



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3524

Introduced 2/14/2020, by Sen. Sara Feigenholtz

#### SYNOPSIS AS INTRODUCED:

755 ILCS 40/10	from Ch. 110 1/2, par. 851-10
755 ILCS 40/20	from Ch. 110 1/2, par. 851-20
755 ILCS 40/65	

Amends the Health Care Surrogate Act. Changes certain uses of the term "qualified physician" to "qualified health care practitioner". Provides that before voiding or revoking a uniform practitioner orders for life-sustaining treatment (POLST) form, National POLST form, or another state's POLST Paradigm portable medical orders form consented to by the individual, that individual's legally authorized surrogate decision maker shall first: engage in consultation with the attending health care practitioner; consult the patient's advance directive, if available; and make a good faith effort to act consistently, at all times, with the patient's known wishes, or, if the patient's wishes are not known, using substituted judgment as the standard. Provides that a health care provider facility shall comply with a POLST form, National POLST form, another state's POLST Paradigm portable medical orders form, or an out-of-hospital Do Not Resuscitate (DNR) order sanctioned by a State in the United States that: has been executed by an adult; and is apparent and immediately available.

LRB101 20691 LNS 70356 b

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 10, 20, and 65 as follows:

6 (755 ILCS 40/10) (from Ch. 110 1/2, par. 851-10)

7 Sec. 10. Definitions.

8 "Adult" means a person who is (i) 18 years of age or older  
9 or (ii) an emancipated minor under the Emancipation of Minors  
10 Act.

11 "Artificial nutrition and hydration" means supplying food  
12 and water through a conduit, such as a tube or intravenous  
13 line, where the recipient is not required to chew or swallow  
14 voluntarily, including, but not limited to, nasogastric tubes,  
15 gastrostomies, jejunostomies, and intravenous infusions.  
16 Artificial nutrition and hydration does not include assisted  
17 feeding, such as spoon or bottle feeding.

18 "Available" means that a person is not "unavailable". A  
19 person is unavailable if (i) the person's existence is not  
20 known, (ii) the person has not been able to be contacted by  
21 telephone or mail, or (iii) the person lacks decisional  
22 capacity, refuses to accept the office of surrogate, or is  
23 unwilling to respond in a manner that indicates a choice among

1 the treatment matters at issue.

2 "Attending physician" means the physician selected by or  
3 assigned to the patient who has primary responsibility for  
4 treatment and care of the patient and who is a licensed  
5 physician in Illinois. If more than one physician shares that  
6 responsibility, any of those physicians may act as the  
7 attending physician under this Act.

8 "Close friend" means any person 18 years of age or older  
9 who has exhibited special care and concern for the patient and  
10 who presents an affidavit to the attending physician stating  
11 that he or she (i) is a close friend of the patient, (ii) is  
12 willing and able to become involved in the patient's health  
13 care, and (iii) has maintained such regular contact with the  
14 patient as to be familiar with the patient's activities,  
15 health, and religious and moral beliefs. The affidavit must  
16 also state facts and circumstances that demonstrate that  
17 familiarity.

18 "Death" means when, according to accepted medical  
19 standards, there is (i) an irreversible cessation of  
20 circulatory and respiratory functions or (ii) an irreversible  
21 cessation of all functions of the entire brain, including the  
22 brain stem.

23 "Decisional capacity" means the ability to understand and  
24 appreciate the nature and consequences of a decision regarding  
25 medical treatment or forgoing life-sustaining treatment and  
26 the ability to reach and communicate an informed decision in

1 the matter as determined by the attending physician.

2 "Forgo life-sustaining treatment" means to withhold,  
3 withdraw, or terminate all or any portion of life-sustaining  
4 treatment with knowledge that the patient's death is likely to  
5 result.

6 "Guardian" means a court appointed guardian of the person  
7 who serves as a representative of a minor or as a  
8 representative of a person under legal disability.

9 "Health care facility" means a type of health care provider  
10 commonly known by a wide variety of titles, including but not  
11 limited to, hospitals, medical centers, nursing homes,  
12 rehabilitation centers, long term or tertiary care facilities,  
13 and other facilities established to administer health care and  
14 provide overnight stays in their ordinary course of business or  
15 practice.

16 "Health care provider" means a person that is licensed,  
17 certified, or otherwise authorized or permitted by the law of  
18 this State to administer health care in the ordinary course of  
19 business or practice of a profession, including, but not  
20 limited to, physicians, nurses, health care facilities, and any  
21 employee, officer, director, agent, or person under contract  
22 with such a person.

