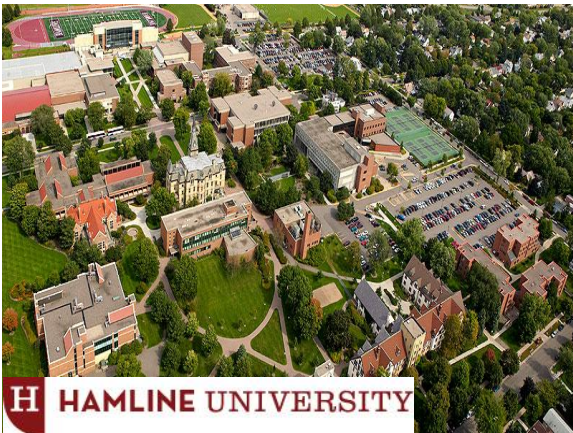


The Progress of POLST Programs Across the Nation, Litigation Arising From Failure to Respect Patients' Rights

Thaddeus Mason Pope, J.D., Ph.D.
Delaware Academy of Medicine
November 12, 2013

Nothing to disclose



Widener University



CHRISTIANA CARE HEALTH SYSTEM

2009 to 2011



EOL in DE
Unwanted Tx
Sanctions

POLST Legal
History
USA
DE

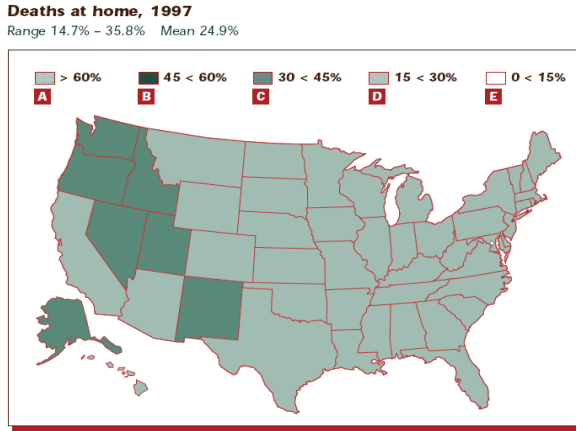
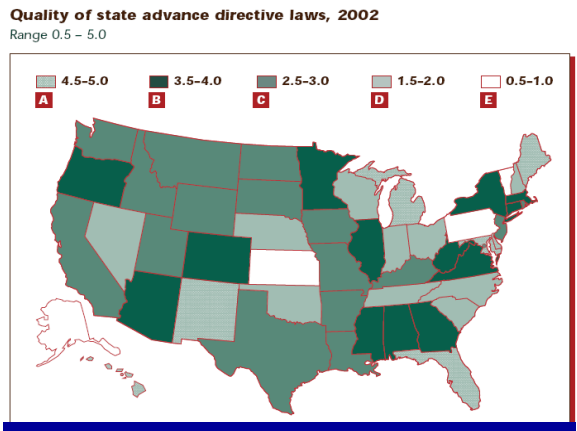
End-of-Life
Care in
Delaware

Means to a Better End:

