

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE MARCH 25, 2015

**SENATE BILL**

**No. 19**

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**Introduced by Senator Wolk**

**(Coauthors: Senators Hancock, Monning, and Vidak)**

(Coauthors: Assembly Members Bonilla, Dababneh, and Eggman)

December 1, 2014

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An act to add *and repeal* Section 4788 to of the Probate Code, relating to resuscitative measures.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as amended, Wolk. Physician Orders for Life Sustaining Treatment form: ~~statewide registry~~. *electronic registry pilot*.

Existing law defines a request regarding resuscitative measures as a written document, signed by an individual with capacity, or a legally recognized health care decisionmaker, and the individual's physician, directing a health care provider regarding resuscitative measures. Existing law defines a Physician Orders for Life Sustaining Treatment form, which is commonly referred to as a POLST form, and provides that a request regarding resuscitative measures includes a POLST form. Existing law requires that a POLST form and the medical intervention and procedures offered by the form be explained by a health care provider. Existing law distinguishes a request regarding resuscitative measures from an advance health care directive.

This bill would enact the California POLST ~~Registry~~ *eRegistry Pilot* Act. The bill would require the ~~California Health and Human Services Agency~~ *Emergency Medical Services Authority* to establish and operate ~~a statewide registry system;~~ *a pilot project, in consultation with stakeholders, to operate an electronic registry system on a pilot basis,* to be known as the California POLST ~~Registry,~~ *eRegistry Pilot*, for the purpose of collecting POLST ~~forms~~ *information* received from a physician or physician's designee. *The bill would require the authority to coordinate the POLST eRegistry Pilot, which would be operated by health information exchange networks, by an independent contractor, or by a combination thereof.* The bill would require the ~~agency~~ *authority* to implement these provisions only after it determines that sufficient nonstate funds ~~have been received~~ *are available* for development of the ~~registry and~~ *POLST eRegistry Pilot*, any related startup ~~costs.~~ *A costs, and an evaluation of the POLST eRegistry Pilot.* When the *POLST eRegistry Pilot* is operable in the geographic area in which he or she operates or practices, a physician or physician's designee who completes a POLST ~~form~~ *information* would be required to include the POLST ~~form~~ *information* in the patient's ~~medical~~ *official electronic* health record and would be required to submit the ~~form to the registry;~~ *a copy of the form to, or to enter the information into, the POLST eRegistry Pilot,* unless a patient or his or her health care decisionmaker chooses not to participate in the ~~registry.~~ The bill would require the ~~agency~~ *to disseminate the information in the POLST form to an authorized user.* The bill would define "authorized user" to include a ~~health care provider.~~ *POLST eRegistry Pilot.* The bill would require the ~~agency~~ *authority* to adopt ~~rules~~ *guidelines* for, among other things, the operation of the ~~registry,~~ *POLST eRegistry Pilot*, including the means by which POLST ~~forms~~ *information* would be submitted electronically, ~~revised, and revoked,~~ *the capability to check the POLST form for accuracy prior to it being made available, modified, or withdrawn,* the appropriate and timely methods for dissemination of POLST form information, the procedures for verifying the identity of an authorized user, and rules for maintaining the confidentiality of a POLST ~~form~~ *information* received by the ~~registry.~~ *POLST eRegistry Pilot.* The bill would require that any disclosure of POLST ~~form~~ *information* in the ~~registry~~ *POLST eRegistry Pilot* be made in accordance with applicable state and federal privacy and security laws and regulations. The bill would provide immunity from criminal prosecution, civil liability, discipline for unprofessional conduct, and any other sanction for a health

care provider who honors a patient’s request regarding resuscitative measures obtained from the ~~registry~~, *POLST eRegistry Pilot*, as specified. *The bill would require an independent contractor approved by the authority to conduct an evaluation of the POLST eRegistry Pilot. The provisions of the bill would be operative until January 1, 2020.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 California POLST ~~Registry~~ *eRegistry Pilot Act*.

