

---

By: **Senator Hollinger**

Introduced and read first time: February 4, 2004

Assigned to: Education, Health, and Environmental Affairs

---

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records - Physician Orders for Life-Sustaining Treatment**

3 FOR the purpose of requiring the Office of the Attorney General to develop a  
4 "Physician Orders for Life-Sustaining Treatment" form that documents certain  
5 treatment preferences of an individual; requiring the form to be consistent with  
6 certain health care decisions of certain individuals; providing that the form may  
7 be completed by a health care provider under certain supervision; requiring the  
8 form to be signed by a certain health care provider and to contain a certain  
9 statement; requiring a health care provider to comply with the form; requiring  
10 the Department of Health and Mental Hygiene to print and distribute the form;  
11 requiring the Department, in consultation with the Office of the Attorney  
12 General and certain other groups, to adopt certain regulations; and generally  
13 relating to the "Physician Orders for Life-Sustaining Treatment" form.

14 BY repealing and reenacting, without amendments,  
15 Article - Health - General  
16 Section 4-301(a) and (g), 5-608(a), and 5-609  
17 Annotated Code of Maryland  
18 (2000 Replacement Volume and 2003 Supplement)

19 BY adding to  
20 Article - Health - General  
21 Section 5-608.1  
22 Annotated Code of Maryland  
23 (2000 Replacement Volume and 2003 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - Health - General**

27 4-301.

28 (a) In this subtitle the following words have the meanings indicated.

1 (g) (1) "Medical record" means any oral, written, or other transmission in  
2 any form or medium of information that:

- 3 (i) Is entered in the record of a patient or recipient;
- 4 (ii) Identifies or can readily be associated with the identity of a  
5 patient or recipient; and
- 6 (iii) Relates to the health care of the patient or recipient.

7 (2) "Medical record" includes any:

8 (i) Documentation of disclosures of a medical record to any person  
9 who is not an employee, agent, or consultant of the health care provider;

10 (ii) File or record maintained under § 12-403(b)(13) of the Health  
11 Occupations Article by a pharmacy of a prescription order for drugs, medicines, or  
12 devices that identifies or may be readily associated with the identity of a patient;

13 (iii) Documentation of an examination of a patient regardless of  
14 who:

- 15 1. Requested the examination; or
- 16 2. Is making payment for the examination; and

17 (iv) File or record received from another health care provider that:

- 18 1. Relates to the health care of a patient or recipient received  
19 from that health care provider; and
- 20 2. Identifies or can readily be associated with the identity of  
21 the patient or recipient.

22 5-608.

23 (a) (1) Certified or licensed emergency medical services personnel shall be  
24 directed by protocol to follow emergency medical services "do not resuscitate orders"  
25 pertaining to adult patients in the outpatient setting in accordance with protocols  
26 established by the Maryland Institute for Emergency Medical Services Systems in  
27 conjunction with the State Board of Physicians.

28 (2) Emergency medical services "do not resuscitate orders" may not  
29 authorize the withholding of medical interventions, or therapies deemed necessary to  
30 provide comfort care or to alleviate pain.

31 (3) A health care provider, other than certified or licensed emergency  
32 medical services personnel, may provide, withhold, or withdraw treatment in  
33 accordance with an emergency medical services "do not resuscitate order" described in  
34 paragraph (1) of this subsection if a health care provider sees either the order or a

1 valid, legible, and patient identifying emergency medical services "do not resuscitate  
2 order" in bracelet form.

3 5-608.1.

4 (A) THE OFFICE OF THE ATTORNEY GENERAL SHALL DEVELOP A "PHYSICIAN  
5 ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM TO DOCUMENT THE TREATMENT  
6 PREFERENCES OF AN INDIVIDUAL RELATED TO:

7 (1) THE USE OF LIFE-SUSTAINING PROCEDURES;

8 (2) TRANSFER TO A HOSPITAL; AND

9 (3) ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE OFFICE OF  
10 THE ATTORNEY GENERAL TO ACCOMPLISH THE PURPOSES OF THE "PHYSICIAN  
11 ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM.

