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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

12/18/2023 7:54 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Add Portable Order to Definition of Physician Order for Life Sustaining Treatment (POLST) Registry

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/22/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

The Oregon Health Authority is updating the definition of POLST in its administrative rule to reflect references to both "physician order" and "portable order." The POLST Registry was adopted in 2009 under ORS 127.666 and requires the collection and dissemination of information relating to life-sustaining treatment orders to help ensure that an individual's medical treatment preferences when close to end-of-life are followed. The Oregon Health Authority (OHA) has contracted with the Oregon Health and Science University (OHSU) to maintain the POLST registry. The OHSU, Oregon POLST Program updated the term "Physician Order for Life Sustaining Treatment" in 2018 to "Portable Orders for Life Sustaining Treatment." The purpose of this update was to recognize that orders for life-sustaining treatment may be authorized not only by physicians, but nurse practitioners and physician assistants as well.

Furthermore, ORS 127.529 (2021 Oregon Laws Chapter 328, Section 2) prescribes the form of an advance directive. The advance directive adopted in statute references the term "Portable Orders for Life Sustaining Treatment (POLST)."

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- ORS chapter 127: https://www.oregonlegislature.gov/bills_laws/ors/ors127.html
- Guidance for Oregon's Health Care Professionals: <https://oregonpolst.org/>
- Oregon POLST form: <https://oregonpolst.org/health-professionals/>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

ORS 127.663, which passed in 2009, allowed not only physicians, but nurse practitioners and physician assistants to assist patients in the completion of orders for life sustaining treatment and in 2017 the law was further revised to include naturopathic physicians. Expanding the types of providers beyond physicians likely increases the numbers of providers that are persons of color creating a positive impact on Oregon communities of color. The OHA anticipates

that its change to the definition of POLST to include a reference to "portable order" will have a positive impact on racial equity in Oregon. Completion of a POLST is not just a form – it's a conversation between a patient with advanced illness and their health care provider which encourages shared, informed medical decision-making leading to a set of portable orders that respects the patient's goals for care including use of CPR or other medical interventions. Translated versions of the POLST form as well as fact sheets are available in Spanish and 13 other languages. Translated versions are offered to improve POLST literacy during conversations with health care professionals, their patients and health surrogates.

The OHA has contracted with the OHSU to operate the POLST registry pursuant to ORS 127.666, and ORS 127.669 prescribe that while the OHA is required to have a POLST registry, it is not required to:

- Prescribe the content of the POLST form;
- Disseminate the POLST form to be used;
- Educate the public about POLST; or
- Train health care providers about POLST.

FISCAL AND ECONOMIC IMPACT:

The OHA does not anticipate that updating the definition to include the term 'portable order' will have any fiscal or economic impact to health care facilities or health care professionals that discuss end-of-life, medical decision-making with their patients and those authorized to sign a POLST form. Forms were updated in 2018 and continue to be available on the web at <https://oregonpolst.org>. Amending the definition is aligning with current goals of the Oregon POLST program and the POLST Registry.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There are no anticipated costs to state agencies, units of local governments or the public as this change in incorporating a term that is already used in the health care community.

(2)(a) The OHA is unable to identify with any accuracy how many health care professionals are operating or working for a small business that complete the POLST process with a patient and who are authorized to sign the POLST form. The change in definition by adding reference to the term 'portable order' is not anticipated to have any impact on small businesses.

(b) No additional reporting, recordkeeping or other administrative activities are anticipated with this change in definition. The definition has been amended to accept both the term 'portable order' or 'physician order.'

(c) No equipment, supplies, labor and increased administration is anticipated with this change in definition. The definition has been amended to accept both the term 'portable order' or 'physician order.'

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

No small businesses were involved in the proposed amendments as the change in term has already been incorporated into forms and is widely recognized in the health care community.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Adding reference to 'Portable order' has already been incorporated into existing forms and used in the health care community.

AMEND: 333-270-0030

RULE SUMMARY: Amend OAR 333-270-0030 – Modifies the definition of POLST to include reference to 'portable order' to align with language used both on the POLST form as well as the advance directive form under ORS 127.529.

CHANGES TO RULE:

333-270-0030

Definitions ¶¶

As used in OAR chapter 333, division 270:¶¶

- (1) "Ambulance service" has the meaning given that term in ORS 682.025.¶¶
- (2) "Authority" means the Oregon Health Authority.¶¶
- (3) "Authorized user" means a person authorized by the Authority to provide information to or receive information from the Registry.¶¶
- (4) "Hospice program" has the meaning given that term in ORS 443.850.¶¶
- (5) "Hospital" has the meaning given that term in ORS 442.015.¶¶
- (6) "Life-sustaining treatment" means any medical procedure, pharmaceutical, medical device or medical intervention that maintains life by sustaining, restoring or supplanting a vital function. "Life-sustaining treatment" does not include routine care necessary to sustain patient cleanliness and comfort.¶¶
- (7) "Long term care facility" means nursing facilities, assisted living and residential care facilities and adult foster homes licensed under OAR chapter 411, divisions 85, 54, and 50, or facilities federally funded to care for veterans.¶¶
- (8) "Naturopathic physician" has the meaning given that term in ORS 685.010.¶¶
- (9) "Non-transporting emergency medical services (EMS) agency" means any individual, partnership, corporation, association, governmental agency or unit or other entity that uses licensed EMS providers to provide emergency care or non-emergency care in the out-of-hospital environment to persons who are ill or injured, but does not transport patients to a hospital.¶¶
- (10) "Nurse practitioner" has the meaning given that term in ORS 678.010; and means a nurse practitioner permitted to practice in a federal facility pursuant to ORS 678.031(1).¶¶
- (11) "Patient" means the person who is the subject of the POLST form.¶¶
- (12) "Personal representative" has the meaning given that term in ORS 192.556.¶¶
- (13) "Physician" has the meaning given that term in ORS 677.010.¶¶
- (14) "Physician assistant" has the meaning given that term in ORS 677.495.¶¶
- (15) "POLST" means a Physician Order or Portable Order for Life-Sustaining Treatment signed by a physician, nurse practitioner, physician assistant or naturopathic physician.¶¶
- (16) "POLST form" means a form, prescribed by the Oregon Health & Science University that contains a POLST, and any revision of the POLST.¶¶
- (17) "Registry" means the Oregon POLST Registry authorized by ORS 127.666.¶¶
- (18) "Revocation" means the cancellation of a POLST form in any written form.¶¶
- (19) "Signed" means a physical signature, electronic signature or verbal order documented per standard medical practice.

Statutory/Other Authority: ORS 127.666

Statutes/Other Implemented: ORS 127.663-127.684