

**PUBLIC HEALTH CODE (EXCERPT)**

**Act 368 of 1978**

**PART 56B**

**PHYSICIAN ORDERS FOR SCOPE OF TREATMENT**

**333.5671 Words and phrases; applicability of definitions and principles of construction.**

Sec. 5671. (1) As used in this part, the words and phrases defined in sections 5672 to 5674 have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5672 Definitions: A to C.**

Sec. 5672. (1) "Actual notice" includes the physical presentation of a POST form or a revoked POST form, or the electronic transmission of a POST form or a revoked POST form if the recipient of the form sends an electronic confirmation to the patient, patient representative, or attending health professional, who sent the electronic transmission, indicating that the POST form or revoked POST form has been received. Actual notice also includes knowledge of a patient's intent to revoke the POST form by a health professional who is treating the patient, by an attending health professional, or by emergency medical services personnel.

(2) "Adult foster care facility" means that term as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(3) "Advanced illness" means a medical or surgical condition with significant functional impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation.

(4) "Attending health professional" means a physician, physician's assistant, or certified nurse practitioner, who has primary responsibility for the treatment of a patient and is authorized to issue the medical orders on a POST form.

(5) "Certified nurse practitioner" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification as a nurse practitioner by the Michigan board of nursing under section 17210.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5673 Definitions; E to I.**

Sec. 5673. (1) "Emergency medical protocol" means a protocol as that term is defined in section 20908.

(2) "Emergency medical services personnel" means that term as defined in section 20904, but does not include an emergency medical services instructor-coordinator.

(3) "Guardian" means a person with the powers and duties to make medical treatment decisions on behalf of a patient to the extent granted by court order under section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.

(4) "Health facility" means a health facility or agency licensed under article 17. Health facility does not include a hospital unless specifically provided.

(5) "Health professional" means an individual licensed, registered, or otherwise authorized to engage in the practice of a health profession under article 15.

(6) "Hospital" means that term as defined in section 20106.

(7) "Information form" means the information form described in section 5676.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5674 Definitions; M to W.**

Sec. 5674. (1) "Medical control authority" means that term as defined in section 20906.

(2) "Patient" means an adult with an advanced illness or means an adult with another medical condition that, despite available curative therapies or modulation, compromises his or her health so as to make death within 1 year foreseeable though not a specific or predicted prognosis.

(3) "Patient advocate" means an individual presently authorized to make medical treatment decisions on behalf of a patient under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386,

MCL 700.5506 to 700.5515.

(4) "Patient representative" means a patient advocate or a guardian.

(5) "Person" means that term as defined in section 1106 or a governmental entity.

(6) "Physician" means that term as defined in section 17001 or 17501.

(7) "Physician orders for scope of treatment form" or "POST form" means the standardized POST form described in section 5676. A POST form is not an advance health care directive.

(8) "Physician's assistant" means an individual licensed as a physician's assistant under part 170 or part 175.

(9) "Residential setting" means a setting outside of a hospital, including, but not limited to, an adult foster care facility.

(10) "Ward" means that term as defined in section 1108 of the estates and protected individuals code, 1998 PA 386, MCL 700.1108.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

### **333.5675 Advisory committee; appointment; membership; recommendations; abolishment; "committee" defined.**

Sec. 5675. (1) Not later than 90 days after the effective date of the amendatory act that added this part, the director shall appoint members of and convene an ad hoc advisory committee. The committee must consist of 11 members appointed as follows:

(a) Four members of the committee must include 1 individual representing each of the following:

(i) A health facility or an adult foster care facility, or an organization or professional association representing health facilities or adult foster care facilities.

(ii) A palliative care provider.

(iii) Emergency medical services personnel.

(iv) A medical control authority.

(b) Seven members of the committee may include, but are not limited to, individuals representing the following:

(i) A health professional.

(ii) A patient advocacy organization.

(2) Within 180 days after the committee is convened, the committee shall make recommendations to the department on all of the following:

(a) Subject to section 5676, the creation of a standardized POST form.

(b) Medical orders to be included on the POST form that relate to emergency and nonemergency situations.

(c) Subject to section 5676, the creation of an information form.

(d) The procedures for the use of a POST form within a residential setting.

(e) The circumstances under which a photocopy, facsimile, or digital image of a completed POST form is considered valid for purposes of a health professional, a health facility, an adult care facility, or emergency medical services personnel complying with the orders for medical treatment on the POST form.

