

Revised DRAFT
Adding Nevada POLST to Statute

Background

Existing Nevada law provides for Nevadans to make clear their desires regarding the provision or withholding of life-sustaining treatments, through “advance directives” to health care providers. NRS 449.535-449.690 provides for a “Living Will” or as used in Nevada law, a “form of declaration directing physician to withhold or withdraw life-sustaining treatment”. It also provides a form for designating a durable power of attorney for the purposes of implementing this “Living Will” in the event that the person is unable to communicate with providers when life-sustaining treatments are being considered. NRS 450B.400-450B.590 provides a complementary process for physician “do-not-resuscitate” (DNR) directives developed with the patient’s (or patient’s surrogate) consultation and approval whether or not a “Living Will” had been executed previous to the determination of a “terminal condition”. 450B provides a process for health authorities to define a form of identification for exercising this directive. While this process is intended to assure that a DNR is followed in pre-hospital and hospital settings, there has been continued confusion and uncertainty regarding its proper application, particularly in pre-hospital situations. Existing law (NRS 449.900-449.965) also provides for an electronic “Living Will Lockbox”. This is a registry of advance directives and DNRs.

The following statutes address “Advance Directives” and “Do Not Resuscitate Orders” and are regulated by the State Health Division with regulations adopted by the State Board of Health.

1. NRS 449.535-449.690 (<http://leg.state.nv.us/NRS/NRS-449.html#NRS449Sec535>) addresses “Withholding or Withdrawal of Life-Sustaining Treatment” and uses the “Uniform Act on Rights of the Terminally Ill” as its model. This contains the “Living Will” and “Durable Power of Attorney” language and is applied to “Medical and Other Related Facilities”.
2. NRS 450B.400-450B.590 (<http://leg.state.nv.us/NRS/NRS-450B.html#NRS450BSec400>) addresses “Withholding Life-Sustaining Treatment” and is applied to “Emergency Medical Services”.
3. NRS 449.900-449.965 (<http://www.leg.state.nv.us/NRS/NRS-449.html#NRS449Sec900>) provides that an electronic version of the Advance Directive may be entered in a “Registry of Advance Directives for Health Care” operated by the Office of the Secretary of State. This is the Living Will Lockbox (<http://nvsos.gov/index.aspx?page=215>).

Position Statement and Intent of Proposed Statutory Language

As noted in a recent AARP report written by Charles Sabatino, of the American Bar Association Commission on Law and Aging, and Naomi Karp of the AARP Public

Policy Institute: “Physician Orders for Life-Sustaining Treatment (POLST) is a promising program to elicit and honor the treatment goals of people with advanced progressive illness or frailty.” The “Physician Orders for Life-Sustaining Treatment” (POLST) Paradigm Program (<http://www.ohsu.edu/polst/programs/index.htm>) is a nationally designed initiative of coalitions in States and communities to improve the quality of care people receive at the end of life. It is based on effective communication of patient wishes, documentation of medical orders on a brightly colored form and a promise by health care professionals to honor these wishes.

While Oregon has had a POLST program since 1991, most States have moved in this direction in the last 10 years. 13 States have adopted POLST Paradigm Programs. Also, 3 Counties have done so. 25 States are developing programs. There was an effort led by the Nevada Center for Ethics and Health Policy formerly located at UNR during the last decade to adopt a POLST in Nevada. The Center has closed because of funding issues and the Nevada State Medical Association has acted as a facilitator of a broad-based coalition to revive this effort.

In addition to adopting a POLST for Nevada, the coalition is committed to assuring that all advance directives and DNRs are required to be available through any “Health Information Exchanges” that are certified by the State of Nevada.

Proposed Statute

1. Amend NRS 450B to replace and simplify the current statute with a section on “Physician Orders for Life Sustaining Treatment” that directs health care providers regarding resuscitative measures. The statute should authorize a legally recognized POLST form that has been completed by a physician only with the consultation and agreement of the patient or patient’s legal surrogate. The patient may revoke the DNR at any time. The treating physician or other authorized health care provider is required to treat an individual in accordance with a POLST form, except when the physician has conducted an evaluation of the individual and issues a new order consistent with the most current information available about the individual’s health status and goals of care. The statute should require that the treating physician shall make a reasonable attempt to consult with the physician who provided the POLST to request a modification of that patient’s POLST if the patient is unable to agree to a change. The statute should indicate that in the event that the patient has properly completed a Living Will that is in conflict with the POLST, that the most recently executed document of the patient’s intentions is valid. The current immunity that accompanies exercising the patient’s direction regarding withholding or withdrawing treatment and a physician’s DNR directive would pass to all health care providers fulfilling the POLST. The statute should indicate that the physician who has completed the POLST is not required to be affiliated with the health care facility or entity where the POLST is being implemented. The State Board of Health

would be required to adopt a POLST form that conforms to the POLST Paradigm by regulation.

2. Amend NRS 449 to include a requirement that any advance directive for health care as defined in NRS 449 and any resuscitation order, including any POLST form, be required to be included in the requirements for any “Health Information Exchange” certified by the State of Nevada or operating within the State of Nevada. It is the intent ultimately to replace the “Living Will Lockbox” with this mechanism for assuring availability of patient initiated Advance Directives and POLST.
3. The placement of any statutory language is a decision made by the Legislative Counsel Bureau, but since a POLST is a physician order to other licensed health professionals, this language could be amended into NRS 629 (<http://leg.state.nv.us/NRS/NRS-629.html>), which deals with the “Healing Arts Generally” and applies to all “providers of health care”. A second option would be to include language in NRS 629 to require that all licensed health care providers to whom NRS 629 applies must meet the requirements of NRS 449 and NRS 450B regarding a patient’s advance directive or a POLST. This statute is also regulated generally by the State Health Division with regulations adopted by the State Board of Health, but when applied to each occupational or licensing board, it would be regulated or enforced by those entities as well.