
By: **Senator Hollinger**

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Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER _____

1 AN ACT concerning

2 ~~Medical Records -- Physician Orders for Life-Sustaining Treatment~~
3 ~~Health Care Decisions - "Patient's Plan of Care" Form - Communication of~~
4 ~~Patient Preferences~~

5 FOR the purpose of authorizing certain health care providers to prepare certain forms
6 under certain circumstances; requiring the Office of the Attorney General to
7 develop a "Physician Orders for Life-Sustaining Treatment Patient's Plan of
8 Care" form that documents certain treatment preferences of an individual
9 summarizes the plan of care for an individual; specifying that the form is
10 voluntary; requiring the form to be consistent with certain health care decisions
11 of certain individuals; providing that the form may be completed by a health
12 care provider under certain supervision; requiring the form to be signed by a
13 certain health care provider ~~and to contain a certain statement~~ under certain
14 circumstances, to be signed by certain individuals, to include certain contact
15 information, to be dated, to contain certain statements, and to designate under
16 which conditions the form shall be reviewed or modified; requiring a health care
17 provider to ~~comply with the form~~; requiring the Department of Health and
18 Mental Hygiene to print and distribute the form; requiring the Department, in
19 consultation with the Office of the Attorney General and certain other groups, to
20 ~~adopt certain regulations~~ review the form as part of a certain process; requiring
21 the Office of the Attorney General to consult with certain entities in developing
22 the form; requiring certain facilities to offer to certain individuals the
23 opportunity to prepare the form; and generally relating to the "~~Physician Orders~~
24 ~~for Life-Sustaining Treatment~~ Patient's Plan of Care" form.

25 BY repealing and reenacting, without amendments,
26 Article - Health - General
27 Section 4-301(a) and (g), 5-608(a), and 5-609

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,

4 Article - Health - General

5 Section 5-602

6 Annotated Code of Maryland

7 (2000 Replacement Volume and 2003 Supplement)

8 BY adding to

9 Article - Health - General

10 Section 5-608.1 and 19-344(f)(5)

11 Annotated Code of Maryland

12 (2000 Replacement Volume and 2003 Supplement)

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

15 **Article - Health - General**

16 4-301.

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

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

20 (i) Is entered in the record of a patient or recipient;

21 (ii) Identifies or can readily be associated with the identity of a
22 patient or recipient; and

23 (iii) Relates to the health care of the patient or recipient.

24 (2) "Medical record" includes any:

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

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

30 (iii) Documentation of an examination of a patient regardless of
31 who:

32 1. Requested the examination; or

33 2. Is making payment for the examination; and

- 1 (iv) File or record received from another health care provider that:
- 2 1. Relates to the health care of a patient or recipient received
- 3 from that health care provider; and
- 4 2. Identifies or can readily be associated with the identity of
- 5 the patient or recipient.

6 5-602.

7 (a) Any competent individual may, at any time, make a written advance

8 directive regarding the provision of health care to that individual, or the withholding

9 or withdrawal of health care from that individual.

10 (b) (1) Any competent individual may, at any time, make a written advance

11 directive appointing an agent to make health care decisions for the individual under

12 the circumstances stated in the advance directive.

13 (2) An owner, operator, or employee of a health care facility from which

14 the declarant is receiving health care may not serve as a health care agent unless the

15 person would qualify as a surrogate decision maker under § 5-605(a) of this subtitle.

16 (3) An agent appointed under this subtitle has decision making priority

17 over any individuals otherwise authorized under this subtitle to make health care

18 decisions for a declarant.

19 (c) (1) A written advance directive shall be dated, signed by or at the

20 express direction of the declarant, and subscribed by two witnesses.

21 (2) (i) Except as provided in items (ii) and (iii) of this paragraph, any

22 competent individual may serve as a witness to an advance directive, including an

23 employee of a health care facility or physician caring for the declarant if acting in

24 good faith.

25 (ii) The health care agent of the declarant may not serve as a

26 witness.

27 (iii) At least one of the witnesses must be an individual who is not

28 knowingly entitled to any portion of the estate of the declarant or knowingly entitled

29 to any financial benefit by reason of the death of the declarant.

30 (d) (1) Any competent individual may make an oral advance directive to

31 authorize the providing, withholding, or withdrawing of any life-sustaining

32 procedure or to appoint an agent to make health care decisions for the individual.

33 (2) An oral advance directive shall have the same effect as a written

34 advance directive if made in the presence of the attending physician and one witness

35 and if the substance of the oral advance directive is documented as part of the

36 individual's medical record. The documentation shall be dated and signed by the

37 attending physician and the witness.

1 (e) (1) Unless otherwise provided in the document, an advance directive
2 shall become effective when the declarant's attending physician and a second
3 physician certify in writing that the patient is incapable of making an informed
4 decision.

