

HOUSE BILL 82

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CF 11r0788

By: **Delegates Morhaim and Kipke**

Introduced and read first time: January 21, 2011

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions Act – “Medical Orders for Life–Sustaining Treatment”**
3 **Form**

4 FOR the purpose of repealing certain provisions of law relating to the “Instructions on
5 Current Life–Sustaining Treatment Options” form; requiring the Department of
6 Health and Mental Hygiene, in conjunction with the Maryland Institute for
7 Emergency Medical Services Systems and the State Board of Physicians, to
8 develop a “Medical Orders for Life–Sustaining Treatment” form and
9 instructions for its completion and use; requiring that the form and instructions
10 be developed in consultation with certain individuals and groups; requiring that
11 the form be suitable for containing certain medical orders; providing that the
12 form is not an advance directive; requiring certain health care facilities and
13 authorizing other health care providers to use a “Medical Orders for
14 Life–Sustaining Treatment” form; requiring certain health care facilities and
15 authorizing other health care providers to use a “Medical Orders for
16 Life–Sustaining Treatment” form; requiring certain health care facilities and
17 health care providers to offer certain individuals the opportunity to participate
18 in the completion of a “Medical Orders for Life–Sustaining Treatment” form;
19 requiring health care facilities to note in a patient’s medical record when certain
20 individuals decline to participate in the completion of a “Medical Orders for
21 Life–Sustaining Treatment” form; requiring, under certain circumstances, that
22 a “Medical Orders for Life–Sustaining Treatment” form be consistent with
23 certain health care decisions of certain individuals; requiring a health care
24 facility to comply with the “Medical Orders for Life–Sustaining Treatment” form
25 under certain circumstances; requiring certain health care providers to keep the
26 “Medical Orders for Life–Sustaining Treatment” form in the patient’s medical
27 record; requiring that the “Medical Orders for Life–Sustaining Treatment” form
28 accompany certain patients and be given to certain individuals under certain
29 circumstances; requiring that the most recent “Medical Orders for
30 Life–Sustaining Treatment” form be followed if there is a conflict between
31 forms; authorizing a health care provider to rely in good faith on the presumed

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 validity of a “Medical Orders for Life–Sustaining Treatment” form; requiring
2 the Department to adopt certain regulations; requiring the Department to make
3 the “Medical Orders for Life–Sustaining Treatment” form and certain
4 instructions available on the Department’s Web site; authorizing the
5 Department to print and distribute the form and instructions; requiring that a
6 “Medical Orders for Life–Sustaining Treatment” form containing an order that
7 resuscitation not be attempted be given the same effect as an emergency
8 medical services “do not resuscitate order”; specifying that orders regarding
9 life–sustaining treatment executed in another state are to be deemed valid
10 under certain circumstances and construed in a certain manner; repealing the
11 requirement that a nursing home offer patients an “Instructions on Current
12 Life–Sustaining Treatment Options” form; requiring certain health care
13 facilities, on or before a certain date, to complete a “Medical Orders for
14 Life–Sustaining Treatment” form for patients admitted to the health care
15 facility before a certain date, and to offer the patients or certain other
16 individuals an opportunity to participate in the completion of the form; altering
17 a certain definition; defining a certain term; and generally relating to health
18 care decisions and the “Medical Orders for Life–Sustaining Treatment” form.

19 BY repealing

20 Article – Health – General
21 Section 5–602(f)(4) and 5–608.1
22 Annotated Code of Maryland
23 (2009 Replacement Volume and 2010 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Health – General
26 Section 5–608, 5–609, 5–617, 5–619, and 19–344(f)
27 Annotated Code of Maryland
28 (2009 Replacement Volume and 2010 Supplement)

29 BY adding to

30 Article – Health – General
31 Section 5–608.1
32 Annotated Code of Maryland
33 (2009 Replacement Volume and 2010 Supplement)

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

36 **Article – Health – General**

37 5–602.

38 (f) [(4) If the transferring health care provider prepares an “Instructions
39 on Current Life–Sustaining Treatment Options” form in accordance with § 5–608.1 of
40 this subtitle, the transferring health care provider shall:

1 (i) Take reasonable steps to ensure that the “Instructions on
2 Current Life–Sustaining Treatment Options” form is consistent with any applicable
3 decision stated in the advance directive of a declarant; and

4 (ii) Transmit the “Instructions on Current Life–Sustaining
5 Treatment Options” form to the receiving health care provider simultaneously with
6 the transfer of the declarant.]

7 5–608.

8 (a) (1) Certified or licensed emergency medical services personnel shall be
9 directed by protocol to follow emergency medical services “do not resuscitate orders”
10 pertaining to adult patients in the outpatient setting in accordance with protocols
11 established by the Maryland Institute for Emergency Medical Services Systems in
12 conjunction with the State Board of Physicians.

