

SB1411



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB1411

Introduced 1/31/2025, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

755 ILCS 40/15
755 ILCS 40/65

from Ch. 110 1/2, par. 851-15

Amends the Health Care Surrogate Act. Provides that if an individual without decisional capacity has an operative and unrevoked living will and the attending physician, in accordance with Section 4 of the Illinois Living Will Act, determines that the individual has a terminal condition and records the condition in the individual's medical record, then the individual's surrogate decision maker, in the order of priority under subsection (a) of Section 25, is authorized to consent to a POLST on behalf of the individual to ensure that the individual's wishes are respected.

LRB104 07373 JRC 17413 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Surrogate Act is amended by
5 changing Sections 15 and 65 as follows:

6 (755 ILCS 40/15) (from Ch. 110 1/2, par. 851-15)

7 Sec. 15. Applicability. This Act applies to patients who
8 lack decisional capacity or who have a qualifying condition.
9 Except as provided in Section 65, this ~~This~~ Act does not apply
10 to instances in which the patient has an operative and
11 unrevoked living will under the Illinois Living Will Act, an
12 operative and unrevoked declaration for mental health
13 treatment under the Mental Health Treatment Preferences
14 Declaration Act, or an authorized agent under a power of
15 attorney for health care under the Illinois Power of Attorney
16 Act and the patient's condition falls within the coverage of
17 the living will, the declaration for mental health treatment,
18 or the power of attorney for health care. In those instances,
19 the living will, declaration for mental health treatment, or
20 power of attorney for health care, as the case may be, shall be
21 given effect according to its terms. This Act does apply in
22 circumstances in which a patient has a qualifying condition
23 but the patient's condition does not fall within the coverage

1 of the living will, the declaration for mental health
2 treatment, or the power of attorney for health care.

3 Each health care facility shall maintain any advance
4 directives proffered by the patient or other authorized
5 person, including a do not resuscitate order, a living will, a
6 declaration for mental health treatment, a declaration of a
7 potential surrogate or surrogates should the person become
8 incapacitated or impaired, or a power of attorney for health
9 care, in the patient's medical records. This Act does apply to
10 patients without a qualifying condition. If a patient is an
11 adult with decisional capacity, then the right to refuse
12 medical treatment or life-sustaining treatment does not
13 require the presence of a qualifying condition.

14 (Source: P.A. 96-448, eff. 1-1-10; 96-492, eff. 8-14-09;
15 96-1000, eff. 7-2-10.)

16 (755 ILCS 40/65)

17 Sec. 65. Department of Public Health Uniform POLST form.

18 (a) An individual of sound mind and having reached the age
19 of majority or having obtained the status of an emancipated
20 person pursuant to the Emancipation of Minors Act may execute
21 a document (consistent with the Department of Public Health
22 Uniform POLST form described in Section 2310-600 of the
23 Department of Public Health Powers and Duties Law of the Civil
24 Administrative Code of Illinois) directing that resuscitating
25 efforts shall not be implemented. This individual may also

1 revoke the document at will. Such a document may also be
2 executed by a qualified health care practitioner. If more than
3 one practitioner shares responsibility for the treatment and
4 care of an individual, any of the qualified health care
5 practitioners may act under this Section. Notwithstanding the
6 existence of a do-not-resuscitate (DNR) order or Department of
7 Public Health Uniform POLST form, appropriate organ donation
8 treatment may be applied or continued temporarily in the event
9 of the patient's death, in accordance with subsection (g) of
10 Section 20 of this Act, if the patient is an organ donor.

11 (a-5) Execution of a Department of Public Health Uniform
12 POLST form is voluntary; no person can be required to execute
13 the form. Execution of a POLST form shall not be a requirement
14 for admission to any facility or a precondition to the
15 provision of services by any provider of health care services.
16 A person who has executed a Department of Public Health
17 Uniform POLST form should review the form annually and when
18 the person's condition changes.