(3) After the department receives the recommendations from the committee under subsection (2), the committee is abolished.

(4) As used in this section, "committee" means the ad hoc advisory committee appointed under subsection (1).

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

### **333.5676 Duties of department; publication of information or materials regarding POST form.**

Sec. 5676. (1) The department, after considering the recommendations of the advisory committee under section 5675, shall do all of the following:

(a) Develop a standardized POST form that has a distinct format and is printed on a specific stock and color of paper to make the form easily identifiable. The department shall include on the POST form at least all of the following:

(i) A space for the printed name of the patient, the patient's age, and the patient's diagnosis or medical condition that warrants the medical orders on the POST form.

(ii) A space for the signature of the patient or the patient representative who consents to the medical orders indicated on the POST form and a space to indicate the date the patient or the patient representative signed the form.

(iii) A space for the printed name and signature of the attending health professional who issues the medical orders on the POST form.

(iv) Sections containing medical orders that direct specific types or levels of treatment to be provided in a setting outside of a hospital to which a patient or a patient representative may provide consent.

(v) A space for the date and the initials of either the attending health professional and the patient or the attending health professional and the patient representative. The POST form must also include a statement that, by dating and initialing the POST form, the individuals described in this subparagraph confirm that the medical orders on the form remain in effect.

(vi) A statement that, within a time frame established by the department by rule, the POST form must be reviewed, dated, and initialed by either the attending health professional and the patient or the attending health professional and the patient representative, if any of the following have occurred:

(A) One year has expired since the patient and the attending health professional or the patient representative and the attending health professional have signed or initialed the POST form.

(B) There has been an unexpected change in the patient's medical condition.

(C) The patient is transferred from 1 care setting or care level to another care setting or care level.

(D) The patient's treatment preferences change.

(E) The patient's attending health professional changes.

(vii) A statement that a patient or a patient representative has the option of executing a POST form and that consenting to the medical orders on the POST form is voluntary.

(viii) A statement that the POST form is void if any information described in subparagraph (i), (ii), or (iii) is not provided on the form or if a requirement described in subparagraph (vi) is not met.

(ix) A statement that if a section on the POST form regarding a specific type or level of treatment is left blank, the blank section will be interpreted as authorizing full treatment for the patient for that treatment, but a blank section on the POST form regarding a specific type or level of treatment does not invalidate the entire form or other medical orders on the form.

(x) A space for the printed name and contact information of the patient representative, if applicable.

(b) Develop an information form. The department shall include on the information form at least all of the following:

(i) An introductory statement in substantially the following form:

"The POST form is intended to be used as part of an advance care planning process. The POST form is not intended to be used as a stand-alone advance health care directive that unilaterally expresses the patient's medical treatment wishes. The POST form contains medical orders that are jointly agreed to by the patient and the attending health professional or the patient representative and the attending health professional. The medical orders on the POST form reflect both the patient's expressed wishes or best interests and the attending health professional's medical advice or recommendation. An advance care planning process that uses the POST form must recommend that the patient consider designating an individual to serve as the patient's patient advocate to make future medical decisions on behalf of the patient if the patient becomes unable to do so."

(ii) An explanation of who is considered a patient with an advanced illness for purposes of executing a POST form.

(iii) An explanation of how a patient advocate is designated under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(iv) A statement indicating that, by signing the information form, the patient or the patient representative acknowledges that he or she had the opportunity to review the information form before executing a POST form.

(v) A space for the signature of the patient or the patient representative and a space to indicate the date the patient or the patient representative reviewed the information form.

(c) Promulgate rules to implement this part. The rules must include, but are not limited to, the procedures for the use of a POST form within a residential setting and the circumstances under which a photocopy, facsimile, or digital image of a completed POST form will be considered valid for purposes of a health professional, a health facility, an adult foster care facility, or emergency medical services personnel complying with the medical orders on the form.

(2) The department may publish information or materials regarding the POST form on the department's website.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

### **333.5677 POST form; individuals consenting to medical orders; consent by patient**

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**representative; information to be provided by attending health professional; signature; copy of form as part of medical record; possession of original form.**

Sec. 5677. (1) The following individuals may consent to the medical orders contained on a POST form:

(a) If a patient is capable of participating in the medical treatment decisions included on the POST form, the patient.