23 "Imminent" (as in "death is imminent") means a  
24 determination made by the attending physician according to  
25 accepted medical standards that death will occur in a  
26 relatively short period of time, even if life-sustaining

1 treatment is initiated or continued.

2 "Life-sustaining treatment" means any medical treatment,  
3 procedure, or intervention that, in the judgment of the  
4 attending physician, when applied to a patient with a  
5 qualifying condition, would not be effective to remove the  
6 qualifying condition or would serve only to prolong the dying  
7 process. Those procedures can include, but are not limited to,  
8 assisted ventilation, renal dialysis, surgical procedures,  
9 blood transfusions, and the administration of drugs,  
10 antibiotics, and artificial nutrition and hydration.

11 "Minor" means an individual who is not an adult as defined  
12 in this Act.

13 "Parent" means a person who is the natural or adoptive  
14 mother or father of the child and whose parental rights have  
15 not been terminated by a court of law.

16 "Patient" means an adult or minor individual, unless  
17 otherwise specified, under the care or treatment of a licensed  
18 physician or other health care provider.

19 "Person" means an individual, a corporation, a business  
20 trust, a trust, a partnership, an association, a government, a  
21 governmental subdivision or agency, or any other legal entity.

22 "Qualifying condition" means the existence of one or more  
23 of the following conditions in a patient certified in writing  
24 in the patient's medical record by the attending physician and  
25 by at least one other qualified health care practitioner  
26 ~~physician~~:

1           (1) "Terminal condition" means an illness or injury for  
2           which there is no reasonable prospect of cure or recovery,  
3           death is imminent, and the application of life-sustaining  
4           treatment would only prolong the dying process.

5           (2) "Permanent unconsciousness" means a condition  
6           that, to a high degree of medical certainty, (i) will last  
7           permanently, without improvement, (ii) in which thought,  
8           sensation, purposeful action, social interaction, and  
9           awareness of self and environment are absent, and (iii) for  
10          which initiating or continuing life-sustaining treatment,  
11          in light of the patient's medical condition, provides only  
12          minimal medical benefit.

13          (3) "Incurable or irreversible condition" means an  
14          illness or injury (i) for which there is no reasonable  
15          prospect of cure or recovery, (ii) that ultimately will  
16          cause the patient's death even if life-sustaining  
17          treatment is initiated or continued, (iii) that imposes  
18          severe pain or otherwise imposes an inhumane burden on the  
19          patient, and (iv) for which initiating or continuing  
20          life-sustaining treatment, in light of the patient's  
21          medical condition, provides only minimal medical benefit.

22          The determination that a patient has a qualifying condition  
23          creates no presumption regarding the application or  
24          non-application of life-sustaining treatment. It is only after  
25          a determination by the attending physician that the patient has  
26          a qualifying condition that the surrogate decision maker may

1 consider whether or not to forgo life-sustaining treatment. In  
2 making this decision, the surrogate shall weigh the burdens on  
3 the patient of initiating or continuing life-sustaining  
4 treatment against the benefits of that treatment.

5 "Qualified health care practitioner" means an individual  
6 who has personally examined the patient and who is an Illinois  
7 licensed physician, advanced practice registered nurse,  
8 physician assistant, or licensed resident after completion of  
9 one year in a qualified graduate medical education program.

10 "Qualified physician" means a physician licensed to  
11 practice medicine in all of its branches in Illinois who has  
12 personally examined the patient.

13 "Surrogate decision maker" means an adult individual or  
14 individuals who (i) have decisional capacity, (ii) are  
15 available upon reasonable inquiry, (iii) are willing to make  
16 medical treatment decisions on behalf of a patient who lacks  
17 decisional capacity, and (iv) are identified by the attending  
18 physician in accordance with the provisions of this Act as the  
19 person or persons who are to make those decisions in accordance  
20 with the provisions of this Act.

21 (Source: P.A. 95-331, eff. 8-21-07.)

22 (755 ILCS 40/20) (from Ch. 110 1/2, par. 851-20)

23 Sec. 20. Private decision making process.

24 (a) Decisions whether to forgo life-sustaining or any other  
25 form of medical treatment involving an adult patient with

1 decisional capacity may be made by that adult patient.

