

## **~~PROVIDER-PHYSICIAN~~ ORDERS FOR LIFE-SUSTAINING TREATMENT**

**NRS 449.691 Definitions.** As used in NRS 449.691 to 449.697, inclusive, unless the context otherwise requires, the words and terms defined in NRS 449.6912 to 449.6934, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2013, 2284)

***NRS 449.691X “Advance Practice Registered Nurse (APRN)” defined.** “Advance Practice Registered Nurse” has the meaning ascribed to it in NRS 632.012.*

**NRS 449.6912 “Attending physician” defined.** “Attending physician” has the meaning ascribed to it in NRS 449.550.

(Added to NRS by 2013, 2284)

**NRS 449.6915 “Do-not-resuscitate identification” defined.** “Do-not-resuscitate identification” has the meaning ascribed to it in NRS 450B.410.

(Added to NRS by 2013, 2284)

**NRS 449.6916 “Do-not-resuscitate order” defined.** “Do-not-resuscitate order” has the meaning ascribed to it in NRS 450B.420.

(Added to NRS by 2013, 2284)

**NRS 449.6918 “Emergency care” defined.** “Emergency care” means the use of life-resuscitating treatment and other immediate treatment provided in response to a sudden, acute and unanticipated medical emergency in order to avoid injury, impairment or death.

(Added to NRS by 2013, 2284)

**NRS 449.692 “Health care facility” defined.** “Health care facility” has the meaning ascribed to it in NRS 162A.740.

(Added to NRS by 2013, 2284)

***NRS 449.6926 “Health care surrogate” defined.** “Health care surrogate” has the meaning ascribed to it in NRS TBD (see attached).*

**NRS 449.6922 “Incompetent” defined.** “Incompetent” has the meaning ascribed to it in NRS 159.019.

(Added to NRS by 2013, 2284)

***NRS 449.6923 “Lacking decisional capacity” defined** “Lacking decisional capacity” means a person who, as determined by their physician, APRN or PA, is unable to understand or communicate their health care preferences. Such a determination does not indicate incompetence and may be a transitory state.*

**NRS 449.6924 “Life-resuscitating treatment” defined.** “Life-resuscitating treatment” has the meaning ascribed to it in NRS 450B.450.

(Added to NRS by 2013, 2284)

**NRS 449.6925 “Life-sustaining treatment” defined.** “Life-sustaining treatment” has the meaning ascribed to it in NRS 449.570.

(Added to NRS by 2013, 2284)

**NRS 449.6928 “Other types of advance directives” defined.** “Other types of advance directives” means an advance directive as defined in NRS 449.905, but does not include a POLST form.

(Added to NRS by 2013, 2284)

***NRS 449.691X “Physician Assistant (PA)”.*** *“Physician Assistant (PA)” has the meaning ascribed to it in NRS 630.015*

**NRS 449.693 “Physician Provider Order for Life-Sustaining Treatment form” or “POLST form” defined.** “Physician Provider Order for Life-Sustaining Treatment form” or “POLST form” means the form prescribed pursuant to NRS 449.694 that:

1. Records the wishes of the patient; and
2. Directs a provider of health care regarding the provision of life-resuscitating treatment and life-sustaining treatment.

(Added to NRS by 2013, 2284)

**NRS 449.6932 “Provider of health care” defined.** “Provider of health care” means an individual who is licensed, certified or otherwise authorized or allowed by law to provide health care in the ordinary course of business or practice of a profession, and includes a person who:

1. Is described in NRS 629.031; or
2. Administers emergency medical services as defined in NRS 450B.460.

(Added to NRS by 2013, 2284)

**NRS 449.6934 “Representative of the patient” defined.** “Representative of the patient” means a legal guardian of the patient, a person designated by the patient to make decisions governing the withholding or withdrawal of life-sustaining treatment pursuant to NRS 449.600, or a person given power of attorney to make decisions concerning health care for the patient pursuant to NRS 162A.700 to 162A.860 inclusive.

