STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3017 By: Calvey of the House

and

Sykes and Crain of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to health care; creating the Physician Orders for Life-Sustaining Treatment Act; providing short title; providing definitions; directing Office of the Attorney General to establish format for certain form; requiring certain orders to conform to certain requirements; requiring certain information to be provided to patient or patient representative; requiring physicians to discuss certain treatments under certain circumstances; prohibiting validity of certain forms under certain circumstances; prescribing contents, phrasing and format of certain form; providing immunity from certain liability; providing liability for certain persons; permitting court enjoinment under certain circumstances; requiring certain orders under certain circumstances; amending 58 O.S. 2011, Section 1072.1, which relates to durable powers of attorney; providing certain exception; clarifying language; directing Office of the Attorney General to establish and directing State Board of Medical Licensure and Supervision to publish certain form; providing for codification; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Physician Orders for Life-Sustaining Treatment Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Physician Orders for Life-Sustaining Treatment Act:

1. "Attorney-in-fact" means an attorney-in-fact authorized to act pursuant to the Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of Title 58 of the Oklahoma Statutes, with authority to act regarding the patient's health and medical care decisions, subject to the limitations under paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes;

2. "Guardian" means a general guardian of the person appointed pursuant to subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes or a limited guardian of the person appointed pursuant to subsection B of Section 3-112 of Title 30 of the Oklahoma Statutes with the authority to make personal medical decisions as determined under paragraph 5 of subsection B of Section 3-113 of Title 30 of the Oklahoma Statutes;

3. "Health care provider" means a person who is licensed, certified or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession;

4. "Health care proxy" means a health care proxy (or alternate health care proxy) authorized to act pursuant to the Oklahoma Advance Directive Act, Sections 3101.1 through 3101.16 of Title 63 of the Oklahoma Statutes, as defined in paragraph 6 of Section 3101.3 of Title 63 of the Oklahoma Statutes; and

5. "Other legally authorized person" means a person, other than a minor's custodial parent or guardian, the patient or the patient's attorney-in-fact, guardian or health care proxy, who has authority to make health care decisions for the patient under common law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Office of the Attorney General shall establish the standardized format for a form in accordance with the provisions of Section 4 of this act, adhering to the directions, sequence and wording in those provisions.

B. An Oklahoma physician orders for life-sustaining treatment shall be executed, implemented, reviewed and revoked in accordance with the instructions on the form required by this section. At the beginning of renewing and preparing it in consultation with the

patient or the patient's legally authorized representative, the attending physician or the health care professional preparing the form or an agent of either shall give that person a copy of the disclosure statement described in Section 3163 of Title 63 of the Oklahoma Statutes. When a patient with a valid POLST experiences a change in medical condition that creates a situation in which, in reasonable medical judgment, withholding specific health care rejected by the POLST will cause or hasten the patient's death, if the patient is then capable of making decisions affecting health care the attending physician shall discuss the situation and treatment with the patient and determine whether, on the basis of information sufficient for informed consent, the patient still wishes the direction in the POLST to control or instead wishes to receive the treatment.

C. A physician orders for life-sustaining treatment (POLST), physician orders for scope of treatment (POST), medical orders for life-sustaining treatment (MOLST), medical orders for scope of treatment (MOST), transportable physician orders for patient preferences (TPOPP) or similar document that does not comply with the standardized format for an Oklahoma physician orders for life-sustaining treatment established by regulations promulgated in accordance with this section:

a. that was executed in this state prior to the effective date of the standardized format established in

accordance with this section shall have no validity after forty-five (45) days following that effective date or after ten (10) days following the admission of the patient to an Oklahoma medical care facility, whichever is later; provided, that a standardized format Oklahoma physician orders for life-sustaining treatment executed subsequent to such document's execution shall immediately supersede it, or

b. that was executed outside this state in compliance with the laws of the jurisdiction of execution shall have no validity after ten (10) days following the admission of the patient to an Oklahoma medical care facility; provided, that a standardized format Oklahoma physician orders for life-sustaining treatment executed subsequent to such document's execution shall immediately supersede it.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

1. At the top of the first page of the standardized format Oklahoma physician orders for life-sustaining treatment form the following wording in all capitals shall appear against a contrasting color background: "FORM SHALL ACCOMPANY PERSON WHEN TRANSFERRED OR DISCHARGED"; at the bottom of the first page the following wording

in all capitals shall appear against a contrasting color background: "HIPAA PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS AND PROXY DECISION MAKERS AS NECESSARY FOR TREATMENT".

