under a durable power of attorney as provided in chapter
354 709. The court-appointed guardian or attorney in fact must have
355 been delegated authority to make health care decisions on behalf
356 of the patient.

357 Section 9. Subsection (4) of section 429.255, Florida
358 Statutes, is amended to read:

359 429.255 Use of personnel; emergency care.—

360 (4) Facility staff may withhold or withdraw cardiopulmonary
361 resuscitation or the use of an automated external defibrillator
362 if presented with an order not to resuscitate executed pursuant
363 to s. 401.45 or a physician order for life-sustaining treatment
364 (POLST) form executed pursuant to s. 408.064 which contains an
365 order not to resuscitate. The department shall adopt rules
366 providing for the implementation of such orders. Facility staff
367 and facilities are ~~shall~~ not be subject to criminal prosecution
368 or civil liability, and may not ~~nor~~ be considered to have
369 engaged in negligent or unprofessional conduct, for withholding
370 or withdrawing cardiopulmonary resuscitation or use of an
371 automated external defibrillator pursuant to such an order or a
372 POLST form and rules adopted by the department. The absence of
373 an order to resuscitate executed pursuant to s. 401.45 or a
374 POLST form executed pursuant to s. 408.064 does not preclude a
375 physician from withholding or withdrawing cardiopulmonary
376 resuscitation or use of an automated external defibrillator as
377 otherwise allowed ~~permitted~~ by law.

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378 Section 10. Subsection (3) of section 429.73, Florida
379 Statutes, is amended to read:

380 429.73 Rules and standards relating to adult family-care
381 homes.—

382 (3) The department shall adopt rules providing for the
383 implementation of orders not to resuscitate and physician orders
384 for life-sustaining treatment (POLST) forms executed pursuant to
385 s. 408.064. The provider may withhold or withdraw
386 cardiopulmonary resuscitation if presented with an order not to
387 resuscitate executed pursuant to s. 401.45 or a POLST form
388 executed pursuant to s. 408.064 which contains an order not to
389 resuscitate. The provider is ~~shall~~ not ~~be~~ subject to criminal
390 prosecution or civil liability, and may not ~~nor~~ be considered to
391 have engaged in negligent or unprofessional conduct, for
392 withholding or withdrawing cardiopulmonary resuscitation
393 pursuant to such orders ~~an order~~ and applicable rules.

394 Section 11. Present subsections (7) and (8) of section
395 456.072, Florida Statutes, are redesignated as subsections (8)
396 and (9), respectively, and a new subsection (7) is added to that
397 section, to read:

398 456.072 Grounds for discipline; penalties; enforcement.—

399 (7) A licensee may withhold or withdraw cardiopulmonary
400 resuscitation or the use of an automated external defibrillator
401 if presented with an order not to resuscitate executed pursuant
402 to s. 401.45 or a physician order for life-sustaining treatment
403 (POLST) form executed pursuant to s. 408.064 which contains an
404 order not to resuscitate. The department shall adopt rules
405 providing for the implementation of such orders. Licensees are
406 not subject to criminal prosecution or civil liability, and may

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407 not be considered to have engaged in negligent or unprofessional
408 conduct, for withholding or withdrawing cardiopulmonary
409 resuscitation or the use of an automated external defibrillator
410 or otherwise carrying out the orders in an order not to
411 resuscitate or a POLST form pursuant to such an order or POLST
412 form and rules adopted by the department. The absence of an
413 order to resuscitate executed pursuant to s. 401.45 or a POLST
414 form executed pursuant to s. 408.064 does not preclude a
415 licensee from withholding or withdrawing cardiopulmonary
416 resuscitation or the use of an automated external defibrillator
417 or otherwise carrying out medical orders allowed by law.

418 Section 12. Paragraph (c) of subsection (1) of section
419 765.205, Florida Statutes, is amended to read:

420 765.205 Responsibility of the surrogate.—

421 (1) The surrogate, in accordance with the principal's
422 instructions, unless such authority has been expressly limited
423 by the principal, shall:

424 (c) Provide written consent using an appropriate form
425 whenever consent is required, including a physician's order not
426 to resuscitate or a physician order for life-sustaining
427 treatment (POLST) form executed pursuant to s. 408.064.

428 Section 13. This act shall take effect July 1, 2016.