(Added to NRS by 2013, 2285)

**NRS 449.694 Board required to prescribe standardized POLST form; requirements.** The Board shall prescribe a standardized Physician Provider Order for Life-Sustaining Treatment form, commonly known as a POLST form, which:

1. Is uniquely identifiable and has a uniform color;
2. Provides a means by which to indicate whether the patient has made an anatomical gift pursuant to NRS 451.500 to 451.598, inclusive;
3. Gives direction to a provider of health care or health care facility regarding the use of emergency care and life-sustaining treatment;
4. Is intended to be honored by any provider of health care who treats the patient in any health-care setting, including, without limitation, the patient’s residence, a health care facility or the scene of a medical emergency; and
5. Includes such other features and information, as the Board may deem advisable.

(Added to NRS by 2013, 2285)

**NRS 449.6942 Physician, APRN or PA required to explain POLST form under certain circumstances and to complete POLST form upon request of patient, *representative or health care surrogate*; validity.**

1. A physician, *APRN or PA* shall take the actions described in subsection 2:
  - (a) If the physician, *APRN or PA* diagnoses a patient with a terminal condition;
  - (b) If the physician, *APRN or PA* determines, for any reason, that a patient has a life expectancy of less than 5 years; or
  - (c) At the request of a patient *or, if the patient lacks decisional capacity, the patient's representative or health care surrogate*.
2. Upon the occurrence of any of the events specified in subsection 1, the physician, *APRN or PA* shall explain to the patient:
  - (a) The existence and availability of the *Physician Provider* Order for Life-Sustaining Treatment form;
  - (b) The features of and procedures offered by way of the POLST form; and
  - (c) The differences between a POLST form and the other types of advance directives.
3. Upon the request of the patient, *or, if the patient lacks decisional capacity, the patient's representative or health care surrogate*. The physician, *APRN or PA* shall complete the POLST form based on the preferences and medical indications of the patient.
4. A POLST form is valid upon execution by a physician, *APRN or PA* and:
  - (a) If the patient is 18 years of age or older and of sound mind, the patient;
  - (b) If the patient is 18 years of age or older and *incompetent lacking decisional capacity*, the representative of the patient, *or if no representative of the patient is designated; the health care surrogate of the patient or*
  - (c) If the patient is less than 18 years of age, the patient and a parent or legal guardian of the patient.
5. As used in this section, "terminal condition" has the meaning ascribed to it in NRS 449.590.

(Added to NRS by 2013, 2285)

*6. Trained Social Workers, Chaplains, Case Managers or other health care workers may assist the patient, or if the patient lack decisional capacity, the representative of the patient, or if no representative of the patient is designated; the health care surrogate, in determining their choices regarding the POLST form and provide general education of the patient, the patient's representative or health care surrogate.*

**NRS 449.6944 Revocation of POLST form; entry of revocation in medical records of patient.**

1. A *Physician Provider* Order for Life-Sustaining Treatment form may be revoked at any time and in any manner by:
  - (a) The patient who executed it, if competent, without regard to his or her age or physical condition;
  - (b) If the patient *is incompetent lacks decisional capacity*, the representative *or if no representative is designated, the health care surrogate* of the patient.
  - (c) If the patient is less than 18 years of age, a parent or legal guardian of the patient;
2. The revocation of a POLST form is effective upon the communication to a provider of health care, by the patient or a witness to the revocation, of the desire to

revoke the form. The provider of health care to whom the revocation is communicated shall:

- (a) Make the revocation a part of the medical record of the patient; or
  - (b) Cause the revocation to be made a part of the medical record of the patient.
- (Added to NRS by 2013, 2285)

**NRS 449.6946 Conflict with other advance directive or do-not-resuscitate identification.**

1. If a valid **Physician Provider** Order for Life-Sustaining Treatment form sets forth a declaration, direction or order which conflicts with a declaration, direction, *do-not-resuscitate identification* or order set forth in one or more of the other types of advance directives:

(a) The declaration, direction or order set forth in the document executed most recently is valid; and

(b) Any other declarations, directions or orders that do not conflict with a declaration, direction or order set forth in another document referenced in this subsection remain valid.