2 (b) Decisions whether to forgo life-sustaining treatment  
3 on behalf of a patient without decisional capacity are lawful,  
4 without resort to the courts or legal process, if the patient  
5 has a qualifying condition and if the decisions are made in  
6 accordance with one of the following paragraphs in this  
7 subsection and otherwise meet the requirements of this Act:

8 (1) Decisions whether to forgo life-sustaining  
9 treatment on behalf of a minor or an adult patient who  
10 lacks decisional capacity may be made by a surrogate  
11 decision maker or makers in consultation with the attending  
12 physician, in the order or priority provided in Section 25.  
13 A surrogate decision maker shall make decisions for the  
14 adult patient conforming as closely as possible to what the  
15 patient would have done or intended under the  
16 circumstances, taking into account evidence that includes,  
17 but is not limited to, the patient's personal,  
18 philosophical, religious and moral beliefs and ethical  
19 values relative to the purpose of life, sickness, medical  
20 procedures, suffering, and death. Where possible, the  
21 surrogate shall determine how the patient would have  
22 weighed the burdens and benefits of initiating or  
23 continuing life-sustaining treatment against the burdens  
24 and benefits of that treatment. In the event an unrevoked  
25 advance directive, such as a living will, a declaration for  
26 mental health treatment, or a power of attorney for health



1 care, is no longer valid due to a technical deficiency or  
2 is not applicable to the patient's condition, that document  
3 may be used as evidence of a patient's wishes. The absence  
4 of a living will, declaration for mental health treatment,  
5 or power of attorney for health care shall not give rise to  
6 any presumption as to the patient's preferences regarding  
7 the initiation or continuation of life-sustaining  
8 procedures. If the adult patient's wishes are unknown and  
9 remain unknown after reasonable efforts to discern them or  
10 if the patient is a minor, the decision shall be made on  
11 the basis of the patient's best interests as determined by  
12 the surrogate decision maker. In determining the patient's  
13 best interests, the surrogate shall weigh the burdens on  
14 and benefits to the patient of initiating or continuing  
15 life-sustaining treatment against the burdens and benefits  
16 of that treatment and shall take into account any other  
17 information, including the views of family and friends,  
18 that the surrogate decision maker believes the patient  
19 would have considered if able to act for herself or  
20 himself.

21 (2) Decisions whether to forgo life-sustaining  
22 treatment on behalf of a minor or an adult patient who  
23 lacks decisional capacity, but without any surrogate  
24 decision maker or guardian being available determined  
25 after reasonable inquiry by the health care provider, may  
26 be made by a court appointed guardian. A court appointed

1 guardian shall be treated as a surrogate for the purposes  
2 of this Act.

3 (b-5) Decisions concerning medical treatment on behalf of a  
4 patient without decisional capacity are lawful, without resort  
5 to the courts or legal process, if the patient does not have a  
6 qualifying condition and if decisions are made in accordance  
7 with one of the following paragraphs in this subsection and  
8 otherwise meet the requirements of this Act:

9 (1) Decisions concerning medical treatment on behalf  
10 of a minor or adult patient who lacks decisional capacity  
11 may be made by a surrogate decision maker or makers in  
12 consultation with the attending physician, in the order of  
13 priority provided in Section 25 with the exception that  
14 decisions to forgo life-sustaining treatment may be made  
15 only when a patient has a qualifying condition. A surrogate  
16 decision maker shall make decisions for the patient  
17 conforming as closely as possible to what the patient would  
18 have done or intended under the circumstances, taking into  
19 account evidence that includes, but is not limited to, the  
20 patient's personal, philosophical, religious, and moral  
21 beliefs and ethical values relative to the purpose of life,  
22 sickness, medical procedures, suffering, and death. In the  
23 event an unrevoked advance directive, such as a living  
24 will, a declaration for mental health treatment, or a power  
25 of attorney for health care, is no longer valid due to a  
26 technical deficiency or is not applicable to the patient's

1 condition, that document may be used as evidence of a  
2 patient's wishes. The absence of a living will, declaration  
3 for mental health treatment, or power of attorney for  
4 health care shall not give rise to any presumption as to  
5 the patient's preferences regarding any process. If the  
6 adult patient's wishes are unknown and remain unknown after  
7 reasonable efforts to discern them or if the patient is a  
8 minor, the decision shall be made on the basis of the  
9 patient's best interests as determined by the surrogate  
10 decision maker. In determining the patient's best  
11 interests, the surrogate shall weigh the burdens on and  
12 benefits to the patient of the treatment against the  
13 burdens and benefits of that treatment and shall take into  
14 account any other information, including the views of  
15 family and friends, that the surrogate decision maker  
16 believes the patient would have considered if able to act  
17 for herself or himself.

