Considering Legislation:

When Selected Regulation Change is not Enough

The Task Force provides legislative language as a model for POLST Paradigm Program development and for form authorization. The language is not prescriptive and aims to create a standard that health care professionals shall respect POLST orders and provide immunity protection to those professionals following such orders. Non-statutory approaches – through health department or medical board regulation or through clinical consensus regarding appropriate care standards – have the advantage of greater flexibility in shaping and implementing a POLST paradigm program.

For example, the state of Oregon adopted the POLST paradigm through voluntary health care professional consensus, supported by targeted changes in professional board regulations applicable to physicians, physician assistants, nurse practitioners, and First Responders. The regulatory changes acknowledge the obligation of these health care professionals to comply with life-sustaining treatment orders executed by a physician, nurse practitioner, or physician assistant, and additionally provide for immunity from criminal prosecution, civil liability or professional discipline (see OAR §847-010-0110 and §847-035-0030(6)). The approach has enabled the Oregon POLST Task Force to modify the POLST form and implementation program periodically as lessons are learned without having to re-navigate the complexities and politics of the legislative process. Just as other standards of care evolve through a process of evidence-based research and professional clinical acceptance, so does the POLST program.

However, there are circumstances in which legislative approaches are unavoidable. The article, *The POLST (Physician Orders for Life-Sustaining Treatment) Paradigm to Improve End-of-Life Care: Potential State Legal Barriers to Implementation* identifies some of these circumstances, the most problematic being highly detailed state requirements for out-of-hospital DNR orders that are incompatible with the requirements for a POLST form (see article).

If a legislative approach is chosen, substantial confusion may be avoided if the POLST paradigm and legislative language are clearly distinguished from state advance directive legislation. The POLST form is a set of medical orders and is not a traditional advance directive. Simplicity and economy of language are also highly recommended to retain sufficient clinical flexibility to make continuing improvements in the program. Like any other clinical procedure, POLST needs to evolve to incorporate evidence-based quality improvements and to adapt to changes in technology, such as electronic medical records or the use of implantable defibrillators. The model below provides a starting point in considering legislative action. Because POLST fits within a landscape of state health decisions law, these model provisions should be modified as needed to fit seamlessly within that context. Also, state legislation from West Virginia and California are helpful examples.

Model POLST Paradigm Program Legislation

SECTION 1. Findings.

The Legislature finds and declares the following:

(a) The Physician Orders for Life Sustaining Treatment (POLST) [or other name chosen by the state] form complements an advance directive by taking the individual's wishes regarding life-sustaining treatment, such as those set forth in the advance directive, and converting those wishes into medical orders.

(b) A POLST form is particularly useful for individuals who are frail and elderly or who have a chronic, progressive medical condition, (clinician would not be surprised if the patient died within in the next year), or a terminal illness.

SECTION 2. Definition.

A "Physician Orders for Life-Sustaining Treatment (POLST) Program" guides the process of evaluation and communication between a patient or other legally authorized medical decision-maker and health care professionals. It ensures that the individual understands the decisions he or she is making, and it converts the individual's goals and preferences for care into a set of medical orders on a form that is portable and complied with by all health professionals across care settings.

SECTION 3. POLST Form and Procedures.
The State Department of Health[use name of appropriate state agency] shall designate a statewide working group of [number] individuals representing physicians, nurse practitioners, physicians assistants, hospitals, long-term care facilities, hospice, state and local emergency medical services providers, and patient advocates to develop a POLST form and process and educational and evaluation methodologies for approval by the Department.

SECTION 4. Reliance on Authority of POLST Form.

(a) If an individual with a POLST form is transferred from one health care facility to another, the health care facility initiating the transfer shall communicate the existence of the POLST form to the receiving facility prior to the transfer. The POLST form shall accompany the individual to the receiving facility and shall remain in effect.The POLST form shall be reviewed by the treating health care professional and one of three actions shall be taken:

(1) The POLST form shall remain in effect;
(2) The POLST form shall be voided and a new form completed; or
(3) The POLST form shall be voided without a new form being completed.

(b) A health care professional or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health care professional or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for complying with a POLST form and assuming that the orders therein were valid when made and have not

been revoked or terminated.

(c) An individual acting as agent, guardian, or surrogate under [reference advance directive law and guardianship law] is not subject to civil or criminal liability or to discipline for unprofessional conduct for signing a POLST form and thereby consenting to POLST in good faith.

SECTION 5. Revocation of Consent to POLST Form.

(a) An individual may revoke his or her consent to all or part of a POLST form at any time and in any manner that communicates an intent to revoke.

(b) An agent, guardian, or surrogate may revoke his or her consent to all or part of a POLST form at any time and in any manner that communicates an intent to revoke.

(c) A health care professional, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care professional and to any health care institution at which the patient is receiving care.

SECTION 6. Implementation.
No later than the first day of [month], [year], the Secretary of the State Department of Health [use name of appropriate state entity] shall implement the statewide distribution of standardized POLST forms.