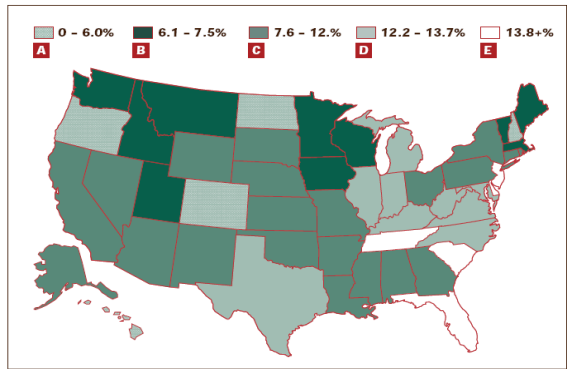


www.lastacts.org

*A Report on Dying
in America Today*



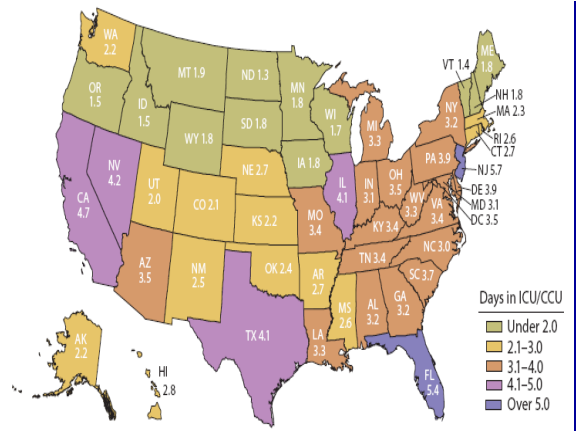
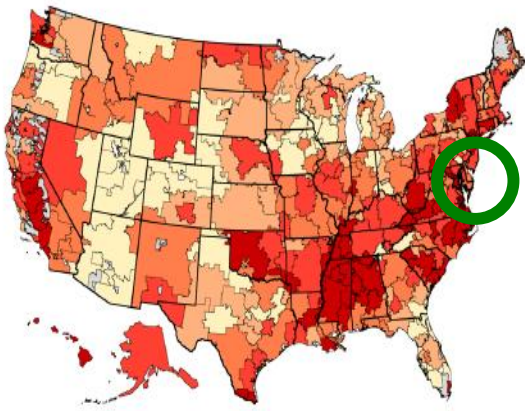
People over 65 with 7 or more ICU days during the last 6 months of life, 2000
 Range 3.4 – 17.3% Mean 10.1%



THE DARTMOUTH INSTITUTE
 FOR HEALTH POLICY & CLINICAL PRACTICE

Where Knowledge Informs Change

A Report of the Dartmouth Atlas Project



P A T I E N T
S A F E T Y
A U T H O R I T Y

1 in 5 got unwanted treatment

Unwanted Treatment

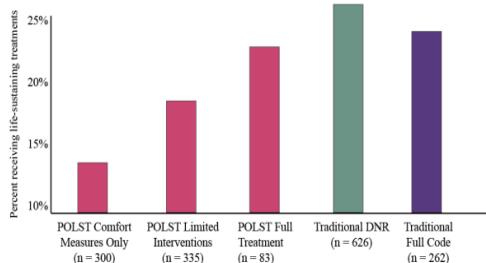
71%: “More important to enhance the **quality** of life . . . even if it means a **shorter life.**”

National Journal (Mar. 2011)

Question and Responses ^a	Public, % (n=1006)	Professionals, % (n=774)
If doctors believe there is no hope of recovery, which would you prefer?		
Life-sustaining treatments should be stopped and should focus on comfort	72.8	92.6
All efforts should continue indefinitely	20.6	2.5



Life-Sustaining Treatments Received (n = 1,606)**†



^a Analyses performed with subset of residents having the same orders in place for at least 60 days. For residents with POLST forms, only those with orders for medical interventions (Section B) were included.
[†] Life-sustaining treatments in Section B included hospitalization/ED visits, IV fluids, dialysis, transfusion, surgery/invasive diagnostic tests, chemotherapy/radiation, and intubation/ventilator support.

JGIM 25: 1241-1246, 2010. A Comparison of Methods to Communicate Treatment Preferences in Nursing Facilities: Traditional Practices versus the Physicians Orders for Life-Sustaining Treatment (POLST) Program. Susan C. Hickman, PhD, Christine A. Nelson, PhD, RN, Nancy A. Perrin, PhD, Alan H. Moss, MD, Bernard J. Hammes, PhD, and Susan W. Tolle, MD.

Nursing facility residents divided by None vs. Limited/Full Treatments

N = 898	Section A Resuscitation**		Section B Medical Interventions*		Section C Antibiotics**		Section D Feeding Tubes*	
	DNR	Full	None	Lim/Full	None	Lim/Full	None	Lim/Full
Oregon	85%	15%	50.9%	49.1%	9.8%	90.2%	56.9%	43.1%
Wisconsin	94.7%	5.3%	50.5%	49.5%	0%	100%	73.5%	26.5%
West Virginia	83.6%	16.4%	38.3%	61.7%	5.5%	94.5%	63.7%	36.3%