3 SEC. 2. Section 4788 is added to the Probate Code, to read:

4 4788. (a) For purposes of this section:

5 (1) ~~“Agency” means the California Health and Human Services~~  
6 ~~Agency.~~

7 (1) *“Authority” means the Emergency Medical Services*  
8 *Authority.*

9 (2) *“Authorized user” means a person authorized by the agency*  
10 *authority to submit information to, or to receive information from,*  
11 *the POLST ~~registry~~, eRegistry Pilot, including health care providers*  
12 *and their designees.*

13 (3) *“Health care provider” has the meaning provided in Section*  
14 ~~4621.~~ *4781.*

15 (4) ~~“POLST form”~~ *“POLST” means a Physician Orders for*  
16 *Life Sustaining Treatment ~~form~~ that fulfills the ~~requirements~~*  
17 *requirements, in any format, of Section 4780.*

18 (5) ~~“Registry”~~ *“POLST eRegistry Pilot” means the California*  
19 *POLST ~~Registry~~ established by the agency eRegistry Pilot Act*  
20 *established pursuant to this ~~section.~~ section to make electronic, in*  
21 *addition to other modes of submission and transmission, POLST*  
22 *information available to authorized users.*

23 (b) (1) ~~The agency shall establish and operate a statewide~~  
24 ~~registry system, to be known as the California POLST Registry,~~  
25 *The authority shall establish a pilot project, in consultation with*  
26 *stakeholders, to operate an electronic registry system on a pilot*  
27 *basis, to be known as the California POLST eRegistry Pilot, for*  
28 *the purpose of collecting a patient’s POLST ~~form~~ information*  
29 *received from a physician or physician’s designee and*  
30 *disseminating the information ~~in the form~~ to an authorized user.*

1 (2) ~~The agency authority shall implement this section only after~~  
 2 ~~determining that sufficient nonstate funds have been received are~~  
 3 ~~available to allow for the development of the registry and POLST~~  
 4 ~~eRegistry Pilot, any related startup costs, costs, and an evaluation~~  
 5 ~~of the POLST eRegistry Pilot.~~

6 ~~(3) The registry may be operated and maintained by a contractor~~  
 7 ~~of the agency. The agency~~

8 (3) *The authority shall coordinate the POLST eRegistry Pilot,*  
 9 *which shall be operated by, and as a part of, the health information*  
 10 *exchange networks, or by an independent contractor, or by a*  
 11 *combination thereof. The POLST eRegistry Pilot may operate in*  
 12 *a single geographic area or multiple geographic areas and may*  
 13 *test various methods of making POLST information available*  
 14 *electronically. The design of the POLST eRegistry Pilot shall be*  
 15 *sufficiently robust, based on the success of the pilot, to inform the*  
 16 *permanent, statewide operation of a POLST eRegistry.*

17 (4) ~~The authority shall adopt all rules guidelines necessary for~~  
 18 ~~the operation of the registry, which POLST eRegistry Pilot. In~~  
 19 ~~developing these guidelines, the authority shall seek input from~~  
 20 ~~interested parties and hold at least one public meeting. The~~  
 21 ~~adoption, amendment, or repeal of the guidelines authorized by~~  
 22 ~~this paragraph is hereby exempted from the Administrative~~  
 23 ~~Procedure Act (Chapter 3.5 (commencing with Section 11340) of~~  
 24 ~~Part 1 of Division 3 of Title 2 of the Government Code). The~~  
 25 ~~guidelines shall include, but not be limited to, the following:~~

26 (A) ~~The means by which an initial or subsequent POLST form~~  
 27 ~~information may be submitted to, or withdrawn from, the registry,~~  
 28 ~~POLST eRegistry Pilot, which shall include a method for electronic~~  
 29 ~~delivery of this information and the use of legally sufficient~~  
 30 ~~electronic signatures.~~

31 (B) ~~Appropriate and timely methods by which the information~~  
 32 ~~in the registry POLST eRegistry Pilot may be disseminated to an~~  
 33 ~~authorized user.~~

34 (C) ~~Procedures for verifying the identity of an authorized user.~~

35 (D) ~~Procedures to ensure the accuracy of, and to appropriately~~  
 36 ~~protect the confidentiality of, POLST forms information submitted~~  
 37 ~~to the registry. POLST eRegistry Pilot.~~

