

## Senate Bill No. 19

### CHAPTER 504

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

[Approved by Governor October 5, 2015. Filed with  
Secretary of State October 5, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 19, Wolk. Physician Orders for Life Sustaining Treatment form: 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 eRegistry Pilot Act. The bill would require the Emergency Medical Services Authority to establish a pilot project, in consultation with stakeholders, to operate an electronic registry system on a pilot basis, to be known as the California POLST eRegistry Pilot, for the purpose of collecting POLST 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 authority to implement these provisions only after it determines that sufficient nonstate funds are available for development of the POLST eRegistry Pilot, any related startup 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 POLST information would be required to include the POLST information in the patient's official medical record and would be required to submit 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 POLST eRegistry Pilot. The bill would require the authority to adopt guidelines for, among other things, the operation of the POLST eRegistry Pilot, including the means by which POLST information would

be submitted electronically, 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 POLST information received by the POLST eRegistry Pilot. The bill would require that any disclosure of POLST information in the 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 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.

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

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

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

4788. (a) For purposes of this section:

(1) "Authority" means the Emergency Medical Services Authority.

(2) "Authorized user" means a person authorized by the authority to submit information to, or to receive information from, the POLST eRegistry Pilot, including health care providers, as defined in Section 4781, and their designees.

(3) "POLST" means a Physician Orders for Life Sustaining Treatment that fulfills the requirements, in any format, of Section 4780.

(4) "POLST eRegistry Pilot" means the California POLST eRegistry Pilot Act established pursuant to this section to make electronic, in addition to other modes of submission and transmission, POLST information available to authorized users.

(b) (1) The authority shall establish a pilot project, in consultation with stakeholders, to operate an electronic registry system on a pilot basis, to be known as the California POLST eRegistry Pilot, for the purpose of collecting a patient's POLST information received from a physician or physician's designee and disseminating the information to an authorized user.

(2) The authority shall implement this section only after determining that sufficient nonstate funds are available to allow for the development of the POLST eRegistry Pilot, any related startup costs, and an evaluation of the POLST eRegistry Pilot.

(3) The authority shall coordinate the POLST eRegistry Pilot, which shall be operated by, and as a part of, the health information exchange networks, or by an independent contractor, or by a combination thereof. The POLST eRegistry Pilot may operate in a single geographic area or multiple geographic areas and may test various methods of making POLST

information available electronically. The design of the POLST eRegistry Pilot shall be sufficiently robust, based on the success of the pilot, to inform the permanent, statewide operation of a POLST eRegistry.

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

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

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

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

(D) Procedures to ensure the accuracy of, and to appropriately protect the confidentiality of, POLST information submitted to the POLST eRegistry Pilot.

(E) The requirement that a patient, or, when appropriate, his or her legally recognized health care decisionmaker, receive a confirmation or a receipt that the patient's POLST information has been received by the POLST eRegistry Pilot.

(F) The ability of a patient, or, when appropriate, his or her legally recognized health care decisionmaker, with his or her health care provider, as defined in Section 4621, to modify or withdraw POLST information on the POLST eRegistry Pilot.

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

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

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

(d) When the POLST eRegistry Pilot is operable in the geographic area in which he or she practices or operates, a physician or physician's designee who completes POLST information with a patient or his or her legally recognized health care decisionmaker shall include the POLST information in the patient's official medical record and shall submit a copy of the POLST

form to, or enter the POLST information into, the POLST eRegistry Pilot, unless the patient or the legally recognized health care decisionmaker chooses not to participate in the POLST eRegistry Pilot.

(e) When the POLST eRegistry Pilot is operable in the geographic area in which they practice or operate, physicians, hospitals, and health information exchange networks shall make electronic POLST information available, for use during emergencies, through the POLST eRegistry Pilot to health care providers, as defined in Section 4781, that also practice or operate in a geographic area where the POLST eRegistry Pilot is operable, but that are outside of their health information exchange networks.

(f) In accordance with Section 4782, a health care provider, as defined in Section 4781, who honors a patient's request regarding resuscitative measures obtained from the POLST eRegistry Pilot shall not be subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, if the health care provider (1) believes in good faith that the action or decision is consistent with this part, and (2) has no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the request would have made on his or her own behalf under like circumstances.

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

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