2. There shall be an introductory section, the left block of which shall contain the name "Oklahoma Physician Orders for Life-Sustaining Treatment (POLST)" followed by the words, "This Physician Order set is based on the patient's current medical condition and wishes and is to be reviewed for potential replacement in the case of a substantial change in either, as well as in other cases listed under F. Any section not completed indicates full treatment for that section. Photocopy or fax copy of this form is legal and valid." and the right block of which shall contain lines for the patient's name, the patient's date of birth and the effective date of the form followed by the statement, "Form must be reviewed at least annually."

3. In Section A of the form, the left block shall contain, in bold font, "A. Check One", and the right block shall be headed, in bold font, "Cardiopulmonary Resuscitation (CPR): Person has no pulse and is not breathing." below which there shall be a checkbox followed by "Attempt Resuscitation (CPR)", then a checkbox followed by "Do Not Attempt Resuscitation (DNR/ no CPR)", and below which shall be the words, "When not in cardiopulmonary arrest, follow orders in B, C and D below."

4. In Section B of the form, the left block shall contain, in bold, "B. Check One", and the right block shall be headed, in bold, "Medical Interventions: Person has pulse and/or is breathing." Below this there shall be a checkbox followed by, in bold, "Full Treatment" followed by, "Includes the use of intubation, advanced airway interventions, mechanical ventilation, defibrillation or cardio version as indicated, medical treatment, intravenous fluids, and cardiac monitor as indicated. Transfer to hospital if indicated. Include intensive care. Includes treatment listed under "Limited Interventions" and "Comfort Measures", followed by, in bold, "Treatment Goal: Attempt to preserve life by all medically effective means."

Below this there shall be a checkbox followed by, in bold, "Limited Interventions" followed by, "Includes the use of medical treatment, oral and intravenous medications, intravenous fluids, cardiac monitoring as indicated, noninvasive bi-level positive airway pressure, a bag valve mask or other advanced airway interventions. Includes treatment listed under "Comfort Measures", followed by, "Do not use intubation or mechanical ventilation. Transfer to hospital if indicated. Avoid intensive care." followed by, in bold, "Treatment Goal: Attempt to preserve life by basic medical treatments."

Below this there shall be a checkbox followed by, in bold, "Comfort Measures only" followed by, "Includes keeping the patient

clean, warm and dry; use of medication by any route; positioning, wound care and other measures to relieve pain and suffering. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Transfer from current location to intermediate facility only if needed and adequate to meet comfort needs and to hospital only if comfort needs cannot otherwise be met in the patient's current location (e.g., hip fracture; if intravenous route of comfort measures is required)."

Below this there shall be, in italics, "Additional Orders:" followed by an underlined space for other instructions.

5. In Section C of the form, the left block shall contain, in bold, "C. Check One" and the right block shall be headed, in bold, "Antibiotics".

Below this there shall be a checkbox followed by, in bold, "Use antibiotics to preserve life."

Below this there shall be a checkbox followed by, in bold, "Trial period of antibiotics if and when infection occurs." After this there shall be, in italics, "*Include goals below in E."

Below this there shall be a checkbox followed by, in bold, "Initially, use antibiotics only to relieve pain and discomfort." After this there shall be, in italics, "+Contact patient or patient's representative for further direction."

Below this there shall be, in italics, "Additional Orders:" followed by an underlined space for other instructions.

6. In Section D of the form, the left block shall contain, in bold, "D. Check One in Each Column", and the right block shall be headed in bold "Assisted Nutrition and Hydration", below which shall be "Administer oral fluids and nutrition, if necessary by spoon feeding, if physically possible." Below these the right block shall be divided into three columns.

The leftmost column shall be headed, "TPN (Total Parenteral Nutrition-provision of nutrition into blood vessels)." Below this there shall be a checkbox followed by, in bold, "TPN long-term" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "TPN for a trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no TPN+".

The middle column shall be headed "Tube Feeding". Below this there shall be a checkbox followed by, in bold, "Long-term feeding tube" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "Feeding tube for a trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no feeding tube".

The rightmost column shall be headed, "Intravenous (IV) Fluids for Hydration". Below this there shall be a checkbox followed by, in bold, "Long-term IV fluids" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "IV fluids for a trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no IV fluids+".

Running below all the columns there shall be, in italics, "Additional Orders:" followed by an underlined space for other instructions, followed by, in italics, "*Include goals below in E. +Contact patient or patient's representative for further direction."