19 (b) Consent to a Department of Public Health Uniform POLST
20 form may be obtained from the individual, or from another
21 person at the individual's direction, or from the individual's
22 legal guardian, agent under a power of attorney for health
23 care, or surrogate decision maker.

24 (b-5) As used in this Section:

25 "POLST" means practitioner orders for life-sustaining
26 treatments.

1 "POLST portable medical orders form" means a medical
2 orders form, including, but not limited to, a Medical Orders
3 for Scope of Treatment (MOST), Medical Orders for Life
4 Sustaining Treatment (MOLST), Physician Orders for Scope of
5 Treatment (POST), or Physician Orders for Life Sustaining
6 Treatment (POLST) form, that is formally authorized by a state
7 or territory within the United States.

8 (c) Nothing in this Section shall be construed to affect
9 the ability of an individual to include instructions in an
10 advance directive, such as a power of attorney for health
11 care. The uniform form may, but need not, be in the form
12 adopted by the Department of Public Health pursuant to Section
13 2310-600 of the Department of Public Health Powers and Duties
14 Law (20 ILCS 2310/2310-600). Except as otherwise provided by
15 law, emergency medical service personnel, a health care
16 provider, or a health care facility shall comply with a
17 Department of Public Health Uniform POLST form, National POLST
18 form, another state's POLST portable medical orders form, or
19 an out-of-hospital Do Not Resuscitate (DNR) order sanctioned
20 by a state in the United States that: (i) has been executed by
21 an adult; and (ii) is apparent and immediately available.

22 (c-5) If an individual without decisional capacity has an
23 operative and unrevoked living will and the attending
24 physician, in accordance with Section 4 of the Illinois Living
25 Will Act, determines that the individual has a terminal
26 condition and records the condition in the individual's

1 medical record, then the individual's surrogate decision
2 maker, in the order of priority under subsection (a) of
3 Section 25, is authorized to consent to a POLST on behalf of
4 the individual to ensure that the individual's wishes are
5 respected.

6 (d) A health care professional or health care provider may
7 presume, in the absence of knowledge to the contrary, that a
8 completed Department of Public Health Uniform POLST form,
9 National POLST form, another state's POLST portable medical
10 orders form, or an out-of-hospital Do Not Resuscitate (DNR)
11 order sanctioned by a state in the United States executed by an
12 adult, or a copy of that form or a previous version of the
13 uniform form, is valid. A health care professional or health
14 care provider, or an employee of a health care professional or
15 health care provider, who in good faith complies with a
16 cardiopulmonary resuscitation (CPR) or life-sustaining
17 treatment order, Department of Public Health Uniform POLST
18 form, or a previous version of the uniform form made in
19 accordance with this Act is not, as a result of that
20 compliance, subject to any criminal or civil liability, except
21 for willful and wanton misconduct, and may not be found to have
22 committed an act of unprofessional conduct.

23 (d-5) Before voiding or revoking a Department of Public
24 Health Uniform POLST form, National POLST form, or another
25 state's POLST portable medical orders form executed by the
26 individual, that individual's legally authorized surrogate

1 decision maker shall first: (1) engage in consultation with a
2 qualified health care practitioner; (2) consult the patient's
3 advance directive, if available; and (3) make a good faith
4 effort to act consistently, at all times, with the patient's
5 known wishes, using substituted judgment as the standard. If
6 the patient's wishes are unknown and remain unknown after
7 reasonable efforts to discern them, the decision shall be made
8 on the basis of the patient's best interests as determined by
9 the surrogate decision maker. A qualified health care
10 practitioner shall document the reasons for this action in the
11 patient's medical record. This process does not apply to an
12 individual wanting to revoke his or her own POLST form.

13 (e) Nothing in this Section or this amendatory Act of the
14 94th General Assembly or this amendatory Act of the 98th
15 General Assembly shall be construed to affect the ability of a
16 physician or other practitioner to make a do-not-resuscitate
17 order.

18 (Source: P.A. 102-140, eff. 1-1-22.)