



MARK B HORTON, MD, MSPH
Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

December 3, 2009

AFL 09-27

TO: Skilled Nursing Facilities
Nursing Facilities

SUBJECT: Physician Orders for Life-Sustaining Treatment (POLST)

This All Facilities Letter (AFL) replaces the letter that was emailed on August 25, 2009 and is being sent to clarify the provisions established by Assembly Bill 3000, Chapter 266, Statutes of 2008 with regard to the Physician Orders for Life Sustaining Treatment (POLST) form [Section 4780 – 4785 of the Probate Code (PC)], which became effective January 1, 2009.

The POLST form and medical intervention and procedures offered are a voluntary option for people to use to communicate their end-of-life decisions. When opted, the form shall be explained by a health care provider. The form, if completed, is based on patient preferences and medical indications. (PC 4780).¹

Although the term “Health Care Provider” is a broadly defined term, the form is a physician’s order. The physician remains responsible for obtaining the patient’s informed consent and assuring that the patient receives all material information that is pertinent to the patient’s decision.

Patients have the right to receive all information that is material to any decision concerning whether to accept or refuse any proposed treatment or procedure. (Title 22, California Code of Regulations (CCR) Section 72527). Attending physicians are responsible to determine what information a reasonable person in the patient’s condition and circumstances would consider material to a decision to accept or refuse a proposed treatment or procedure. (22 CCR Section 72528). Disclosure of all material information and obtaining informed consent remains the responsibility of the physician. (22 CCR Section 72528). Facilities should not consider that a POLST form is completed until the physician has obtained informed consent from the patient or the patient’s decisionmaker.

¹ A POLST form is not mandatory.

The POLST² form outlines a plan of care reflecting the patient's end-of-life care wishes. The POLST form:

- is a standardized form that is brightly colored and clearly identifiable;
- can be revoked by an individual with capacity – at any time;
- can be changed to be made consistent with the individuals' current health status and goals of care upon a request by the legally recognized health care decisionmaker for an individual lacking capacity in consultation with the individual's attending physician;
- is legally sufficient as a physician order and not an advance directive;
- is recognized, adopted and honored across treatment settings;
- provides statutory immunity from criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction or any other sanction to a healthcare provider who relies in good faith on the request and honors it;
- allows an individual with capacity to, at any time, request alternative treatment to that treatment that was ordered on the form; and
- does not require health care providers to use a POLST form, but requires that health care providers honor POLST orders.

A physician may conduct an evaluation of the individual and, if possible, in consultation with the individual, or the individual's legally recognized health care decisionmaker, issue a new order consistent with the most current information available about the individual's health status and goals of care. (CA Probate Code 4781.2(c)). A POLST is not a standing order. Standing orders are written orders which staff use or intend to use in the absence of a prescriber's specific order for a specific patient. (22, CCR 72109). Skilled nursing facilities are prohibited from using standing orders. (22, CCR 72317).

The POLST directions suggest that the form should be reviewed if there is a "substantial change" in the persons' health status. California's laws and regulations controlling reassessments provide more specific guidance. Skilled nursing facilities must provide for the planning of patient care by health care professionals that includes reviewing, evaluating, and updating of the patient care plan following a change in the patient's condition. (22, CCR 72311(a)(1)(C)). The facility's planning of patient care must include "continuing assessment" of the patient's needs. (22, CCR 72311(a)(1)(A)). The facility's staff must notify the attending physician of any "sudden and/or marked adverse change in signs, symptoms or behavior exhibited by a patient." (22, CCR 72311(a)(3)(B); See also, Health & Safety Code Section 1599.1(i)).

The skilled nursing facility must reassess the resident whenever there is a change of condition, whether there is a POLST form or not. An executed POLST form does not nullify a resident's right to an assessment, a hospital transfer, if indicated, or the resident's right to accept or refuse treatment. (22, CCR 72527; Health & Safety Code Section 1599.1(i)).

² The POLST is not a Department of Public Health form. The form can be downloaded from www.caPOLST.org.

AFL 09-27
Page 3
December 3, 2009

The information in this AFL is a brief summary of current law, and facilities should refer to the full text to ensure compliance. The California Department of Public Health's failure to expressly notify facilities of legislative changes does not relieve facilities of their responsibility for following all laws and for being aware of all legislative changes.

If you have any further questions, please contact your district office.

Sincerely,

Original Signed by Kathleen Billingsley, R.N.

Kathleen Billingsley, R.N.
Deputy Director
Center for Health Care Quality