~~2. If a valid POLST form sets forth a declaration, direction or order to provide life-resuscitating treatment to a patient who also possesses a do-not-resuscitate identification, a provider of health care, shall not provide life-resuscitating treatment if the do-not-resuscitate identification is on the person of the patient when the need for life-resuscitating treatment arises~~

(Added to NRS by 2013, 2286)

**NRS 449.6948 Immunity from civil and criminal liability and discipline for unprofessional conduct.**

1. A provider of health care is not guilty of unprofessional conduct or subject to civil or criminal liability if:

(a) The provider of health care withholds emergency care or life-sustaining treatment:

(1) In compliance with a **Physician Provider** Order for Life-Sustaining Treatment form and the provisions of NRS 449.691 to 449.697, inclusive; or

(2) In violation of a **Physician Provider** Order for Life-Sustaining Treatment form if the provider of health care is acting in accordance with a declaration, direction or order set forth in one or more of the other types of advance directives and:

(I) Complies with the provisions of NRS 449.695; or

(II) Reasonably and in good faith, at the time the emergency care or life-sustaining treatment is withheld, is unaware of the existence of the POLST form or believes that the POLST form has been revoked pursuant to NRS 449.6944; or

(b) The provider of health care provides emergency care or life-sustaining treatment:

(1) Pursuant to an oral or written request made by the patient, the representative health care surrogate of the patient, or a parent or legal guardian of the patient, who may revoke the POLST form pursuant to NRS 449.6944;

(2) Pursuant to an observation that the patient, the representative of the patient, *health care surrogate of the patient* or a parent or legal guardian of the patient has revoked, or otherwise indicated that he or she wishes to revoke, the POLST form pursuant to NRS 449.6944; or

(3) In violation of a POLST form, if the provider of health care reasonably and in good faith, at the time the emergency care or life-sustaining treatment is provided, is unaware of the existence of the POLST form or believes that the POLST form has been revoked pursuant to NRS 449.6944.

2. A health care facility, ambulance service, fire-fighting agency or other entity that employs a provider of health care is not guilty of unprofessional conduct or subject to civil or criminal liability for the acts or omissions of the employee carried out in accordance with the provisions of subsection 1.

(Added to NRS by 2013, 2286)

**NRS 449.695 Provider of health care required to comply with valid POLST form; modification by physician, *APRN or PA*; transfer of care of patient; exceptions.**

1. Except as otherwise provided in this section and NRS 449.6946, a provider of health care shall comply with a valid ~~Physician~~ *Provider* Order for Life-Sustaining Treatment form, regardless of whether the provider of health care is employed by a health care facility or other entity affiliated with the physician, *APRN or PA* who executed the POLST form.

2. A physician, *APRN or PA* may medically evaluate the patient and, based upon the evaluation, may recommend new orders consistent with the most current information available about the patient's health status and goals of care. Before making a modification to a valid POLST form, the physician, *APRN or PA* shall consult the patient or, if the patient ~~is incompetent~~ *lacks decisional capacity*, shall make a reasonable attempt to consult the representative *or, if no representative is designated, health care surrogate of the patient* and the patient's attending physician, *APRN or PA*.

3. Except as otherwise provided in subsection 4, a provider of health care who is unwilling or unable to comply with a valid POLST form shall take all reasonable measures to transfer the patient to a physician, *APRN or PA* or health care facility so that the POLST form will be followed.

4. Life-sustaining treatment must not be withheld or withdrawn pursuant to a POLST form of a patient known to the attending physician, *APRN or PA* to be pregnant, so long as it is probable that the fetus will develop to the point of live birth with the continued application of life-sustaining treatment.

5. Nothing in this section requires a provider of health care to comply with a valid POLST form if the provider of health care does not have actual knowledge of the existence of the form.

(Added to NRS by 2013, 2287)

**NRS 449.6952 Assumption of validity of POLST form; presumption of intent of patient not created if patient has revoked or not executed POLST form.**

1. Unless he or she has knowledge to the contrary, a provider of health care may assume that a ~~Physician~~ *Provider* Order for Life-Sustaining Treatment form complies with the provisions of NRS 449.691 to 449.697, inclusive, and is valid.

