Nevada POLST
NRS 449.691 – 449.697
Proposed Revisions

Out-of-hospital Do Not Resuscitate (DNR)

- *Revision of NRS 449.694.2*
- ***Problem**:* Currently, if a patient DNR card issued by the State that differs from a more recent POLST directing resuscitation, the patient is *not* to be resuscitated.
- ***Revision***: The most recent document (POLST or out-of-hospital DNR) should be honored.
- ***Rationale***: *If there is any question as to what a patient wants, it is prudent and reasonable to err on the side of life*.

Agenda Item VI A-1—HEALTH CARE
Meeting Date: 08-24-16

Change "incompetence" to "lacking decisional capacity"

- ***Problem***: Competence is judicial determination, a legal term.
- Many patients near the end of life lose decisional capacity; boomers will increase this number.
- ***Revision***: Add a definition for "lacking decisional capacity" (an inability to understand or communicate your wishes) and replace any instances of "incompetence" and "incompetency".
- ***Rationale***: Competency is a legal term. In medicine, care providers determine capacity. Capacity may change from one moment to the next.
  - *If adjudicated to be incompetent, then despite later expression of desired treatment or non-treatment, the patient's decisions will not be considered. If capacity is determined, it can be easily changed to accommodate a patient's mental status to honor their wishes.*
  - There are too many patients lacking capacity for our system to adjudicate; as Boomers age up this will be aggravated.
  - Of all the states that have their POLSTs in statute (24) , only one, Iowa, uses competency instead of decisional capacity.

APRNs and PAs as authorized provider signers of the POLST

- ***Problem***: Rural areas lack sufficient physician coverage or access. Hospice, skilled nursing, rehab patients and home-bound patients may not have a physician available to consult and sign a POLST form in a timely manner.
- ***Revision***: Allow APRNs and PAs to sign and validate a POLST with the same supervisory requirements as currently exist for APRN and PA licensing.
  - Change the name of the program to Provider Order for Life-Sustaining Treatment (POLST).
- ***Rationale***: Many patients are unable to complete a POLST form due to access to a physician.
  - 2/3 of all states participating in POLST allow for APRNs and PAs to sign a POLST form
  - *Opposition in physician-only states is from physicians with general arguments about expanded roles of physician extenders; however, more states include APRNs and PAs each year.*
  - *The Nevada State Medical Association has endorsed this proposal.*

Surrogate Health Care Decision-Making for POLST - *Problem*

- Many patients lack decisional capacity.
- Many do not have a DPOA which is required to complete a POLST if without capacity.
- Families of and others with established relationships with these patients, are unable to complete a POLST for their loved one.
- *This results in poorer health outcomes, often unwanted care and consequent poor resource allocation*.

Surrogate Health Care Decision-Making for POLST - *Revision*

- Allow health care surrogates (family and those who have exhibited special care and concern for the patient, a "good friend") to complete and sign a POLST for a patient lacking decisional capacity if the patient does not already have a POLST or designated agent (DPOA-HC or legal guardian).
- Health care surrogates may not revoke or revise a POLST completed by the patient or their DPOA.
- Decisional incapacity to complete a POLST shall be determined by the patient's physician, APRN or PA.
- The patient's physician, APRN or PA shall retain the right to determine fitness of a surrogate pursuant to federal Privacy Act, 45 CFR 164.502(g). Attestation will be required of single third party witness.
- Draft definition and statute attached: "Health Care Surrogate NRS TBA".

Surrogate Health Care Decision-Making for POLST - *Rationale*

- 21/24 states with POLST in statute allow "good friends" as health care surrogates if no other is available.
- *Family members and "good friends" are currently unable to authorize elective care such as admission to hospice or a Long-Term Acute Care facility (LTAC), and other treatments.*
- Care provided at an acute care facility vs. a long-term facility for similar care is about $20,000 more, but with a shorter survival rate.
- *It is counter-intuitive that family members may make decisions to refuse or withdraw life support, but family and "good friends" cannot authorize treatment that may extend life, provide comfort care at the end of life or authorize other treatments aligning with a patient's values.*
- *A DNR order written by a physician is not valid outside a facility.*
- *Currently, family may make decisions regarding resuscitation and life-sustaining treatment for an admitted patient, but once outside a facility (during transport or at home) the hospital DNR is not valid.*
- *For patients who lack decisional capacity near the end of life, the location of the patient should not preclude completion of a POLST by a family member or "good friends", as approved and recommended by the National Conference of Commissioners on Uniform State Laws (1993.*

Surrogate Health Care Decision-Making for POLST - *Rationale*

- *Many believe if their AD is completed refusing life-sustaining measures, they will not be resuscitated; however, EMS is required to attempt resuscitation.*
- Family and "good friends" should be able to complete a POLST to align with the patient's Declaration and values.
- *Unwanted resuscitation is a misguided use of resources and extremely burdensome and disrespectful of the patient and their desires.*
- Resuscitation of POLST profile patients is often unsuccessful, but if not, outcomes are difficult. Almost 80% of patients who initially survive a cardiac arrest remain in a coma for varying lengths of time, approximately 40% enter a persistent vegetative state" , and the overall 1-year-survival rate is 4%-20%, and *those are statistics for the general population.*

Remove POLST as a form of Advance Directive

- *Problem:* There is a conflict in statute. NRS 449.6928 states a POLST is not another type of advance directive, while NRS 449.905.4 includes the POLST as an advance directive.

- *Proposal:* Remove POLST from NRS 449.905.4

- *Rationale:* The POLST is not an advance directive.
  - An advance directive, as the name indicates, is in advance of an illness or injury. Anyone over the age of 18 in any health status may complete an advance directive.
  - The POLST is specifically for those we would expect not to survive another year, the very frail elderly or those near the end of a life-limiting illness.
  - If such a patient is completing a POLST, their health care provider can anticipate what types of treatment options are likely in the near future so the patient can make an informed decision concerning them.
  - The national POLST organization, POLST Paradigm, does not recognize the POLST as an advance directive.
  - *Because the legislation specifically excludes POLST from "other advance directives" (NRS 449.6928), NRS 449.905.4 should be struck from statute to eliminate confusion.*