(b) Subject to subsection (2), if a patient is not capable of participating in the medical treatment decisions included on the POST form, either of the following:

(i) A patient representative who is a patient advocate.

(ii) A patient representative who is a guardian after complying with section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.

(2) If a patient representative is consenting to the medical orders contained on the POST form, the patient representative shall comply with the patient's expressed wishes. If the patient's wishes are unknown, the patient representative shall consent to the medical orders in the following manner:

(a) If the patient representative is a guardian, in a manner that is consistent with the patient's best interest.

(b) If the patient representative is a patient advocate, subject to section 5509(1)(e) of the estates and protected individuals code, 1998 PA 386, MCL 700.5509.

(3) Before a patient and an attending health professional or a patient representative and an attending health professional sign a POST form, the attending health professional shall provide the patient or the patient representative with the information form and, if the patient does not have a patient representative, the attending health professional shall recommend to the patient that the patient consider designating an individual to serve as the patient's patient advocate to make future medical decisions on behalf of the patient if the patient becomes unable to do so. The attending health professional shall also consult with the patient or patient representative and explain to the patient or patient representative the nature and content of the POST form and the medical implications of the medical orders contained on the POST form. The patient or patient representative shall sign the information form at the time he or she signs the POST form under this subsection. The attending health professional who signs the POST form shall place the information form that is signed by the patient or the patient representative in the patient's permanent medical record. The attending health professional who signs the POST form shall also obtain a copy or duplicate of the POST form and make that copy or duplicate part of the patient's permanent medical record. The patient or the patient representative shall maintain possession of the original POST form.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

### **333.5678 Revocation of POST form.**

Sec. 5678. (1) The following individuals may revoke a POST form under the following circumstances:

(a) A patient may revoke the POST form at any time and in any manner that the patient is able to communicate his or her intent to revoke the POST form. If the patient's revocation is not in writing, an individual who witnesses the patient's expressed intent to revoke the POST form shall describe in writing the circumstances of the revocation, sign the writing, and provide the writing to the individuals described in subsection (2), as applicable.

(b) The patient representative may revoke the POST form at any time the patient representative considers revoking the POST form to be consistent with the patient's wishes or, if the patient's wishes are unknown, in the patient's best interest.

(c) If a change in the patient's medical condition makes the medical orders on the POST form contrary to generally accepted health care standards, the attending health professional may revoke the POST form. If an attending health professional revokes a POST form under this subdivision, he or she shall take reasonable actions to notify the patient or the patient representative of the revocation and the change in the patient's medical condition that warranted the revocation of the POST form.

(2) Upon revocation of the POST form, the patient, patient representative, or attending health professional shall write "revoked" over the signature of the patient or patient representative, as applicable, and over the signature of the attending health professional, on the POST form that is contained in the patient's permanent medical record and on the original POST form if the original POST form is available. If a patient or patient representative revokes the POST form, the patient or patient representative shall take reasonable actions to notify 1 or more of the following of the revocation:

(a) The attending health professional.

(b) A health professional who is treating the patient.

(c) The health facility that is directly responsible for the medical treatment or care and custody of the patient.

(d) The patient.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5679 POST form; use as communication tool; treatment by emergency medical services personnel; exceptions; noncompliance by health professional or health facility.**

Sec. 5679. (1) In an acute care setting, a health professional who is treating the patient may use a completed POST form as a communication tool.

(2) Emergency medical services personnel shall provide or withhold treatment to a patient according to the orders on a POST form unless any of the following apply:

(a) The emergency medical services being provided by the emergency medical services personnel are necessitated by an injury or medical condition that is unrelated to the diagnosis or medical condition that is indicated on the patient's POST form.

(b) The orders on the POST form request medical treatment that is contrary to generally accepted health care standards or emergency medical protocols.

(c) The POST form contains a medical order regarding the initiation of resuscitation if the patient suffers cessation of both spontaneous respiration and circulation, and the emergency medical services personnel has actual notice of a do-not-resuscitate order that was executed under the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, after the POST form was validly executed. As used in this subdivision, "actual notice" means that term as defined in section 2 of the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1052.

(d) The POST form has been revoked in the manner provided in this part and the emergency medical services personnel has actual notice of the revocation.