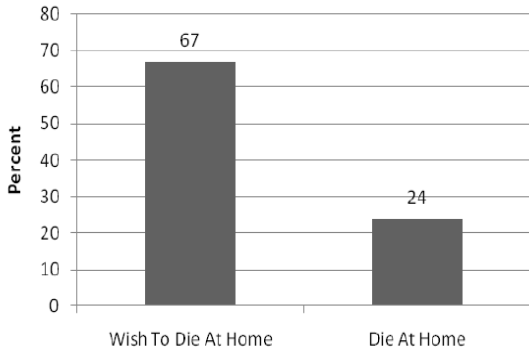
*p < .01; ** p < .001

Note: Analysis does not control for potential covariates including age, cognitive status, race, life status, or hospice use

Source: unpublished Ro data - see Hickman, Nelson, Perrin, Moss, Hammes, & Tolle (2010)



Dying at Home: Wishes vs. Reality



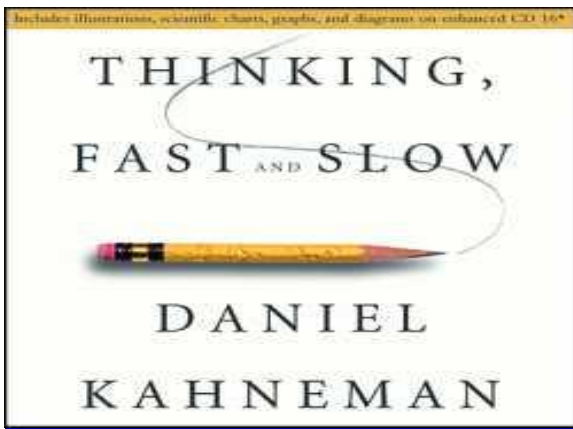
Harms

- Patient
- Family
- Other patients
- Society

Patients
without
 capacity

Unwanted
 treatment

 Sanctions



IN THE SUPREME COURT OF TEXAS

No. 01-0079

SIDNEY AINSLEY MILLER, BY AND THROUGH HER NEXT FRIEND KARLA H. MILLER, AND KARLA H. MILLER AND J. MARK MILLER, INDIVIDUALLY

v.

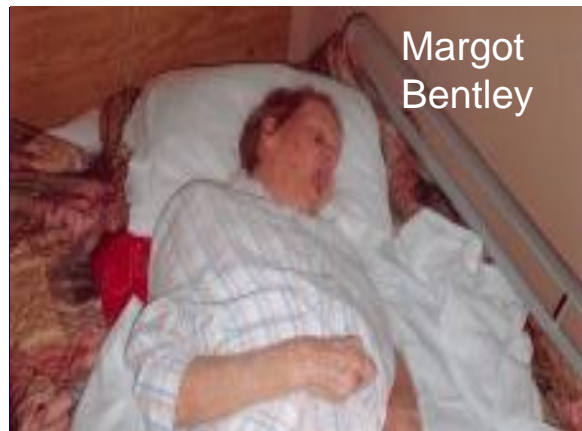
HCA, INC., HCA-HOSPITAL CORPORATION OF AMERICA, HOSPITAL CORPORATION OF AMERICA AND COLUMBIA/HCA HEALTHCARE CORPORATION

ON PETITION FOR REVIEW FROM THE
 COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Argued on April 3, 2002

2003

2009 SUPREME COURT No. 78383-7 **2007**
 BY COURT REPORTER SUPREME COURT
 OF THE STATE OF WASHINGTON
 hyn
 LIAM STEWART-GRAVES, a minor, and
 NICHOLE STEWART-GRAVES, as
 Guardian ad Litem, and NICHOLE
 STEWART-GRAVES and TODD
 GRAVES, individually,
 Appellants,
 v.
 KATHERINE F. VAUGHN, M.D.; THE
 VANCOUVER MEDICAL CLINIC, INC., P.S.; and
 SOUTHWEST WASHINGTON MEDICAL CENTER,
 Respondents.