2. The provisions of NRS 449.691 to 449.697, inclusive, do not create a presumption concerning the intention of a:

(a) Patient if the patient, the representative of the patient, *health care surrogate of the patient* or a parent or legal guardian of the patient has revoked the POLST form pursuant to NRS 449.6944; or

(b) Person who has not executed a POLST form concerning the use or withholding of emergency care or life-sustaining treatment.

(Added to NRS by 2013, 2287)

**NRS 449.6954 Death does not constitute suicide or homicide; effect of POLST form on policy of insurance; prohibiting or requiring execution of POLST form prohibited as condition for insurance or receipt of health care.**

1. Death that results when emergency care or life-sustaining treatment has been withheld pursuant to a ~~Physician~~ *Provider* Order for Life-Sustaining Treatment form and in accordance with the provisions of NRS 449.691 to 449.697, inclusive, does not constitute a suicide or homicide.

2. The execution of a POLST form does not affect the sale, procurement or issuance of a policy of life insurance or an annuity, nor does it affect, impair or modify the terms of an existing policy of life insurance or an annuity. A policy of life insurance or an annuity is not legally impaired or invalidated if emergency care or life-sustaining treatment has been withheld from an insured who has executed a POLST form, notwithstanding any term in the policy or annuity to the contrary.

3. A person may not prohibit or require the execution of a POLST form as a condition of being insured for, or receiving, health care.

(Added to NRS by 2013, 2287)

**NRS 449.6956 Unlawful acts; penalty.**

1. It is unlawful for:

(a) A provider of health care to willfully fail to transfer the care of a patient in accordance with subsection 3 of NRS 449.695.

(b) A person to willfully conceal, cancel, deface or obliterate a ~~Physician~~ *Provider* Order for Life-Sustaining Treatment form without the consent of the patient who executed the form.

(c) A person to falsify or forge the POLST form of another person, or willfully conceal or withhold personal knowledge of the revocation of the POLST form of another person, with the intent to cause the withholding or withdrawal of emergency care or life-sustaining treatment contrary to the wishes of the patient.

(d) A person to require or prohibit the execution of a POLST form as a condition of being insured for, or receiving, health care in violation of subsection 3 of NRS 449.6954.

(e) A person to coerce or fraudulently induce another to execute a POLST form.

2. A person who violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 2013, 2288)

**NRS 449.6958 Actions contrary to reasonable medical standards not required; mercy-killing, euthanasia or assisted suicide not authorized; rights associated with other advance directives not impaired; right to make decisions concerning emergency care or life-sustaining treatment not affected.** The provisions of NRS 449.691 to 449.697, inclusive, do not:



1. Require a provider of health care to take any action contrary to reasonable medical standards;
2. Affect the responsibility of a provider of health care to provide treatment for a patient's comfort or alleviation of pain;
3. Condone, authorize or approve mercy killing, euthanasia or assisted suicide;
4. Except as otherwise provided in NRS 449.6946, affect or impair any right created pursuant to the provisions of any other types of advance directives; or
5. Affect the right of a patient to make decisions concerning the use of emergency care or life-sustaining treatment, if he or she is able to do so.

(Added to NRS by 2013, 2288)

**NRS 449.696 Validity of POLST form executed in another state.**

1. A ~~Physician~~ *Provider* Order for Life-Sustaining Treatment form executed in another state in compliance with the laws of that state or this State is valid for the purposes of NRS 449.691 to 449.697, inclusive.

2. As used in this section, "state" includes the District of Columbia, the Commonwealth of Puerto Rico and a territory or insular possession subject to the jurisdiction of the United States.

(Added to NRS by 2013, 2288)

**NRS 449.697 Regulations.** The Board may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 449.691 to 449.697, inclusive.

