

**2008 (through August)**  
**SUMMARY OF HEALTH CARE DECISION STATUTES ENACTED IN 2008**

In 2008, states adopted the following legislation creating, modifying and amending rights and procedures affecting health care decision-making. The statutes affect advanced directives, default surrogate laws, Physicians Orders for Life-Sustaining Treatment (POLST), and registries.

California and New York adopted versions of POLST statewide in 2008, joining seven other states authorizing versions of POLST (ID, MD, NC, OR, UT, WA, WV). Virginia became the 12th state to authorize a statewide registry for advance directives.

Each piece of legislation is coded to indicate the potential areas of health care decision making affected by the statute. The coding system is:

AD = Advanced Directives

DNR = Do Not Resuscitate Orders

DS = Default Surrogate

POLST = Physician's Orders for Life Sustaining Treatment, or its variants (e.g. MOLST, POST, and MOST).

Registry = State electronic registry for Advance Directives or POLST

<b>Health Care Decision Statutes</b>
--------------------------------------

***Arizona*** – DS

Arizona Legis. Serv. Ch. 281 (H.B. 2823) , known as “Jesse’s Law,” amends the state’s default surrogate law to requiring the court in which a petition has been filed to review the decision of a surrogate to enter a temporary order directing the surrogate not to make a decisions to withdraw artificial administration of food or fluids. The bill is named after Jesse Ramirez who was seriously injured in an automobile accident in May 2007. Ten days after the accident, food, water and antibiotics were withdrawn and he was transferred to a hospice. Attorneys from the Alliance Defense Fund filed a lawsuit which prompted the restoration of treatment to the Gulf War veteran and his admission to a rehabilitation center. He was able to walk out of that facility in October 2007 and continues to recover at home.

***California*** – POLST

2008 Cal. Legis. Serv. Ch. 266 (A.B. 3000), approved August 4, 2008, amends Cal. Probate Code §§4780 – 4785, to authorize the use of Physicians’ Order for Life-Sustaining Treatment (POLST). The law:

- Redefines a request to forgo resuscitative measures as a "request regarding resuscitative measures," which would be a written document, signed by an individual with capacity, or a legally recognized health care decisionmaker, and that individual's physician, that directs a health care provider regarding resuscitative measures. The bill would include within this definition a Physician Orders for Life Sustaining Treatment (POLST) form.

- Requires health care providers to treat an individual in accordance with a POLST form, except as specified, and would permit physicians to conduct an evaluation of the individual and issue a new order consistent with the most current information available about the individual's health status and goals of care.
- Requires the legally recognized health care decisionmaker of an individual without capacity to consult with the individual's treating physician prior to making a request to modify that individual's POLST form, and would provide that an individual with capacity may at any time request alternative treatment to that treatment that was ordered on the form.
- Provides that if the orders in an individual's request regarding resuscitative measures directly conflict with his or her individual health care instruction, the most recent order or instruction is effective.

***Iowa -- AD***

2008 Ia. Legis. Serv. S.F. 473 (WEST), approved April 11, 2008, enacts the “Final Disposition Act,” Iowa Code Ann. §§144C.1 to C.11, that authorizes individuals to designate by a declaration, contained in or attached to a durable power of attorney for health care, a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains and the ceremonies planned after the declarant's death. Iowa Code §144.56 is also amended to include consent to an autopsy within the designee’s authority.

***Maryland -- AD***

2008 Maryland Laws Ch. 79 (H.B. 510), approved April 8, 2008, and effective October 1, 2008, amends Md. Health-Gen. Code Ann. §§5-601 to 5-604 to provide that for purposes of the Health Care Decisions Act, an electronic signature has the same effect as a manual signature, if the electronic signature meets certain requirements. This enables individuals to execute as well as revoke electronic advance directives. An electronic signature means “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” It is valid if it:

- (1) Uses an algorithm approved by the National Institute of Standards and Technology;
- (2) Is unique to the individual using it;
- (3) Is capable of verification;
- (4) Is under the sole control of the individual using it;
- (5) Is linked to data in such a manner that if the data are changed, the electronic signature is invalidated;
- (6) Persists with the document and not by association in separate files; and
- (7) Is bound to a digital certificate.

***Maryland - DS***

2008 Maryland Laws Ch. 590 (S.B. 566), approved May 22, 2008, and effective July 1, 2008, amends several code provisions to give domestic partners parity with spouses with respect to health care decisions authority, access to the patient and the patient’s health care information, and disposition of a body after death. The Act amends Md. Health-Gen. Code §6-101 to define “domestic partnership” as a relationship between two individuals who:

- (1) Are at least 18 years old;

- (2) Are not related to each other by blood or marriage within four degrees of consanguinity under civil law rule;
- (3) Are not married or in a civil union or domestic partnership with another individual; and
- (4) Agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

The Act provides several possible items of proof to substantiate this relationship

**Missouri – AD**

2008 Mo. Legis. Serv. S.B. 1139 (VERNON'S), approved July 10, 2008, and effective 90 days thereafter, amends code provisions regulating the duties of coroners and medical examiners and adopts the Revised Uniform Anatomical Gifts Act (RUAGA). States adopting RUAGA authorize agents under advance health care directives to make anatomical gifts on behalf of the principal unless otherwise limited. The Missouri law is listed in this summary (as well as in the list of states adopting the RUAGA) because it also provides that an agent under a durable power of attorney may be granted the “right of sepulcher” in the document, meaning the right to choose and control the burial, cremation, or other final disposition of the body.