Federation of
STATE 
MEDICAL
BOARDS

CMS
 CENTERS for MEDICARE & MEDICAID SERVICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR MEDICARE & MEDICAID SERVICES		PRINTED: 11/9/2013 FORM APPROVED OMB NO. 0938-0391	
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER / SUPPLIER / CLIA IDENTIFICATION NUMBER 155792	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 07/22/2013
NAME OF PROVIDER OF SUPPLIER		STREET ADDRESS, CITY, STATE, ZIP	

Resuscitate contra instructions

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR MEDICARE & MEDICAID SERVICES		PRINTED: 11/9/2013 FORM APPROVED OMB NO. 0938-0391	
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER / SUPPLIER / CLIA IDENTIFICATION NUMBER 155792	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 07/22/2013
NAME OF PROVIDER OF SUPPLIER		STREET ADDRESS, CITY, STATE, ZIP	

Inadequate recording preferences

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850



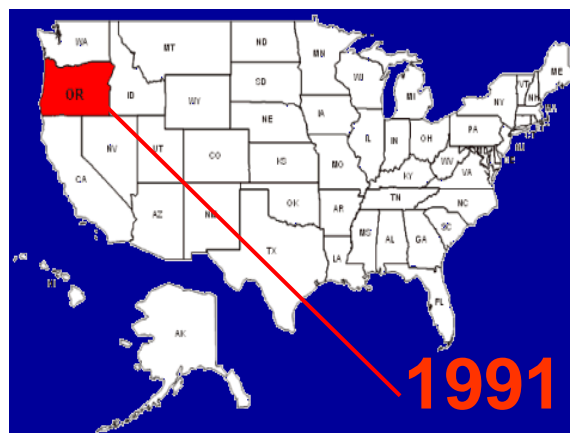
Center for Clinical Standards and Quality/Survey & Certification Group

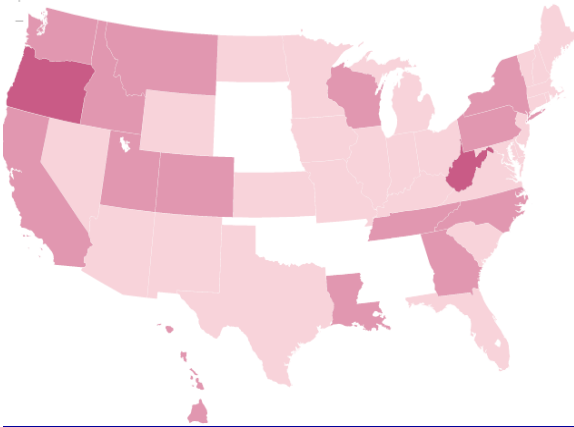
Ref: S&C: 14-01-NH

DATE: October 1, 2013
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: Cardiopulmonary Resuscitation (CPR) in Nursing Homes



History of
POLST
Nationwide





113TH CONGRESS
1ST SESSION **H. R. 1173**

To amend the Social Security Act to provide for coverage of voluntary advance care planning consultation under Medicare and Medicaid, and for other purposes.

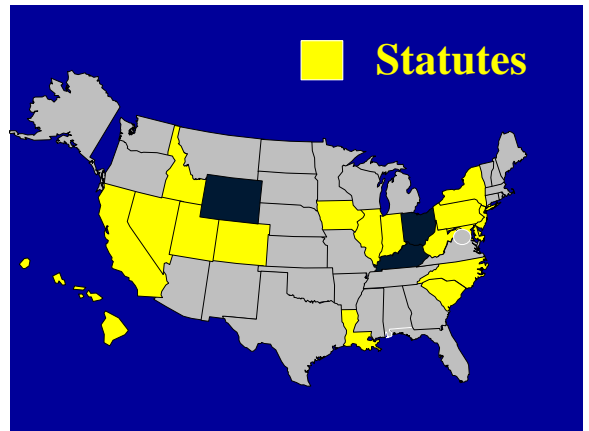
IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2013

