

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 356

5 By: Senator Irvin  
6 By: Representative Bentley  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS PHYSICIAN ORDER FOR  
10 LIFE-SUSTAINING TREATMENT ACT; TO PROVIDE FOR THE USE  
11 OF A PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT  
12 FORM; AND FOR OTHER PURPOSES.  
13  
14

## Subtitle

15 TO CREATE THE ARKANSAS PHYSICIAN ORDER  
16 FOR LIFE-SUSTAINING TREATMENT ACT; AND TO  
17 PROVIDE FOR THE USE OF A PHYSICIAN ORDER  
18 FOR LIFE-SUSTAINING TREATMENT FORM.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

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

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

27  
28 20-6-201. Title.

29 This subchapter shall be known and may be cited as the “Arkansas  
30 Physician Order for Life-Sustaining Treatment Act”.  
31

32 20-6-202. Legislative findings.

33 The General Assembly finds that:

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

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



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

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

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

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

15 (A) Is:

16 (i) Signed;

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

19 (iii) A conspicuous, clearly identifiable form; and

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

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

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

28  
 29 20-6-203. Definitions.

30 As used in this subchapter:

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

1 profit organization.

2 (B) "Healthcare facility" includes without limitation:

3 (i) An ambulatory surgical facility;

4 (ii) A home health agency;

5 (iii) A hospice;

6 (iv) A hospital;

7 (v) An infirmary;

8 (vi) A long-term care facility;

9 (vii) An assisted living facility;

10 (viii) A mental health center;

11 (ix) An outpatient facility;

12 (x) A rehabilitation facility; and

13 (xi) A residential treatment facility;

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

18 (A) An emergency medical care provider; and

19 (B) An individual providing home and community-based  
20 services;

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

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

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

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

35  
36 20-6-204. Physician order for life-sustaining treatment form.

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

3           (1) Is signed and dated by:

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

6                   (B) The physician of the patient;

7           (2) Includes:

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

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

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

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

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

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

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

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

27                   (A) Explain:

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

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

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

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

1 individual.

2  
3 20-6-205. Compliance.

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

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

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

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

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

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

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

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

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

36

1           20-6-206. Review and revision.

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

4                   (2) The physician may:

5                           (A) Conduct an evaluation of the patient; and

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

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

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

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

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

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

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

26  
27           20-6-207. Relationship with advance directives.

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

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

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

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

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

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

10  
11           20-6-208. Liability.

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

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

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

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

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

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

32  
33           20-6-209. Voluntary signing.

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

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

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

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

10 (A) Goals of care;

11 (B) Personal values and preferences;

12 (C) Benefits of various treatment options; and

13 (D) Avoidance of unwanted burden.

14 (c) This subchapter does not:

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

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

22  
 23 20-6-210. Criminal penalty.

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

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

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

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

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

36 (ii) Requiring a healthcare provider to have an



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

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

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

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

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

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

18  
19 20-6-211. Applicability – Death – Life insurance.

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

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

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

30 (c) This subchapter does not:

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

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

35  
36 20-6-212. Copy of physician order for life-sustaining treatment form.

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

4

5        SECTION 2. DO NOT CODIFY. Form.

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

9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY		
PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT (POLST)		
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>	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>	
<i>Check One</i>	<b>NOTE ... If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.</b>	
	<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 <u>N</u> atural <u>D</u> eath)	
<b>B</b>	<b>MEDICAL INTERVENTIONS:</b> <i>If patient is found with a pulse and/or is breathing.</i>	
<i>Check One</i>	<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:
SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED		

APPROVED: 03/15/2017