7. In Section E of the form, the left block shall contain, in bold, "E. Check all that apply" and the right block shall be headed, in bold, "Patient Preferences as a Basis for this POLST Form" shall include the following:

a. below the heading there shall be a box including the words, in bold, "Patient Goals/Medical Condition:" followed by an adequate space for such information,

b. below this there shall be a checkbox followed by, "The patient has an advance directive for health care in accordance with Sections 3101.4 or 3101.14 of Title 63 of the Oklahoma Statutes." Below that there shall be a checkbox followed by, "The patient has a durable power of attorney for health care decisions in accordance with paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes." Below that shall be the indented words, "Date of execution" followed by an underlined space. Below that shall be the words, "If POLST not being executed by patient: We certify that this POLST is in accordance with the patient's advance directive." Below this there shall

be an underlined space underneath which shall be positioned the words, "Name and Position (print) Signature" and "Signature of Physician",

c. below these shall be the words, "Directions given by:" and below that a checkbox followed by "Patient", a checkbox followed by "Minor's custodial parent or guardian", a checkbox followed by "Attorney-in-fact", a checkbox followed by "Health care proxy", and a checkbox followed by "Other legally authorized person:" followed by an underlined space. Beneath or beside the checkbox and "Other legally authorized person:" and the underlined space shall be the words "Basis of Authority:" followed by an underlined space, and

d. below these shall be a four-column table with four rows. In the top row the first column shall be blank; the second column shall have the words, "Printed Name"; the third column shall have the word, "Signature", and the fourth column shall have the word, "Date". In the remaining rows the second through fourth columns shall be blank. In the first column of these rows, in the second row shall be the words, "Attending physician"; in the third row shall be the words, "Patient or other individual checked

above (patient's representative)"; and in the fourth row shall be the words, "Health care professional preparing form (besides doctor)."

8. Section F of the form, which shall have the heading, in bold, "Information for Patient or Representative of Patient Named on this Form", shall include the following language, appearing in bold on the form:

"The POLST form is always voluntary and is usually for persons with advanced illness. Before providing information for or signing it, carefully read "Information for Patients and Their Families - Your Medical Treatment Rights Under Oklahoma Law", which the health care provider must give you. It is especially important to read the sections on CPR and food and fluids, which have summaries of Oklahoma laws that may control the directions you may give. POLST records your wishes for medical treatment in your current state of health. Once initial medical treatment is begun and the risks and benefits of further therapy are clear, your treatment wishes may change. Your medical care and this form can be changed to reflect your new wishes at any time. However, no form can address all the medical treatment decisions that may need to be made. An advance health care directive is recommended, regardless of your health status. An advance directive allows you to document in detail your future health care instructions and/or name a health care agent to speak for you if you are unable to speak for yourself.

The State of Oklahoma affirms that the lives of all are of equal dignity regardless of age or disability and emphasizes that no one should ever feel pressured to agree to forego life-preserving medical treatment because of age, disability or fear of being regarded as a burden.

If this form is for a minor for whom you are authorized to make health care decisions, you may not direct denial of medical treatment in a manner that would violate the child abuse and neglect laws of Oklahoma. In particular, you may not direct the withholding of medically indicated treatment from a disabled infant with life-threatening conditions, as those terms are defined in 42 U.S.C., Section 5106g or regulations implementing it and 42 U.S.C., Section 5106a."

9. Section G of the form, which shall have the heading, in bold, "Directions for Completing and Implementing Form", shall include the following three subdivisions:

a. the first subdivision, entitled "COMPLETING POLST", shall have the following language with the words, "The signature of the patient or the patient's representative is required" appearing in bold on the form:

"POLST must be reviewed and prepared in consultation with the patient or the patient's representative after that person has been given a copy of "Information for

Patients and Their Families - Your Medical Treatment Rights Under Oklahoma Law". POLST must be reviewed and signed by a physician to be valid. Be sure to document the basis for concluding the patient had or lacked capacity at the time of execution of the form in the patient's medical record. If the patient lacks capacity, any current advance directive form must be reviewed and the patient's representative and physician must both certify that POLST complies with it. The signature of the patient or the patient's representative is required; however, if the patient's representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's representative must be placed in the medical record as soon as practicable and "on file" must be written on the appropriate signature line on this form.",

b. the second subdivision, entitled "IMPLEMENTING POLST", shall have the following language:

"If a minor protests a directive to deny the minor life-preserving medical treatment, the denial of treatment may not be implemented pending issuance of a judicial order resolving the conflict. A health care provider unwilling to comply with POLST must comply

with the transfer and treatment pending transfer requirements of Section 3101.9 of Title 63 of the Oklahoma Statutes as well as those of the Nondiscrimination in Treatment Act, Sections 3090.2 and 3090.3 of Title 63 of the Oklahoma Statutes", and

c. the third subdivision, entitled "REVIEWING POLST", shall have the following language:

"This POLST must be reviewed at least annually or earlier if:

The patient is admitted to or discharged from a medical care facility; there is substantial change in the patient's health status; or the treatment preferences of the patient or patient's representative change."