18 (2) Decisions concerning medical treatment on behalf  
19 of a minor or adult patient who lacks decisional capacity,  
20 but without any surrogate decision maker or guardian being  
21 available as determined after reasonable inquiry by the  
22 health care provider, may be made by a court appointed  
23 guardian. A court appointed guardian shall be treated as a  
24 surrogate for the purposes of this Act.

25 (c) For the purposes of this Act, a patient or surrogate  
26 decision maker is presumed to have decisional capacity in the

1 absence of actual notice to the contrary without regard to  
2 advanced age. With respect to a patient, a diagnosis of mental  
3 illness or an intellectual disability, of itself, is not a bar  
4 to a determination of decisional capacity. A determination that  
5 an adult patient lacks decisional capacity shall be made by the  
6 attending physician to a reasonable degree of medical  
7 certainty. The determination shall be in writing in the  
8 patient's medical record and shall set forth the attending  
9 physician's opinion regarding the cause, nature, and duration  
10 of the patient's lack of decisional capacity. Before  
11 implementation of a decision by a surrogate decision maker to  
12 forgo life-sustaining treatment, at least one other qualified  
13 health care practitioner ~~physician~~ must concur in the  
14 determination that an adult patient lacks decisional capacity.  
15 The concurring determination shall be made in writing in the  
16 patient's medical record after personal examination of the  
17 patient. The attending physician shall inform the patient that  
18 it has been determined that the patient lacks decisional  
19 capacity and that a surrogate decision maker will be making  
20 life-sustaining treatment decisions on behalf of the patient.  
21 Moreover, the patient shall be informed of the identity of the  
22 surrogate decision maker and any decisions made by that  
23 surrogate. If the person identified as the surrogate decision  
24 maker is not a court appointed guardian and the patient objects  
25 to the statutory surrogate decision maker or any decision made  
26 by that surrogate decision maker, then the provisions of this

1 Act shall not apply.

2 (d) A surrogate decision maker acting on behalf of the  
3 patient shall express decisions to forgo life-sustaining  
4 treatment to the attending physician and one adult witness who  
5 is at least 18 years of age. This decision and the substance of  
6 any known discussion before making the decision shall be  
7 documented by the attending physician in the patient's medical  
8 record and signed by the witness.

9 (e) The existence of a qualifying condition shall be  
10 documented in writing in the patient's medical record by the  
11 attending physician and shall include its cause and nature, if  
12 known. The written concurrence of another qualified health care  
13 practitioner ~~physician~~ is also required.

14 (f) Once the provisions of this Act are complied with, the  
15 attending physician shall thereafter promptly implement the  
16 decision to forgo life-sustaining treatment on behalf of the  
17 patient unless he or she believes that the surrogate decision  
18 maker is not acting in accordance with his or her  
19 responsibilities under this Act, or is unable to do so for  
20 reasons of conscience or other personal views or beliefs.

21 (g) In the event of a patient's death as determined by a  
22 physician, all life-sustaining treatment and other medical  
23 care is to be terminated, unless the patient is an organ donor,  
24 in which case appropriate organ donation treatment may be  
25 applied or continued temporarily.

26 (Source: P.A. 97-227, eff. 1-1-12.)

1 (755 ILCS 40/65)

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

3 (a) An individual of sound mind and having reached the age  
4 of majority or having obtained the status of an emancipated  
5 person pursuant to the Emancipation of Minors Act may execute a  
6 document (consistent with the Department of Public Health  
7 Uniform POLST form described in Section 2310-600 of the  
8 Department of Public Health Powers and Duties Law of the Civil  
9 Administrative Code of Illinois) directing that resuscitating  
10 efforts shall not be implemented. Such a document may also be  
11 executed by an attending health care practitioner. If more than  
12 one practitioner shares that responsibility, any of the  
13 attending health care practitioners may act under this Section.  
14 Notwithstanding the existence of a do-not-resuscitate (DNR)  
15 order or Department of Public Health Uniform POLST form,  
16 appropriate organ donation treatment may be applied or  
17 continued temporarily in the event of the patient's death, in  
18 accordance with subsection (g) of Section 20 of this Act, if  
19 the patient is an organ donor.