**New York -- DS**

New York 2008 Sess. Law News of N.Y. Ch. 262 (S. 7752) (McKINNEY'S), approved July 7, 2008, and effective January 3, 2009, amends the surrogate’s court procedures act at N.Y. Surr. Ct. Pro §1750-b to authorize the use of a surrogate’s court decision-making committee to make health care decisions on behalf of a mentally retarded person for whom no guardian has been appointed pursuant to this article or for whom there is no qualified family member available to make such a decision. It also provides for non-binding mediation in case of disputes over withholding or withdrawal of life-sustaining procedures.

**New York -- POLST**

2008 Sess. Law News of N.Y. Ch. 197 (A. 10764) (McKINNEY'S), approved and effective July 7, 2008, amends N.Y. Pub. Health Law §2977 to authorize statewide use of the NY MOLST protocol and form (Medical Orders for Life-Sustaining Treatment) as an alternative to the statutory DNR form. Previously, MOST had been used only in a demonstration program in two counties.

**Utah -- AD**

2008 Utah Laws Ch. 107 (S.B. 161), approved March 14, 2008, and effective May 5, 2008, amends the state’s new Advance Health Care Directive Act (adopted in 2007) to:

- Add definitions of additional terms, Utah Code Ann. §75-2a-103.
- Describe the decision-making standard to be used by any surrogate in making a health care decisions, §75-2a-103(21).
- Coins the name “life with dignity order” instead of the term “physician order for life sustaining treatment” and establish procedures and requirements relating to its use, §75-2a-103(17) and -106.
- Clarify certain provisions related to the priority of default surrogates and simplify the process for disqualifying a default surrogate, §75-2a-108.
- Clarify when a health care directive or the authority of a default surrogate is effective,

§75-2a-109.

- Provide additional criteria for who may witness an oral revocation of a health care directive, §75-2a-114.
- Modify the optional form for an advance health care directive, , §75-2a-117.

***Vermont*** – AD and DS

2008 Vermont Laws No. 186 (H. 617), approved June 5, 2008, amends the state’s guardianship law in several respects. With respect to health decisions, the law:

- Defines capacity to make a medical decision and informed consent, Vt. Stat. Ann. tit. 14, §3060.
- Provides that when the person under guardianship has an advance directive, the authority of the agent and the instructions contained in the directive shall remain in effect unless the probate court expressly orders otherwise, §3069.
- Provides detailed guidelines for medical decision-making by guardians, §3075.

***Virginia*** – AD registry

2008 Virginia Laws Ch. 301 (H.B. 805), approved March 4, 2008, and effective July 1, 2008, amends Va. Code § 54.1-2983 to -2996 to establish a registry for advance health care directives, to be operated and regulated by the Health Department. Advance Directives and revocations of advance directives must be notarized before being submitted to the directory. However, an otherwise effective revocation is still effective even if not submitted to the registry. [Same as 2008 Virginia Laws Ch. 696 (S.B. 290)].

<b>States Adopting the Revised Uniform Anatomical Gifts Act (2006) in 2008</b>
--

- 2008 Alabama Laws Act 2008-453 (H.B. 476)
- 2008 District of Columbia Laws 17-145 (Act 17-311)
- 2008 Georgia Laws Act 545 (S.B. 405)
- 2008 Hawaii Laws Act 122 (H.B. 2139)
- 2008 Me. Legis. Serv. Ch. 601 (S.P. 528) (L.D. 1505) (WEST)
- 2008 Mich. Legis. Serv. P.A. 39 (H.B. 4940) (WEST)
- 2008 Mo. Legis. Serv. S.B. 1139 (VERNON'S)
- 2008 Miss. Laws Ch. 561 (H.B. 1075)
- 2008 NJ Sess. Law Serv. Ch. 50 (SENATE 754) (WEST)
- 2008 West Virginia Laws Ch. 191 (H.B. 4304)

<b>Other Notable Changes</b>
------------------------------

***Colorado*** – Authority of licensed advance practice nurses.

2008 Colo. Legis. Serv. Ch. 51 (H.B. 08-1061), approved March 20, 2008, and effective January 1, 2009, authorizes licensed advance practice nurses to undertake several physician functions,

including authorization of treatments, prescription authority within limits, and certification of a patient's decisional incapacity for purposes of giving effect to their advance directive.

***Delaware*** – HIPAA clarification of “personal representative.”

2008 Delaware Laws Ch. 307 (H.B. 381), approved July 3, 2008, amends Del. Code Ann. Tit. 16, §2509 to affirm that health care agents, surrogates, and guardians are “personal representatives” under HIPAA for purposes of access to confidential patient information.

***Maryland*** – Authority of certified nurse practitioners

2008 Maryland Laws Ch. 232 (S.B. 889), approved April 24, 2008, and effective October 1, 2008, amends several sections of the Code to authorize certified nurse practitioners to undertake several physician functions under certain conditions, including among others, completing a certificate of death (Md. Health-Gen. Code §4-212); issuing an EMS do-not-resuscitate order (Md. Health-Gen. Code §5-601 and -608); and receiving and documenting an oral advance directive from a patient (§5-602). [Same as 2008 Maryland Laws Ch. 233 (H.B. 1140)].

***Vermont*** – Palliative Care Study Committee

2008 Vermont Laws No. 166 (S. 281), approved May 22, 2008, creates a legislative study committee on palliative care, end-of-life care, and pain management. The study committee shall discuss and make recommendations on legislative and non-legislative solutions for improving palliative care, end-of-life care, management of chronic pain, and access to these services for children. The study committee's report with findings and recommendations is due no later than January 15, 2009.