5 (2) If a patient is unconscious, or unable to communicate by any means,
6 the certification of a second physician is not required under paragraph (1) of this
7 subsection.

8 (f) (1) It shall be the responsibility of the declarant to notify the attending
9 physician that an advance directive has been made. In the event the declarant
10 becomes comatose, incompetent, or otherwise incapable of communication, any other
11 person may notify the physician of the existence of an advance directive.

12 (2) An attending physician who is notified of the existence of the advance
13 directive shall promptly:

14 (i) If the advance directive is written, make the advance directive
15 or a copy of the advance directive a part of the declarant's medical records; or

16 (ii) If the advance directive is oral, make the substance of the
17 advance directive, including the date the advance directive was made and the name of
18 the attending physician, a part of the declarant's medical records.

19 (3) IF THE CARE OF A DECLARANT IS TRANSFERRED FROM ONE HEALTH
20 CARE PROVIDER TO ANOTHER, THE TRANSFERRING HEALTH CARE PROVIDER MAY
21 PREPARE A "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF THIS
22 SUBTITLE.

23 (4) IF THE TRANSFERRING HEALTH CARE PROVIDER PREPARES A
24 "PATIENT'S PLAN OF CARE" FORM IN ACCORDANCE WITH § 5-608.1 OF THIS SUBTITLE,
25 THE TRANSFERRING HEALTH CARE PROVIDER SHALL:

26 (I) TAKE REASONABLE STEPS TO ENSURE THAT THE "PATIENT'S
27 PLAN OF CARE" FORM IS CONSISTENT WITH ANY APPLICABLE DECISION STATED IN
28 THE ADVANCE DIRECTIVE OF A DECLARANT; AND

29 (II) TRANSMIT THE "PATIENT'S PLAN OF CARE" FORM TO THE
30 RECEIVING HEALTH CARE PROVIDER SIMULTANEOUSLY WITH THE TRANSFER OF
31 THE DECLARANT.

32 (g) It shall be the responsibility of the declarant to notify a health care agent
33 that the agent has been named in an advance directive to act on the declarant's
34 behalf.

35 (h) Unless otherwise provided in the patient's advance directive, a patient's
36 agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

37 (i) The absence of an advance directive creates no presumption as to the
38 patient's intent to consent to or refuse life-sustaining procedures.

1 5-608.

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

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

10 (3) A health care provider, other than certified or licensed emergency
11 medical services personnel, may provide, withhold, or withdraw treatment in
12 accordance with an emergency medical services "do not resuscitate order" described in
13 paragraph (1) of this subsection if a health care provider sees either the order or a
14 valid, legible, and patient identifying emergency medical services "do not resuscitate
15 order" in bracelet form.

16 5-608.1.

17 (A) THE OFFICE OF THE ATTORNEY GENERAL SHALL DEVELOP A "~~PHYSICIAN~~
18 ~~ORDERS FOR LIFE-SUSTAINING TREATMENT~~ PATIENT'S PLAN OF CARE" FORM ~~TO~~
19 ~~DOCUMENT THE TREATMENT PREFERENCES OF AN INDIVIDUAL RELATED TO~~
20 SUITABLE FOR SUMMARIZING THE PLAN OF CARE FOR AN INDIVIDUAL, INCLUDING
21 THE ASPECTS OF THE PLAN OF CARE RELATED TO:

22 (1) THE USE OF LIFE-SUSTAINING PROCEDURES; AND

23 (2) TRANSFER TO A HOSPITAL FROM A NONHOSPITAL SETTING; ~~AND~~

24 (3) ~~ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE OFFICE OF~~
25 ~~THE ATTORNEY GENERAL TO ACCOMPLISH THE PURPOSES OF THE "PHYSICIAN~~
26 ~~ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM.~~

27 (B) THE "~~PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT~~ PATIENT'S
28 PLAN OF CARE" FORM IS VOLUNTARY AND SHALL BE CONSISTENT WITH:

29 (1) THE DECISIONS OF:

30 (I) THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL;
31 OR

32 (II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED
33 DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS
34 AUTHORIZED BY THIS SUBTITLE; AND

35 (2) ANY ADVANCE DIRECTIVE OF ~~AN INDIVIDUAL~~ THE PATIENT IF THE
36 PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION; ~~AND~~

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

3 (C) THE "~~PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT~~ PATIENT'S
4 PLAN OF CARE" FORM:

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

7 (2) IF THE ATTENDING PHYSICIAN HAS A REASONABLE BASIS TO
8 BELIEVE THAT THE "PATIENT'S PLAN OF CARE" FORM SATISFIES THE
9 REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION, SHALL BE SIGNED BY THE
10 ATTENDING PHYSICIAN; AND

11 (3) SHALL BE SIGNED BY:

12 (I) THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL;
13 OR

14 (II) IF THE PATIENT IS INCAPABLE OF MAKING AN INFORMED
15 DECISION, A HEALTH CARE AGENT OR SURROGATE DECISION MAKER AS
16 AUTHORIZED BY THIS SUBTITLE;

17 (4) IF SIGNED BY THE PATIENT IN ACCORDANCE WITH ITEM (3)(I) OF
18 THIS SUBSECTION, SHALL INCLUDE CONTACT INFORMATION FOR THE PATIENT'S
19 HEALTH CARE AGENT;

20 (5) IF SIGNED BY A HEALTH CARE AGENT OR SURROGATE DECISION
21 MAKER IN ACCORDANCE WITH ITEM (3)(II) OF THIS SUBSECTION, SHALL INCLUDE
22 CONTACT INFORMATION FOR THE HEALTH CARE AGENT OR SURROGATE DECISION
23 MAKER;

24 (6) SHALL BE DATED;

25 (7) SHALL INCLUDE A STATEMENT THAT THE FORM MAY BE REVIEWED,
26 MODIFIED, OR RESCINDED AT ANY TIME;

27 (8) SHALL DESIGNATE UNDER WHICH CONDITIONS THE FORM MUST BE
28 REVIEWED OR MODIFIED, INCLUDING PROMPTLY AFTER THE PATIENT BECOMES
29 INCAPABLE OF MAKING AN INFORMED DECISION; AND

30 ~~(3)~~ (9) SHALL CONTAIN A CONSPICUOUS STATEMENT THAT THE
31 ORIGINAL FORM SHALL ACCOMPANY THE INDIVIDUAL WHEN THE INDIVIDUAL IS
32 TRANSFERRED TO ANOTHER HEALTH CARE PROVIDER OR DISCHARGED.

33 (D) ~~(+)~~ A HEALTH CARE PROVIDER ~~SHALL, IN ACCORDANCE WITH THE~~
34 ~~"PHYSICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM;~~ SHALL REVIEW ANY
35 "PATIENT'S PLAN OF CARE" FORM RECEIVED FROM ANOTHER HEALTH CARE
36 PROVIDER AS PART OF THE PROCESS OF ESTABLISHING A PLAN OF CARE FOR AN
37 INDIVIDUAL.

1 ~~(I) PROVIDE, WITHHOLD, OR WITHDRAW LIFE SUSTAINING~~
2 ~~PROCEDURES;~~

3 ~~(II) ARRANGE FOR OR REFRAIN FROM ARRANGING FOR A~~
4 ~~TRANSFER OF AN INDIVIDUAL TO A HOSPITAL; AND~~

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

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

10 ~~(E) THE DEPARTMENT SHALL PRINT AND DISTRIBUTE THE "PHYSICIAN~~
11 ~~ORDERS FOR LIFE SUSTAINING TREATMENT" FORM DEVELOPED BY THE OFFICE OF~~
12 ~~THE ATTORNEY GENERAL UNDER THIS SECTION.~~

13 ~~(F) (E) THE DEPARTMENT SHALL ADOPT REGULATIONS IMPLEMENTING~~
14 ~~THE PROVISIONS OF THIS SECTION IN CONSULTATION THE OFFICE OF THE~~
15 ~~ATTORNEY GENERAL, IN DEVELOPING THE "PATIENT'S PLAN OF CARE" FORM IN~~
16 ~~ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, SHALL CONSULT WITH:~~

17 ~~(1) THE OFFICE OF THE ATTORNEY GENERAL THE DEPARTMENT;~~

18 ~~(2) RELIGIOUS GROUPS AND INSTITUTIONS WITH AN INTEREST IN~~
19 ~~END-OF-LIFE CARE; AND~~

20 ~~(3) ONE OR MORE REPRESENTATIVES FROM THE COMMUNITY OF~~
21 ~~INDIVIDUALS WITH DISABILITIES; AND~~

22 ~~(3) (4) ANY OTHER GROUP THE DEPARTMENT OFFICE OF THE~~
23 ~~ATTORNEY GENERAL IDENTIFIES AS APPROPRIATE FOR CONSULTATION.~~

24 5-609.

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

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

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

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

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

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

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

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

14 19-344.

15 (f) (5) (I) A FACILITY SHALL OFFER A RESIDENT, UPON ADMISSION, THE
16 OPPORTUNITY FOR THE PREPARATION OF A "PATIENT'S PLAN OF CARE" FORM IN
17 ACCORDANCE WITH § 5-608.1 OF THIS ARTICLE.

18 (II) IF A FACILITY PREPARES A "PATIENT'S PLAN OF CARE" FORM IN
19 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE FORM SHALL
20 REMAIN CONSPICUOUSLY IN THE FRONT OF A RESIDENT'S MEDICAL RECORDS.

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