20 (a-5) Execution of a Department of Public Health Uniform  
21 POLST form is voluntary; no person can be required to execute  
22 either form. A person who has executed a Department of Public  
23 Health Uniform POLST form should review the form annually and  
24 when the person's condition changes.

25 (b) Consent to a Department of Public Health Uniform POLST

1 form may be obtained from the individual, or from another  
2 person at the individual's direction, or from the individual's  
3 legal guardian, agent under a power of attorney for health  
4 care, or surrogate decision maker, ~~and witnessed by one~~  
5 ~~individual 18 years of age or older, who attests that the~~  
6 ~~individual, other person, guardian, agent, or surrogate (1) has~~  
7 ~~had an opportunity to read the form; and (2) has signed the~~  
8 ~~form or acknowledged his or her signature or mark on the form~~  
9 ~~in the witness's presence.~~

10 (b-5) As used in this Section: 7

11 "Attending" ~~"attending"~~ health care practitioner" means an  
12 individual who (1) is an Illinois licensed physician, advanced  
13 practice registered nurse, physician assistant, or licensed  
14 resident after completion of one year in a program; (2) is  
15 selected by or assigned to the patient; and (3) has primary  
16 responsibility for treatment and care of the patient.

17 "POLST" means practitioner orders for life-sustaining  
18 treatments.

19 "POLST Paradigm portable medical orders form" means a  
20 medical orders form, including, but not limited to, a Medical  
21 Orders for Scope of Treatment (MOST), Medical Orders for Life  
22 Sustaining Treatment (MOLST), Physician Orders for Scope of  
23 Treatment (POST), or Physician Orders for Life Sustaining  
24 Treatment (POLST) form, that is formally authorized by a state  
25 or territory within the United States.

26 (c) Nothing in this Section shall be construed to affect

1 the ability of an individual to include instructions in an  
2 advance directive, such as a power of attorney for health care.  
3 The uniform form may, but need not, be in the form adopted by  
4 the Department of Public Health pursuant to Section 2310-600 of  
5 the Department of Public Health Powers and Duties Law (20 ILCS  
6 2310/2310-600). Except as otherwise provided by law, emergency  
7 medical service personnel, a health care provider, or a health  
8 care facility shall comply with a Department of Public Health  
9 Uniform POLST form, National POLST form, another state's POLST  
10 Paradigm portable medical orders form, or an out-of-hospital Do  
11 Not Resuscitate (DNR) order sanctioned by a State in the United  
12 States that: (i) has been executed by an adult; and (ii) is  
13 apparent and immediately available.

14 (d) A health care professional or health care provider may  
15 presume, in the absence of knowledge to the contrary, that a  
16 completed Department of Public Health Uniform POLST form,  
17 National POLST form, another state's POLST Paradigm portable  
18 medical orders form, or an out-of-hospital Do Not Resuscitate  
19 (DNR) order sanctioned by a State in the United States executed  
20 by an adult, or a copy of that form or a previous version of the  
21 uniform form, is valid. A health care professional or health  
22 care provider, or an employee of a health care professional or  
23 health care provider, who in good faith complies with a  
24 cardiopulmonary resuscitation (CPR) or life-sustaining  
25 treatment order, Department of Public Health Uniform POLST  
26 form, or a previous version of the uniform form made in



1 accordance with this Act is not, as a result of that  
2 compliance, subject to any criminal or civil liability, except  
3 for willful and wanton misconduct, and may not be found to have  
4 committed an act of unprofessional conduct.

5 (d-5) Before voiding or revoking a Department of Public  
6 Health Uniform POLST form, National POLST form, or another  
7 state's POLST Paradigm portable medical orders form consented  
8 to by the individual, that individual's legally authorized  
9 surrogate decision maker shall first: (1) engage in  
10 consultation with the attending health care practitioner; (2)  
11 consult the patient's advance directive, if available; and (3)  
12 make a good faith effort to act consistently, at all times,  
13 with the patient's known wishes, or, if the patient's wishes  
14 are not known, using substituted judgment as the standard. The  
15 attending physician shall document the reasons for this action  
16 in the patient's medical record.

17 (e) Nothing in this Section or this amendatory Act of the  
18 94th General Assembly or this amendatory Act of the 98th  
19 General Assembly shall be construed to affect the ability of a  
20 physician or other practitioner to make a do-not-resuscitate  
21 order.

22 (Source: P.A. 99-319, eff. 1-1-16; 100-513, eff. 1-1-18.)