

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 356

By: Senator Irvin  
By: Representative Bentley

## For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT ACT; TO PROVIDE FOR THE USE OF A PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT FORM; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE ARKANSAS PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT ACT; AND TO PROVIDE FOR THE USE OF A PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT FORM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 6, is amended to add an additional subchapter to read as follows:

Subchapter 2 – Arkansas Physician Order for Life-Sustaining Treatment Act

20-6-201. Title.

This subchapter shall be known and may be cited as the “Arkansas Physician Order for Life-Sustaining Treatment Act”.

20-6-202. Legislative findings.

The General Assembly finds that:

(1) It is important for individuals to make healthcare decisions before a medical crisis or emergency occurs;

(2) Healthcare planning is a process, rather than a single



decision, that helps individuals think about the type of care that they would want if they become seriously ill or incapacitated, and encourages individuals to talk with their loved ones and physicians regarding their healthcare decisions;

(3) An advanced directive gives individuals the ability to put their wishes in writing and to identify another individual who would speak for them if they become unable to speak or make decisions for themselves;

(4) The physician order for life-sustaining treatment form complements an advance directive, if existing, by taking an individual's intentions regarding life-sustaining treatment, such as the intentions set forth in an advance directive, and converting the individual's intentions into a medical order;

(5) The hallmarks of a physician order for life-sustaining treatment form are that a physician order for life-sustaining treatment form:

(A) Is:

(i) Signed;

(ii) Immediately actionable as medical orders on a standardized form;

(iii) A conspicuous, clearly identifiable form; and

(iv) Recognized, adopted, and honored across treatment settings; and

(B) Addresses a range of life-sustaining treatment interventions as well as the patient's preferred intensity of treatment for each intervention; and

(6) The physician order for life-sustaining treatment form is used only for patients with a serious illness or medical frailty when a physician would not be surprised if the patient died within one (1) year.

#### 20-6-203. Definitions.

As used in this subchapter:

(1)(A) "Healthcare facility" means an institution, building, agency, or a portion of an institution, building, or agency that is used, operated, or designed to provide healthcare services, medical treatment, nursing care, rehabilitative care, or preventative care to an individual, regardless of whether the institution, building, or agency is a private organization, a public organization, a nonprofit organization, or a for-

profit organization.

(B) "Healthcare facility" includes without limitation:

- (i) An ambulatory surgical facility;
- (ii) A home health agency;
- (iii) A hospice;
- (iv) A hospital;
- (v) An infirmary;
- (vi) A long-term care facility;
- (vii) An assisted living facility;
- (viii) A mental health center;
- (ix) An outpatient facility;
- (x) A rehabilitation facility; and
- (xi) A residential treatment facility;

(2) "Healthcare provider" means an individual who is licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or in the practice of a profession, including without limitation:

- (A) An emergency medical care provider; and
- (B) An individual providing home and community-based

services;

(3) "Legal representative" means the same as a person authorized to consent on the principal's behalf under § 20-6-102;

(4) "Patient" means an individual who has a critical medical condition or a terminal illness and for whom a physician has determined that a physician order for life-sustaining treatment is consistent with the individual's goals of care;

(5) "Physician" means an individual who is licensed to practice medicine or osteopathic medicine in this state; and

(6) "Physician order for life-sustaining treatment" means a document containing orders by a physician regarding life-sustaining treatment and medical interventions in accordance with the wishes of a patient or if the wishes of the patient are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the best interest of the patient.

20-6-204. Physician order for life-sustaining treatment form.

(a) The State Board of Health shall prescribe a standardized physician order for life-sustaining treatment form that:

(1) Is signed and dated by:

(A) The patient or the legal representative of the patient; and

(B) The physician of the patient;

(2) Includes:

(A) The name and date of birth of the patient; and

(B) The intentions of the patient regarding care, including without limitation the administration of cardiopulmonary resuscitation and the level of medical interventions in the event of a medical emergency; and

(3) Is easily distinguishable to facilitate recognition by healthcare providers and healthcare facilities.