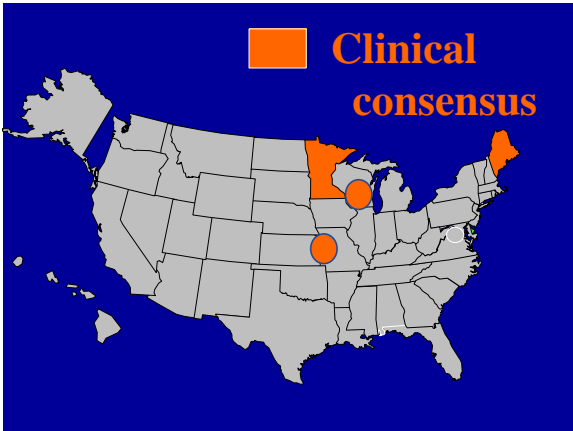
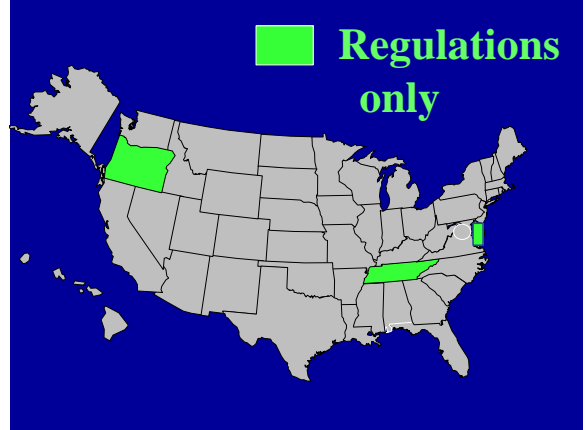
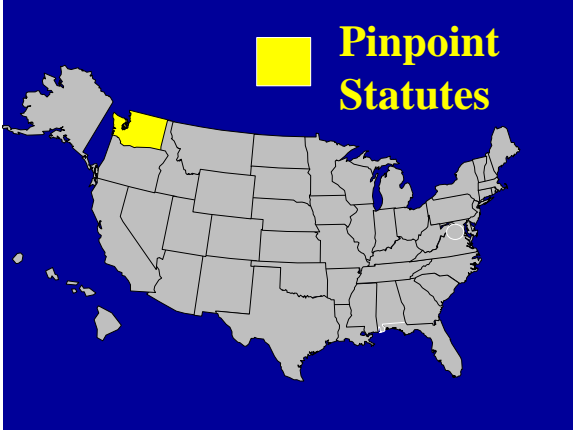
Mr. BLUMENAUER (for himself, Mr. HANNA, Mr. ROE of Tennessee, Mr. REED, Ms. SCHWARTZ, Mr. KING, Mr. GEORGE MILLER of California, Mr. McDERMOTT, Mr. BERG of California, Ms. SCHADOWSKY, and Mrs. CLAYTON) introduced the following bill, which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned:

A BILL

To amend the Social Security Act to provide for coverage of voluntary advance care planning consultation under Medicare and Medicaid, and for other purposes.



**Detail
vs.
Delegate**



**History of
POLST
in Delaware**

**HCDA
PACD
MOLST
DMOST**

HCDA

Del. Code
Title 16
Chapter 25

July 1982

S.B. 560

“Delaware Death
with Dignity Act”



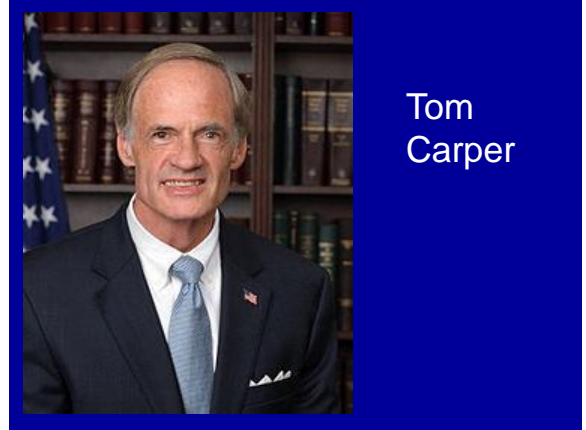
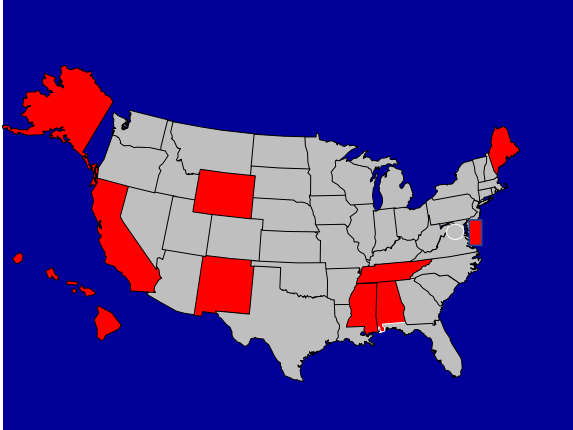
Pierre S.
du Pont IV