(Added to NRS by 2013, 2288)

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***Health Care Surrogate Decision Maker – Proposed NRS***

- (1) A qualified patient may make decisions regarding life-sustaining or other treatment so long as the patient is able to do so pursuant to NRS 449.624*
- (2) NRS TBA inclusive, do not affect the responsibility of the attending physician or other provider of health care to provide treatment for a patient's comfort or alleviation of pain.*
- (3) Treatment consists of both curative and palliative care as defined in NRS 449.0156*
- (4) The determination that an adult patient lacks decisional capacity to provide informed consent to or refusal of medical treatment shall be made by the patient's physician, APRN or PA.*
- (5) Upon determination of the patient's lack of decisional capacity to provide informed consent:*
  - a. The specific findings regarding the cause and nature of the patient's lack of decisional capacity shall be documented in such patient's medical record.*
  - b. A third party witness shall attest to the lack of decisional capacity of the patient as described in NRS 449.6923 and fitness of the health care surrogate in accordance with the provision in subsection (13).*
  - c. The physician, APRN, PA or the physician's designee, shall make reasonable efforts to notify the patient of the patient's lack of decisional capacity.*

- d. *The physician, APRN, PA, or the physician's designee, shall make reasonable efforts to locate health care surrogates as defined in this subsection (6) as practicable.*
- e. *It shall be the responsibility of the health care surrogates specified in subsection (6) of this section to make reasonable efforts to reach a consensus as to whom among them shall make medical treatment decisions on behalf of the patient.*
- f. *The physician, APRN, PA or another health care provider shall make reasonable efforts to advise the patient of the identity of the health care surrogate, and of the patient's right to participate in decision-making as able to do so.*
- g. *The name and relationship of the health care surrogate who shall make medical treatment decisions on behalf of the patient as described in section (5).e. shall be entered in the patient's medical record.*
- (6) *The authority to consent or to withhold consent to treatment for a patient lacking decisional capacity pursuant to NRS 449.6923 (refer to proposed revision in NRS 449.691) may be exercised by the following persons, in order of priority:*
  - a. *The spouse of the patient;*
  - b. *An adult child of the patient or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;*
  - c. *The parents of the patient;*
  - d. *An adult sibling of the patient or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or*
  - e. *The nearest other adult relative of the patient by blood or adoption who is reasonably available for consultation.*
  - f. *If there is no available person so related to the patient, the authority may be assumed by "an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is willing and able to make a health-care decision for the patient"<sup>1</sup>*
- (7) *If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide, or declines to decide, the next class is authorized to decide, but an equal division in a class does not authorize the next class to decide.*
- (8) *A decision to grant or withhold consent must be made in good faith. A health care surrogate's consent is not valid if it conflicts with the intention of the patient.as expressed in a valid Advance Directive or POLST.*
- (9) *For a patient who has no effective declaration, artificial nutrition and hydration must not be withheld unless a different desire is expressed in writing by the patient's authorized representative or the family member with the authority to consent or withhold consent pursuant to NRS 449.624.*
- (10) *If anyone believes the patient has regained decisional capacity, then the patient's physician, APRN or PA shall:*
  - a. *Reexamine the patient and determine whether or not the patient has regained such decisional capacity and;*

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<sup>1</sup> Federal Uniform Health Care Decisions Act found at: [http://www.uniformlaws.org/shared/docs/health\\_care\\_decisions/uhcda\\_final\\_93.pdf](http://www.uniformlaws.org/shared/docs/health_care_decisions/uhcda_final_93.pdf)



- b. Shall enter the decision and the basis therefore into the patient's medical record and;*
  - c. Shall notify the patient, the health care surrogate, and the person who initiated the redetermination of decisional capacity.*
- (11) A decision of the attending physician acting in good faith that a health care surrogate's consent is valid or invalid is conclusive.*
  - (12) Life-sustaining treatment must not be withheld or withdrawn pursuant to this section from a patient known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.*
  - (13) The patient's physician, APRN or PA shall retain the right to determine fitness of a health care surrogate pursuant to federal Privacy Act, 45 CFR 164.502(g).*
  - (14) A decision of the patient's physician, APRN or PA acting in good faith that a consent is valid or invalid is conclusive pursuant to NRS 449.626.*
  - (15) A health care provider or health care facility may rely, in good faith, upon the medical treatment decision of a health care surrogate decision-maker if an adult patient's physician, APRN or PA determines that such patient lacks the decisional capacity to provide informed consent to or refusal of medical treatment and no guardian with medical decision-making authority, agent appointed in a medical durable power of attorney, or other known person has the legal authority to provide such consent or refusal on the patient's behalf.*