(b) A legal representative may sign a physician order for life-sustaining treatment form on behalf of a patient who lacks capacity to do so, guided by:

(1) The express or implied intentions of the patient; or

(2) If the intentions of the patient are unknown and cannot be reasonably determined, the best interest of the patient given the overall medical condition and prognosis of the patient.

(c)(1) The physician order for life-sustaining treatment form shall be completed by a physician based upon patient intentions and medical indications.

(2) During the process of completing the physician order for life-sustaining treatment form, the physician may:

(A) Explain:

(i) The physician order for life-sustaining treatment form; and

(ii) The medical interventions and procedures offered by the form; and

(B) Inform the patient or the legal representative of the patient about the difference between an advance directive and the physician order for life-sustaining treatment form.

(d) This subchapter does not authorize a physician to unilaterally create a physician order for life-sustaining treatment on behalf of an

individual.

20-6-205. Compliance.

(a) Except as provided in subsection (c) of this section, a healthcare provider and a healthcare facility shall treat a patient in accordance with the physician order for life-sustaining treatment form.

(b) A physician order for life-sustaining treatment form is valid in a healthcare facility, regardless of whether the physician who signed the form has clinical privileges at the healthcare facility.

(c)(1) A healthcare provider or healthcare facility is not required to comply with a physician order for life-sustaining treatment form if the physician order for life-sustaining treatment form requires medically ineffective health care or health care contrary to generally accepted healthcare standards applicable to a healthcare provider or healthcare facility.

(2) A healthcare provider or healthcare facility may decline to comply with an executed physician order for life-sustaining treatment form based upon religious beliefs or moral convictions if the healthcare provider or healthcare facility:

(A) Promptly informs the patient or legal representative of the patient regarding the inability to carry out the physician order for life-sustaining treatment form;

(B) Provides continuing care to the patient until a transfer can be made or a determination has been made that the transfer cannot be made; and

(C)(i) Makes all reasonable efforts to assist in the prompt transfer of the patient to another healthcare provider or healthcare facility that is willing to comply with the executed physician order for life-sustaining treatment form.

(ii) If a transfer cannot be made, the healthcare provider or healthcare facility shall not be compelled to comply with the physician order for life-sustaining treatment form.

(3) This section does not authorize a healthcare provider or healthcare facility to withhold life-sustaining treatment against the wishes of a patient or a legal representative.

20-6-206. Review and revision.

(a)(1) An executed physician order for life-sustaining treatment form may be reviewed periodically by the physician of the patient.

(2) The physician may:

(A) Conduct an evaluation of the patient; and

(B) In consultation with the patient or the legal representative of the patient, issue a new physician order for life-sustaining treatment form consistent with the most current information available about the health status and goals of care of the patient.

(b)(1) The new physician order for life-sustaining treatment form shall be:

(A) Recorded on a new physician order for life-sustaining treatment form; and

(B) Signed in compliance with § 20-6-204.

(2) Once a new physician order for life-sustaining treatment form has been executed, the previous physician order for life-sustaining treatment form shall be nullified.

(c) A patient with the capacity to make his or her own healthcare decisions may, at any time, request alternative treatment to the treatment that was ordered on the physician order for life-sustaining treatment form.

(d) The legal representative of the patient who does not have the capacity to make his or her own healthcare decisions shall consult with the physician who is the treating physician of the patient prior to making a request to modify the orders reflected in the physician order for life-sustaining treatment form of the patient.

20-6-207. Relationship with advance directives.

(a)(1) A physician order for life-sustaining treatment form is not intended to replace an advance directive.

(2) In executing a physician order for life-sustaining treatment form, a patient, the legal representative of the patient when applicable, and the physician shall make a good-faith effort to locate and incorporate treatment preferences documented in a previously executed advance directive, when appropriate and desired by the patient.