June 1996

S.B. 408

“Health Care
Decisions Act”






Tom Carper

May 2013
H.B. 42
“uncles” & “aunts”
surrogate list

PACD

 DELAWARE HEALTH & SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH - OFFICE OF EMERGENCY MEDICAL SERVICES
PRE-HOSPITAL ADVANCED CARE DIRECTIVE (PACD) FOR TERMINAL ILLNESS ONLY
SCOPE OF EMERGENCY MEDICAL SERVICES CARE

I, _____ (please print your full name), request the following emergency medical care in the event I am incapacitated due to my terminal illness:

Option A: (Advanced Life Support) **Maximal (Restorative) Care Before Arrest, Then DNR.**
Individual shall receive the full scope of restorative interventions permissible under the Delaware Statewide ALS protocol.

Option B: (Basic Life Support) **Limited (Palliative) Care Only Before Arrest, Then DNR.**
Individual shall receive comfort care for control of signs and symptoms.

Option C: (Do Not Resuscitate) **No Care Administered Of Any Kind**
Individual is permitted to refuse care of any kind provided there is a signed order clearly stating this course of action. Where this option is in place, no form of comfort care or life saving efforts of any kind will be administered by Emergency Medical Service personnel under any circumstances, unless the individual provides a some form of communication such as verbally, eye blink, hand taps, or some other similar form of communication, to indicate the desire to revoke the existing PACD order in place.

I understand that *Do Not Resuscitate* means that upon my rejection of any life-saving care efforts, if my heart stops beating or I stop breathing due to my present terminal illness no medical procedure to restart breathing or heart functioning will be instituted by emergency medical service personnel.

Patient/Surrogate Signature _____ Date _____
Surrogate's Relationship to Patient _____
I affirm that this patient/surrogate is making an informed decision and that this Pre-Hospital Advanced Care Directive is the expressed wish of the patient.

Physician Signature _____ Date _____
Print Name _____ Telephone _____
Address _____ State _____ Zip _____
City _____
Patient's Name (Print) _____ Telephone _____
Address _____ State _____ Zip _____

ONLY

2000
16 Del. Code 9706(h)
added by H.B. 332

Title 16

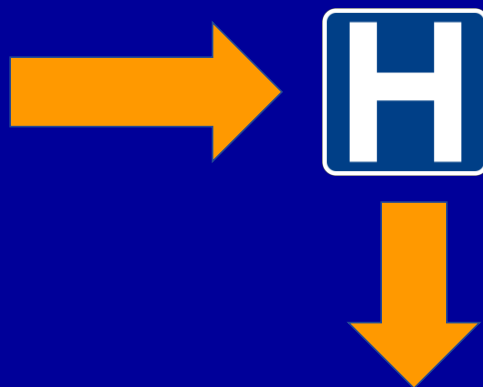
Health & Safety

Chapter 97

Emergency Medical Services

“The Director of Public Health shall have the authority to promulgate rules for EMS provider recognition and compliance with an advanced health care directive . . .”

“The regulation shall define **pre-hospital advanced care directive** procedures . . . in compliance with Chapter 25 of this title . . .”