12 (B) THE "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM  
13 SHALL BE CONSISTENT WITH:

14 (1) THE DECISIONS OF A COMPETENT INDIVIDUAL;

15 (2) ANY ADVANCE DIRECTIVE OF AN INDIVIDUAL INCAPABLE OF  
16 MAKING AN INFORMED DECISION; AND

17 (3) THE DECISIONS OF A HEALTH CARE AGENT OR SURROGATE  
18 DECISION MAKER AS AUTHORIZED BY THIS SUBTITLE.

19 (C) THE "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM:

20 (1) MAY BE COMPLETED BY A HEALTH CARE PROVIDER UNDER THE  
21 DIRECTION OF AN ATTENDING PHYSICIAN;

22 (2) SHALL BE SIGNED BY THE ATTENDING PHYSICIAN; AND

23 (3) SHALL CONTAIN A CONSPICUOUS STATEMENT THAT THE ORIGINAL  
24 FORM SHALL ACCOMPANY THE INDIVIDUAL WHEN THE INDIVIDUAL IS  
25 TRANSFERRED TO ANOTHER HEALTH CARE PROVIDER OR DISCHARGED.

26 (D) (1) A HEALTH CARE PROVIDER SHALL, IN ACCORDANCE WITH THE  
27 "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM:

28 (I) PROVIDE, WITHHOLD, OR WITHDRAW LIFE-SUSTAINING  
29 PROCEDURES;

30 (II) ARRANGE FOR OR REFRAIN FROM ARRANGING FOR A  
31 TRANSFER OF AN INDIVIDUAL TO A HOSPITAL; AND

32 (III) COMPLY WITH OTHER MEDICAL ORDERS ON THE FORM.

1 (2) A "PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM  
2 THAT CONTAINS AN ORDER THAT RESUSCITATION NOT BE ATTEMPTED SHALL BE  
3 GIVEN THE SAME EFFECT AS AN EMERGENCY MEDICAL SERVICES "DO NOT  
4 RESUSCITATE ORDER" AS SET FORTH IN § 5-608(A) OF THIS SUBTITLE.

5 (E) THE DEPARTMENT SHALL PRINT AND DISTRIBUTE THE "PHYSICIAN  
6 ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM DEVELOPED BY THE OFFICE OF  
7 THE ATTORNEY GENERAL UNDER THIS SECTION.

8 (F) THE DEPARTMENT SHALL ADOPT REGULATIONS IMPLEMENTING THE  
9 PROVISIONS OF THIS SECTION IN CONSULTATION WITH:

10 (1) THE OFFICE OF THE ATTORNEY GENERAL;

11 (2) RELIGIOUS GROUPS AND INSTITUTIONS WITH AN INTEREST IN  
12 END-OF-LIFE CARE; AND

13 (3) ANY OTHER GROUP THE DEPARTMENT IDENTIFIES AS  
14 APPROPRIATE FOR CONSULTATION.

15 5-609.

16 (a) (1) A health care provider is not subject to criminal prosecution or civil  
17 liability or deemed to have engaged in unprofessional conduct as determined by the  
18 appropriate licensing authority as a result of withholding or withdrawing any health  
19 care under authorization obtained in accordance with this subtitle.

20 (2) A health care provider providing, withholding, or withdrawing  
21 treatment under authorization obtained under this subtitle does not incur liability  
22 arising out of any claim to the extent the claim is based on lack of consent or  
23 authorization for the action.

24 (b) A person who authorizes the provision, withholding, or withdrawal of  
25 life-sustaining procedures in accordance with a patient's advance directive or as  
26 otherwise provided in this subtitle is not subject to:

27 (1) Criminal prosecution or civil liability for that action; or

28 (2) Liability for the cost of treatment solely on the basis of that  
29 authorization.

30 (c) (1) The provisions of this section shall apply unless it is shown by a  
31 preponderance of the evidence that the person authorizing or effectuating the  
32 provision, withholding, or withdrawal of life-sustaining procedures in accordance  
33 with this subtitle did not, in good faith, comply with the provisions of this subtitle.

34 (2) The distribution to patients of written advance directives in a form  
35 provided in this subtitle and assistance to patients in the completion and execution of  
36 such forms does not constitute the unauthorized practice of law.

1 (d) An advance directive made in accordance with this subtitle shall be  
2 presumed to have been made voluntarily by a competent individual. Authorization for  
3 the provision, withholding or withdrawal of life-sustaining procedures in accordance  
4 with this subtitle shall be presumed to have been made in good faith.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2004.