(b) In the event of a conflict with a physician order for life-sustaining treatment form and an advance directive, either:

(1) The document executed most recently by the patient shall take precedence regarding the medical decision or treatment preference at issue; or

(2) If both the advance directive and the physician order for life-sustaining treatment form were executed by the legal representative of the patient, the advance directive shall take precedence regarding the medical decision or treatment preference at issue.

(c) This section does not prohibit or require the execution, revocation, or modification of an advance directive.

20-6-208. Liability.

A healthcare provider, healthcare facility, or employee or agent of the healthcare provider or healthcare facility is not subject to civil or criminal liability or discipline for unprofessional conduct for:

(1) Complying with a physician order for life-sustaining treatment form based upon a good-faith assumption that the physician order for life-sustaining treatment form was valid when executed and that the physician order for life-sustaining treatment form was not revoked or terminated;

(2) Failing to comply with a physician order for life-sustaining treatment form based upon a good faith determination that:

(A) The physician order for life-sustaining treatment form was not valid; or

(B) The physician order for life-sustaining treatment form requires medically ineffective health care or health care contrary to generally accepted healthcare standards applicable to the healthcare provider or healthcare facility; or

(3) Declining to comply with an executed physician order for life-sustaining treatment form based upon religious beliefs or moral convictions if the healthcare provider or healthcare facility complies with the requirements of § 20-6-205.

20-6-209. Voluntary signing.

(a) The signing of a physician order for life-sustaining treatment form by a patient or legal representative of the patient is voluntary.

(b)(1) A person or entity, including without limitation a healthcare

provider, healthcare facility, employer, or health insurance carrier, shall not require an individual to execute a physician order for life-sustaining treatment form as a condition of being insured for, or receiving, healthcare services.

(2) If a healthcare provider or healthcare facility complies with subdivision (b)(1) of this section, the healthcare provider or healthcare facility may have a policy to offer a physician order for life-sustaining treatment form to appropriate individuals as part of a conversation about:

- (A) Goals of care;
- (B) Personal values and preferences;
- (C) Benefits of various treatment options; and
- (D) Avoidance of unwanted burden.

(c) This subchapter does not:

(1) Create a presumption concerning the intention of an individual who has not executed a physician order for life-sustaining treatment form with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition; or

(2) Affect the right of an individual to make decisions regarding the use of life-sustaining procedures as long as the individual has the capacity to make a decision.

20-6-210. Criminal penalty.

(a) It is unlawful for a person to willfully:

(1) Conceal, cancel, deface, obliterate, or damage a physician order for life-sustaining treatment form without the consent of the patient or the legal representative of the patient;

(2)(A) Cause an individual to execute a physician order for life-sustaining treatment form by undue influence, fraud, or duress.

(B) As used in this section, "undue influence" includes without limitation:

(i) Charging a different rate or fee for insurance coverage or healthcare services based upon whether the individual consents to a physician order for life-sustaining treatment form or has executed a physician order for life-sustaining treatment form;

(ii) Requiring a healthcare provider to have an

internal policy to offer a physician order for life-sustaining treatment form to any individual;

(iii) Providing any financial incentive, payment, discount, or rating incentive for have an internal policy or procedure relating to the completion of a physician order for life-sustaining treatment form as applied to a healthcare provider or healthcare facility; or

(iv) Imposing a rating or reimbursement penalty if a healthcare provider or healthcare facility fails to achieve a target for physician order for life-sustaining treatment form completions; or

(3) Falsify or forge a physician order for life-sustaining treatment form of another person that results in a direct change of health care provided to the patient.

(b) A person who violates this section is guilty of a Class D felony.

(c) This section does not prevent payment to a healthcare provider or healthcare facility for consultation with or counseling of a patient concerning a physician order for life-sustaining treatment form or for offering advance directive healthcare planning.

20-6-211. Applicability – Death – Life insurance.

(a) A death that results from compliance with a physician order for life-sustaining treatment form does not constitute a suicide, homicide, or abuse, for any reason.

(b)(1) The execution of a physician order for life-sustaining treatment form does not affect the sale, procurement, or issuance of a life insurance policy or annuity policy.