Minimum content
 Identification methods
 Revocation methods
 Reciprocity

Nov. 1, 2002

Proposed PACD regulations

Request for written materials
 & suggestions



Nov. 26, 2002

Public hearing

Dec. 1, 2002

Original end
comment
period

Dec. 31, 2002

Extended
comment
period

- Delaware Healthcare Facility Association
- Christiana Care Hospital Ethics Committee
- Governor's Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities
- Courtland Manor Inc., Nursing Home
- Kent County EMS

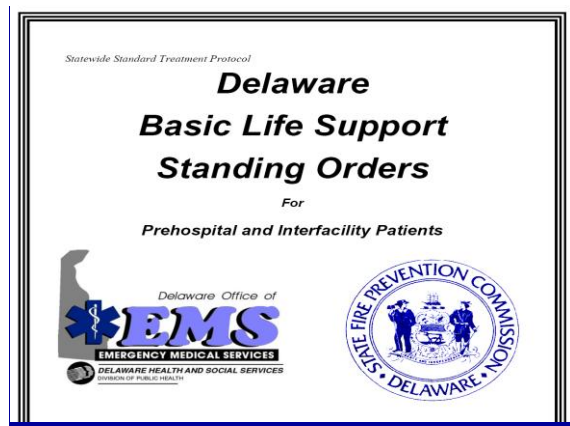
June 13, 2003

Final regulations

July 10, 2003

Regulations
effective

7 DE Reg. 85 (7/1/03)



July 2005

S.B. 195 amends
9706(h): identify via
driver license

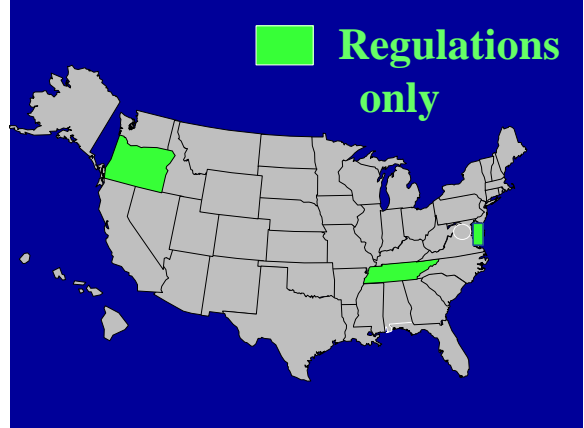
MOLST

2009

**MOLST Core
Working Group**

CCHS (MD, RN, APN)
DE Hospice
Compassionate Care
DEOLC
LTC DON
Widener Health Law

QUESTION	ALMOST ALWAYS	USUALLY	SOMETIMES	RARELY	COMMENTS
5. Have seen examples of where DNR orders have not transitioned to a new care setting in an effective way?	32	9	44	29	1 responded NA See attached
6. Have you ever seen the Pre-Hospital Advanced Care Directive (orange form) used effectively?	9	1	19	59	See attached



9706(h)

DE DOJ
DE EMS
DE DHSS Policy

May 1, 2011
DPH proposes regulations
14 DE Reg. 1195 (05/01/11)

Delaware Register of Regulations

Issue Date: April 1, 2011
Volume 14 - Issue 10, Pages 929 - 1139

IN THIS ISSUE:
Regulations:
Proposed Final
Governor:
Executive Orders
General Notices
Calendar of Events & Hearing Notices

DEPARTMENT OF THE STATE OF DELAWARE
1704 • 1776 • 1781 • 1789

Pursuant to 26 Del.C., Chapter 11, Subchapter 01, this issue of the Register contains all documents required to be published, and received, on or before March 15, 2011.

May 31, 2011
 End comment period

Governor's Advisory Council for Exceptional Citizens
 State Council for Persons with Disabilities

August 2011
 Final regulations
 15 DE Reg. 211 (08/01/11)

Delaware Register of Regulations
 Issue Date: August 1, 2011
 Volume 13 - Issue 2, Pages 117 - 246



IN THIS ISSUE:
 Regulations: Proposed, Final
 Calendar of Events & Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter 111, this issue of the Register contains all documents required to be published and received, on or before July 15, 2011.

STATE OF DELAWARE MOLST FORM

HIPAA PERMITS DISCLOSURE OF MOLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY

MEDICAL ORDERS for life-sustaining treatment (MOLST)

EB01 Update these orders. EB02 Contact physician. This is a medical order sheet based on the person's current medical condition and wishes. Any section not complete implies full treatment for that section. Everyone shall be treated with dignity and respect.

