



The League of Women Voters of Delaware

POSITION STATEMENT: We support DE Medical Orders for Scope of Treatment

The League of Women Voters of Delaware supports DMOST (Delaware Medical Orders for Scope of Treatment) legislation. Our support is based on the final section of the LWVUS healthcare position: "Allocation of Resources to Individuals: ...Limited resources should be allocated based on the following criteria considered together: the urgency of the medical condition, the life expectancy of the patient, the expected outcome of the treatment, the cost of the procedure, the duration of care, the quality of life of the patient after treatment, **and the wishes of the patient and the family.** (Bolding added.)

Advance healthcare directives (or living wills), which many people have, are useful but not legally binding documents. Additionally they are not always available when needed *or, rather frequently, are ignored by families whose members disagree with the patient's stated wishes for end of life care.* A medical order is just that—an order which is to be carried out wherever the patient happens to be.

We believe DMOST is a logical, much needed, extension of a patient's right to consent to or refuse medical treatment.

The law and medical ethics require that patients be able to make their own decisions about the care they receive at the end of life. Today, that is not happening in Delaware because we have no process to ensure that end of life preferences are understood, recorded, and followed by health care providers in various settings (nursing home, hospital, hospice, ambulance, home). DMOST would solve that problem.

Across the county, programs like DMOST (called POLST Paradigm Programs) promote the use of a state-wide, standardized medical orders for end of life care, which transfer with a patient from one setting to another. The form allows patients to request or refuse treatments like resuscitation, feeding tubes, and antibiotics. The options on DMOST range from "Full Treatment" to "Comfort Care Only". DMOST is signed by a health care practitioner and a patient (or a patient's surrogate, if the patient is unable to sign). It functions as a medical order AND an informed consent form. The Coalition to Enact DMOST is proposing legislation to create a DMOST for Delaware.

- OST programs are always voluntary.
- EMS providers support DMOST as a tool to help them honor a patient's wishes.
- *Most states have already adopted a program like DMOST.*
- *Only 6 states in the U.S. have no program.*
- Our surrounding states (MO, NJ, PA) all have programs like DMOST.
- 15 states have "Endorsed Programs".
- 29 other states have "Developing Programs".

The Institute of Medicine recommends that states should " ... *implement a POLST paradigm program [like DMOST] in accordance with nationally standardized core requirements*".

National Standards are set by the National POLST Paradigm Task Force (NPPTF). These standards were developed by state leaders after studying the best practices over many years' experience with using POLST. State programs must meet these standards in order to be "endorsed" by the NPPTF.

Delaware's legislation, regulations, and DMOST form need to meet nationally standardized core requirements, in order to be endorsed by the National POLST Paradigm Task Force.

Delaware Medical Orders for Scope of Treatment (DMOST)

Documenting and Honoring the Health Care Wishes of Delawareans

Questions and Answers

Q.: Should the DMOST require witnesses?

A.: No. Requiring witnesses for DMOST goes against national standards. *Delaware's DMOST program will not be endorsed if we require witnesses. Why not?*

- Witnesses are not needed for *any* medical orders or informed consent forms. DMOST is signed by a health care practitioner and a patient (or surrogate).
- Requiring witnesses will restrict access to DMOST, depending on who may serve as a witness and how convenient a notary is to the location.

Q.: Must a person be terminally ill or permanently unconscious to have a DMOST?

A.: No. Requiring qualifying conditions for a DMOST goes against national standards. *Delaware's DMOST program will not be endorsed if we require qualifying conditions. Why?*

Qualifying conditions are useful in Advance Directives because they specify a time in the future when the person's wishes should be followed. DMOST is NOT an Advance Directive. DMOST will take effect the moment the order is signed (*like all other medical orders*), so qualifying conditions would serve no purpose. Given the difficulties of predicting prognosis, the National POLST Paradigm Task Force recommends DMOST be offered to people with serious illness or frailty, when health care providers would not be surprised if the person died within the next year. Research has shown this clinical rule of thumb ("the surprise question") is a much more accurate predictor of death within a year than the diagnosis of terminal illness. Many patients die without ever being labelled "terminally ill".

Q.: Who will sign the DMOST if a patient does not have capacity?

A.: The DMOST statute does not change the existing law. If a patient does not have capacity to sign, a decision maker will be determined pursuant to an existing advance health-care directive, or the Surrogacy Statute in *Title 16, Chapter 25*.

Q.: Would DMOST be improved by adding a plain English description of what the form does?

A.: The language in DMOST will follow nationally standardized core requirements, as recommended by the Institute of Medicine. Its language is quite plain and easy to understand.

Q.: Does DMOST have to be consistent with an advance directive, if a patient has both?

A.: If a DMOST is not consistent with an advance directive, the document created most recently will be followed.

Q.: Will state funds be needed to implement and administer the DMOST Program and to train health care providers to use it?

A.: Most states administer their programs as a coordinated effort between non-profit groups, universities, government health departments, and others. The Coalition to Enact DMOST expects to fund program coordination and education through charitable grants and in-kind donations from Coalition members. We have not requested any state funding for the program.