The same requirements for participation of the patient or patient's representative, and signature by both a physician and the patient or the patient's representative, that are described under "COMPLETING POLST" shall also apply when POLST is reviewed, and must be documented in Section I.

10. Section G of the form, which shall have the heading, in bold, "REVOCATION OF POLST", shall have the following language, with the words specified below appearing in bold on the form:

"If POLST is revised or becomes invalid, write in bold the word "VOID" in large letters on the front of the form. After voiding the

form a new form may be completed. A patient with capacity or the individual or individuals authorized to sign on behalf of the patient in Section E of this form may void this form. If no new form is completed, full treatment and resuscitation is to be provided, except as otherwise authorized by Oklahoma law."

11. Section H of the form, which shall have the heading, in bold, "REVIEW SECTION", followed by: "Periodic review confirms current form or may require completion of new form," shall include the following columns and a number of rows determined by the Office of the Attorney General:

a. Date of Review,

b. Location of Review,

c. Patient or Representative Signature,

d. Physician Signature, and

e. Outcome of Review.

Each row in column (5) shall include a checkbox followed by, "FORM CONFIRMED - No Change", below which there shall be a checkbox followed by, "FORM VOIDED, see updated form.", below which there shall be a checkbox followed by, "FORM VOIDED, no new form."

A final section of the form, which shall have the heading, in bold, "Contact Information:", shall include two rows of four columns. In the first column, the first row shall include "Patient/Representative" followed by an adequate space for such information, and the second column shall include "Health Care

Professional Preparing Form" followed by an adequate space for such information. In the second column both rows shall include "Relationship" followed by an adequate space for such information; in the third column both rows shall include "Phone Number" followed by an adequate space for such information; and in the fourth column both rows shall include "Email Address" followed by an adequate space for such information.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3105.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A physician or other health care provider acting in good faith and in accordance with reasonable medical standards applicable to the physician or other health care provider is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

1. Executing an Oklahoma standardized format physician orders for life-sustaining treatment form in compliance with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to provide, withhold or withdraw health care;

2. Declining to execute an Oklahoma standardized format physician orders for life-sustaining treatment form in compliance with a health care decision of a person based on a reasonable belief that the person then lacked authority; or

3. Complying with an apparently valid Oklahoma standardized format physician orders for life-sustaining treatment form on the assumption that the order was valid when made and has not been revoked or terminated.

B. A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's physician orders for life-sustaining treatment form without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give a physician orders for life-sustaining treatment form, is subject to liability to that individual for damages of Two Hundred Thousand Dollars ($200,000.00) or actual damages resulting from the action, whichever is greater, plus reasonable attorney fees.

C. On petition of a health care provider or facility involved with the patient's care, the patient or the patient's custodial parent or guardian, attorney-in-fact, guardian or health care proxy, or other person who has authority to make health care decisions for the patient under common law, any court of competent jurisdiction may enjoin or direct a health care decision related to a physician orders for life-sustaining treatment form, or order other appropriate equitable relief. The court shall issue such temporary orders as necessary to preserve the life of the patient pending a final judgment in such litigation, including any appeals.

SECTION 6. AMENDATORY 58 O.S. 2011, Section 1072.1, is amended to read as follows:

Section 1072.1 A. The durable power of attorney may show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

2. The time and conditions under which the power is to become effective;

3. The extent and scope of the powers conferred; and

4. Who is to exercise the power, including any successor attorney-in-fact if a prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may grant complete or limited authority with respect to the principal's:

1. Person, including, but not limited to, health and medical care decisions and a do-not-resuscitate consent on the principal's behalf, but excluding:

a. the execution, on behalf of the principal, of a Directive to Physicians, an Advance Directive for Health Care, Living Will, or other document<u>, except an Oklahoma standardized format physician orders for life-sustaining treatment form in accordance with the provisions of this act,</u> purporting to authorize life-sustaining treatment decisions, and

b. the making of life-sustaining treatment decisions unless the power complies with the requirements for a

health care proxy under the Oklahoma ~~Rights of the Terminally Ill or Persistently Unconscious~~ Advance Directive Act or the Oklahoma Do-Not-Resuscitate Act; and

2. Property, including homestead property, whether real, personal, intangible or mixed.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Office of the Attorney General shall establish the Oklahoma standardized format physician orders for life-sustaining treatment form in accordance with Sections 3 and 4 of this act within sixty (60) days of the act's effective date and the State Board of Medical Licensure and Supervision shall publish it on the Board's website.

SECTION 8. This act shall become effective in accordance with the provisions of Section 58 of Article V of the Oklahoma Constitution.

55-2-9948 AM 05/10/16