Last Name/First Name/Middle Initial _____ date of birth _____ Last 4 SSN # _____ M F
 Gender _____

A Cardiopulmonary Resuscitation (CPR): Person has no pulse and is not breathing.*
 Check One Box Only
 Attempt Resuscitation (CPR) Do Not Attempt Resuscitation (DNR/No CPR)
 *When person is not in cardiopulmonary arrest, follow orders in B, C, and D.

B Medical Interventions: Person has a pulse and/or is breathing.
 Check One Box Only
 COMFORT MEASURES ONLY. Use medications for any pain, positioning, wound care, and other measures to relieve pain and suffering. Use oxygen, oral suctioning, and manual removal of airway obstruction as needed for comfort. Do not transfer to hospital for life-sustaining treatment. Transfer if comfort needs cannot be met in current location.
 LIMITED ADDITIONAL INTERVENTIONS. Includes care described above. Use medical treatment, IV fluids, and cardiac monitor as indicated. Do not use intubation or mechanical ventilation. May use less invasive airway supports (e.g. CPAP, BiPAP). Transfer to hospital if indicated. Avoid intensive care.
 FULL TREATMENT. Includes care described above. Use intubation, advanced airway interventions, mechanical ventilation, and cardiopulmonary as indicated. Transfer to hospital if indicated. Includes intensive care. Additional Orders: (e.g. dialysis, etc.) _____

C ANTI-BIOTICS:
 Check One Box Only
 No antibiotics. Use other measures to relieve symptoms.
 Determine use or limitation of antibiotics if infection occurs, with comfort as goal.
 Use antibiotics if life can be prolonged.
 Additional Orders: _____

D ARTIFICIALLY ADMINISTERED NUTRITION:
 Check One Box Only
 Always offer food and fluids by mouth, if feasible.
 No artificial nutrition by tube.
 Definite trial period of artificial nutrition by tube. (Date) _____
 Long-term artificial nutrition by tube.
 Additional Orders: _____

E SUMMARY OF MEDICAL CONDITION/GOALS:

F SIGNATURES: Preferences have been expressed to the health care provider whose signature is found below. This document reflects those preferences. If signed by a surrogate, preferences must reflect patient's wishes as best understood by the surrogate.

Discussed with:
 Patient Parent of Minor Patient or Legal Surrogate Signature/Relationship (optional) Date _____
 Legal Guardian Next of Kin Physician/APP/PA Signature (mandatory) Date _____
 Health Care Agent Patient or Legal Surrogate Signature/Relationship (optional) Date _____

SEND FORM WITH PERSON WHENEVER TRANSFERRED OR DISCHARGED.
 Use of original form is strongly encouraged. Photocopies and FAXes of signed MOLST forms are legal and valid.

Delaware Association for Healthcare Quality



Summer 2012
 Check out our website!
www.dahaq.org

News Brief

MOLST Presentation
 Janet Jonah, RN, BS, MHA

WELCOME 2011-2012 New Members



November
2012

Karyl Rattay
Director, Division
of Public Health



DELAWARE HEALTH
AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

OFFICE OF THE DIRECTOR

November 14, 2012

Medical Orders for Life-Sustaining Treatments (MOLST) Form

Dear Health Care Provider:

The State of Delaware, Division of Public Health, requests that all healthcare workers refrain from further use of the Medical Orders for Life-Sustaining Treatments (MOLST) form. It has been determined that healthcare providers are using the MOLST form beyond the legal parameters set forth in regulation 4304, issued by the Delaware Division of Public Health.

“providers are
using the MOLST
beyond the legal
parameters”

“The future development
of any additional process
for recording end-of-life
decisions in the State of
Delaware **requires . . .
legislation.**”

DMOST

Del. Code
Title 16
Chapter **25A**



SPONSOR:

DELAWARE STATE SENATE/HOUSE OF
REPRESENTATIVES

147th GENERAL ASSEMBLY

SENATE/HOUSE BILL NO. ____

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CREATION OF
MEDICAL ORDERS FOR END OF LIFE DECISIONS.



Thaddeus Mason Pope

Director, Health Law Institute
Hamline University School of Law
1536 Hewitt Avenue

Saint Paul, Minnesota 55104

T 651-523-2519

F 901-202-7549

E tpope01@hamline.edu

W www.thaddeuspope.com

B medicalfutility.blogspot.com

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