(3) If a health professional or health facility is unwilling to comply with the medical orders on a validly executed POST form because of a policy, religious belief, or moral conviction, the health professional or health facility shall take all reasonable steps to refer or transfer the patient to another health professional or health facility. If an adult foster care facility is unwilling to comply with the medical orders on a validly executed POST form for the reasons described in this subsection, the adult foster care facility shall take all reasonable steps to refer or transfer the patient to another adult foster care facility as provided in section 26c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.726c.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5680 Treatment or services not subject to criminal prosecution, civil liability, or professional disciplinary action.**

Sec. 5680. A person is not subject to criminal prosecution, civil liability, or professional disciplinary action for any of the following:

(a) Providing medical treatment that is contrary to the medical orders indicated on a POST form if the person did not have actual notice of the POST form.

(b) Providing medical treatment that is consistent with the medical orders indicated on a POST form if the person did not have actual notice that the POST form was revoked.

(c) Providing emergency medical services consistent with generally accepted health care standards or emergency medical protocols as provided in section 5679, regardless of the medical orders indicated on the POST form.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5681 Valid execution of POST form; presumption.**

Sec. 5681. (1) If a POST form is validly executed after a patient advocate designation that contains written directives regarding medical treatment, or another advance health care directive that contains written directives regarding medical treatment, the medical orders indicated on the POST form are presumed to express the patient's current wishes.

(2) If a POST form is validly executed after a do-not-resuscitate order is executed under the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, the medical orders indicated on the POST form are presumed to express the patient's current wishes.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368



**333.5682 Belief that execution of POST form contrary to wishes or best interests; petition; review; injunction.**

Sec. 5682. If an individual has reason to believe that a POST form has been executed contrary to the wishes of the patient or, if the patient is a ward, contrary to the wishes or best interests of the ward, the individual may petition the probate court to have the POST form and the conditions of its execution reviewed. If the probate court finds that the POST form has been executed contrary to the wishes of the patient or, if the patient is a ward, contrary to the wishes or best interests of the ward, the probate court shall issue an injunction voiding the effectiveness of the POST form and prohibiting compliance with the POST form.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5683 Life or health insurer; prohibited conduct.**

Sec. 5683. (1) A life insurer shall not do any of the following because of the execution or implementation of a POST form:

- (a) Refuse to provide or continue coverage to the patient.
- (b) Charge the patient a higher premium.
- (c) Offer a patient different policy terms because the patient has executed a POST form.
- (d) Consider the terms of an existing policy of life insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(2) A health insurer shall not do any of the following:

- (a) Require the execution of a POST form to maintain or be eligible for coverage.
- (b) Charge a different premium based on whether a patient or patient representative has executed a POST form.
- (c) Consider the terms of an existing policy to have been breached or modified if the patient or patient representative has executed a POST form.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5684 Provisions as cumulative; legal right not impaired or superseded; presumption.**

Sec. 5684. (1) The provisions of this part are cumulative and do not impair or supersede a legal right that a patient or patient representative may have to consent to or refuse medical treatment for himself or herself or on behalf of another.

(2) This part does not create a presumption that a patient who has executed a POST form intends to consent to or refuse medical treatment that is not addressed in the medical orders on the POST form.

(3) This part does not create a presumption that a patient or patient representative who has not executed a POST form intends to consent to or refuse any type of medical treatment.

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368

**333.5685 Advisory committee to be appointed 3 years after effective date of amendatory act; meeting; recommendations; report; abolishment; "committee" defined.**

Sec. 5685. (1) By 3 years after the effective date of the amendatory act that added this part, the director shall appoint an ad hoc advisory committee consisting of 11 members in the same manner as the ad hoc advisory committee is required to be appointed under section 5675.

(2) The director shall call the first meeting of the committee.

(3) Within 90 days after the first meeting of the committee is convened, the committee shall submit a report to the department that contains recommendations on all of the following:

- (a) Any changes to the rules promulgated under section 5676 that the committee considers necessary or appropriate.
- (b) Any changes to the POST form or the information form that the committee considers necessary or appropriate.
- (c) Any legislative changes to this part that the committee considers necessary or appropriate.
- (4) After the department receives the recommendations from the committee under subsection (3), the committee is abolished.
- (5) As used in this section, "committee" means the ad hoc advisory committee appointed under subsection (1).

**History:** Add. 2017, Act 154, Eff. Feb. 6, 2018.

**Popular name:** Act 368