(2) A life insurance policy or annuity policy shall not be impaired or invalidated if emergency care or life-sustaining treatment is withheld from an insured individual who has executed a physician order for life-sustaining treatment form.

(c) This subchapter does not:

(1) Condone, authorize, or approve mercy killing, euthanasia, or physician-assisted suicide; or

(2) Permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

20-6-212. Copy of physician order for life-sustaining treatment form.

A copy of an executed physician order for life-sustaining treatment form has the same effect as the original physician order for life-sustaining treatment form.

SECTION 2. DO NOT CODIFY. Form.

The State Board of Health shall adopt the following form and may by rule revise the form so long as the revisions are consistent with the intent of this act.

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY		
PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)		
<p>First follow these orders, then contact <b>Physician</b>. A copy of the executed POLST form is a legally binding, valid physician order. Any section not completed implies full treatment for that section. <b>POLST complements an Advance Directive and is not intended to replace that document.</b></p>	Patient Last Name:	Date form Prepared:
	Patient First Name:	Patient Date of Birth:
	Patient Middle Name:	
<b>A</b>	<b>CARDIOPULMONARY RESUSCITATION (CPR):</b> <i>If patient has no pulse and is not breathing.</i> <b>NOTE ... If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.</b>	
<p>Check One</p>	<input type="checkbox"/> <b>Attempt Resuscitation/CPR</b> (Selecting CPR in Section A <u>requires</u> selecting Full Treatment in Section B) <input type="checkbox"/> <b>Do Not Attempt Resuscitation/DNR</b> (Allow Natural Death)	
<b>B</b>	<b>MEDICAL INTERVENTIONS:</b> <i>If patient is found with a pulse and/or is breathing.</i>	
<p>Check One</p>	<input type="checkbox"/> <b>Full Treatment</b> – primary goal of prolonging life by all medically effective means. In addition to treatment described in Selective Treatment and Comfort Treatment, use intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated. <input type="checkbox"/> <i>Trial Period of Full Treatment.</i> <input type="checkbox"/> <b>Selective Treatment</b> – goal of treating medical conditions while avoiding burdensome measures. In addition to treatment described in Comfort Treatment, use medical treatment and IVs as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care. <input type="checkbox"/> <i>Request transfer to hospital only if comfort needs cannot be met in current location.</i> <input type="checkbox"/> <b>Comfort Treatment</b> – primary goal of maximizing comfort. Relieve pain and suffering with medication by any route as needed; use oxygen, suctioning, and manual treatment of airway obstruction. Do not use treatments listed in Full and Selective Treatment unless consistent with comfort goal. <b>Request transfer to hospital <u>only</u> if comfort needs cannot be met in current location.</b>	
<b>C</b>	<b>ADDITIONAL ORDERS:</b> <hr/> <hr/> <hr/>	
<b>D</b>	<b>INFORMATION AND SIGNATURES:</b>	
	<b>Discussed with:</b> <input type="checkbox"/> Patient (Patient Has Capacity) <input type="checkbox"/> Legal Representative <input type="checkbox"/> Advance Directive dated _____, available and reviewed <input type="checkbox"/> Advance Directive not available. <input type="checkbox"/> No Advance Directive.	
	<b>Signature of Physician</b> <i>My signature below indicates to the best of my knowledge that these orders are consistent with the patient's intentions and medical condition.</i>	
	Print Physician Name:	Physician Phone Number:    Physician License #:
	Physician Signature: <i>(required)</i>	
		Date:
	<b>Signature of Patient or Legal Representative</b> <i>I am aware that my consent to this form is voluntary. By signing this form, a legal representative acknowledges that this request regarding resuscitative measures is consistent with the known wishes of, and with the best interest of, the individual who is the subject of the form.</i>	
	Print Name:	Relationship: <i>(write self if patient)</i>
	Signature: <i>(required)</i>	Date:
	Mailing Address:	Phone:
<b>SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED</b>		

APPROVED: 03/15/2017