38 (E) ~~The requirement that a patient, or, when appropriate, his or~~  
 39 ~~her legally recognized health care decisionmaker, receive a~~  
 40 ~~confirmation or a receipt that the patient's POLST form~~

1 *information has been received by the registry. POLST eRegistry*  
2 *Pilot.*

3 ~~(F) The ability of the physician who signed the POLST form,~~  
4 ~~or his or her designee, and of a patient, or, when appropriate, his~~  
5 ~~or her legally recognized health care decisionmaker, to review the~~  
6 ~~information in the patient’s POLST form after it has been entered~~  
7 ~~into the registry, and to confirm that it is accurate, prior to the~~  
8 ~~information being available to an authorized user.~~

9 (G)

10 (F) The ability of a patient, or, when appropriate, his or her  
11 legally recognized health care decisionmaker, ~~to withdraw a~~  
12 ~~POLST form from the registry. with his or her health care~~  
13 ~~provider, to modify or withdraw POLST information on the POLST~~  
14 ~~eRegistry Pilot.~~

15 (6) (A) *Prior to implementation of the POLST eRegistry Pilot,*  
16 *the authority shall submit a detailed plan to the Legislature that*  
17 *explains how the POLST eRegistry Pilot will operate.*

18 (B) *The plan to be submitted pursuant to subparagraph (A) shall*  
19 *be submitted in compliance with Section 9795 of the Government*  
20 *Code.*

21 (c) ~~The operation of the registry POLST eRegistry Pilot, for all~~  
22 ~~users, shall comply with state and federal privacy and security~~  
23 ~~laws and regulations, including, but not limited to, compliance~~  
24 ~~with the Confidentiality of Medical Information Act (Part 2.6~~  
25 ~~(commencing with Section 56) of Division 1 of the Civil Code)~~  
26 ~~and the regulations promulgated pursuant to the federal Health~~  
27 ~~Insurance Portability and Accountability Act of 1996 (Public Law~~  
28 ~~104-191), found at Parts 160 and 164 of Title 45 of the Code of~~  
29 ~~Federal Regulations.~~

30 (d) ~~When the POLST eRegistry Pilot is operable in the~~  
31 ~~geographic area in which he or she practices or operates, a~~  
32 ~~physician or physician’s designee who completes a POLST form~~  
33 ~~POLST information with a patient or his or her legally recognized~~  
34 ~~health care decisionmaker shall include the POLST form~~  
35 ~~information in the patient’s official medical record. The physician~~  
36 ~~or physician’s designee electronic health record and shall submit~~  
37 ~~a copy of the POLST form to the registry to, or enter the POLST~~  
38 ~~information into, the POLST eRegistry Pilot, unless the patient or~~  
39 ~~the legally recognized health care decisionmaker chooses not to~~  
40 ~~participate in the registry. POLST eRegistry Pilot.~~

1 (e) When the POLST eRegistry Pilot is operable in the  
2 geographic area in which they practice or operate, physicians,  
3 hospitals, and health information exchange networks shall make  
4 electronic POLST information available, for use during  
5 emergencies, through the POLST eRegistry Pilot to health care  
6 providers that also practice or operate in a geographic area where  
7 the POLST eRegistry Pilot is operable, but that are outside of their  
8 health information exchange networks.

9 (e)

10 (f) In accordance with Section 4782, a health care provider who  
11 honors a patient's request regarding resuscitative measures obtained  
12 from the ~~registry~~ POLST eRegistry Pilot shall not be subject to  
13 criminal prosecution, civil liability, discipline for unprofessional  
14 conduct, administrative sanction, or any other sanction, if the health  
15 care provider (1) believes in good faith that the action or decision  
16 is consistent with this part, and (2) has no knowledge that the action  
17 or decision would be inconsistent with a health care decision that  
18 the individual signing the request would have made on his or her  
19 own behalf under like circumstances.

20 (g) An independent contractor approved by the authority shall  
21 perform an evaluation of the POLST eRegistry Pilot.

22 (h) This section shall remain in effect only until January 1, 2020,  
23 and as of that date is repealed, unless a later enacted statute, that  
24 is enacted before January 1, 2020, deletes or extends that date.