13 (2) Emergency medical services “do not resuscitate orders” may not
14 authorize the withholding of medical interventions, or therapies deemed necessary to
15 provide comfort care or to alleviate pain.

16 (3) A health care provider, other than certified or licensed emergency
17 medical services personnel, who sees, in a valid form, an emergency medical services
18 “do not resuscitate order” described in paragraph (1) of this subsection that is not
19 superseded by a subsequent physician’s order:

20 (i) May, before a patient’s cardiac or respiratory arrest, provide,
21 withhold, or withdraw treatment in accordance with the emergency medical services
22 “do not resuscitate order”; and

23 (ii) Shall, after a patient’s cardiac or respiratory arrest,
24 withhold or withdraw treatment in accordance with the emergency medical services
25 “do not resuscitate order”.

26 **(4) AN ORDER CONTAINED IN A “MEDICAL ORDERS FOR**
27 **LIFE–SUSTAINING TREATMENT” FORM THAT RESUSCITATION NOT BE**
28 **ATTEMPTED SHALL BE GIVEN THE SAME EFFECT AS EMERGENCY MEDICAL**
29 **SERVICES “DO NOT RESUSCITATE ORDERS” DESCRIBED IN PARAGRAPH (1) OF**
30 **THIS SUBSECTION.**

31 (b) This section does not authorize emergency medical services personnel to
32 follow an emergency medical services “do not resuscitate order” for any patient who,
33 prior to cardiac or respiratory arrest, is able to, and does, express to those personnel
34 the desire to be resuscitated.

1 (c) This section does not authorize emergency medical services personnel in
 2 the outpatient setting to follow an emergency medical services “do not resuscitate
 3 order” that is in any form other than:

4 (1) An emergency medical services “do not resuscitate order” described
 5 in subsection (a) of this section;

6 (2) An oral emergency medical services “do not resuscitate order”
 7 provided by an online, emergency medical services medical command and control
 8 physician; [or]

9 (3) An oral emergency medical services “do not resuscitate order”
 10 provided by a physician, as defined in § 5–601 of this subtitle, or a nurse practitioner,
 11 as defined in § 5–601 of this subtitle, who is physically present on the scene with the
 12 patient and the emergency medical services personnel in the outpatient setting; **OR**

13 **(4) AN ORDER CONTAINED IN A “MEDICAL ORDERS FOR**
 14 **LIFE–SUSTAINING TREATMENT” FORM.**

15 (d) (1) Except as provided in paragraph (2) of this subsection, in addition
 16 to the immunity provided in § 5–609 of this subtitle and any other immunity provided
 17 by law, an emergency medical services provider is not subject to criminal or civil
 18 liability, or deemed to have engaged in unprofessional conduct as determined by the
 19 appropriate licensing or certifying authority, arising out of a claim concerning the
 20 provision of health care if:

21 (i) The claim is based on lack of consent or authorization for the
 22 health care;

23 (ii) Subsection (a) of this section would ordinarily apply; and

24 (iii) The emergency medical services provider:

25 1. Acts in good faith in providing the health care; and

26 2. Believes reasonably that subsection (a)(1) of this
 27 section does not apply.

28 (2) This subsection does not apply if the patient is wearing a valid,
 29 legible, and patient–identifying emergency medical services “do not resuscitate order”
 30 in bracelet form.

31 [5–608.1.

32 (a) The Office of the Attorney General shall develop an “Instructions on
 33 Current Life–Sustaining Treatment Options” form suitable for summarizing the plan
 34 of care for an individual, including the aspects of the plan of care related to:

1 (1) The use of life-sustaining procedures; and

2 (2) Transfer to a hospital from a nonhospital setting.

3 (b) The “Instructions on Current Life-Sustaining Treatment Options” form is
4 voluntary and shall be consistent with:

5 (1) The decisions of:

6 (i) The patient if the patient is a competent individual; or

7 (ii) If the patient is incapable of making an informed decision, a
8 health care agent or surrogate decision maker as authorized by this subtitle; and

9 (2) Any advance directive of the patient if the patient is incapable of
10 making an informed decision.

11 (c) The “Instructions on Current Life-Sustaining Treatment Options” form:

12 (1) May be completed by a health care provider under the direction of
13 an attending physician;

14 (2) If the attending physician has a reasonable basis to believe that
15 the “Instructions on Current Life-Sustaining Treatment Options” form satisfies the
16 requirements of subsection (b) of this section, shall be signed by the attending
17 physician;

18 (3) Shall be signed by:

19 (i) The patient if the patient is a competent individual; or

20 (ii) If the patient is incapable of making an informed decision, a
21 health care agent or surrogate decision maker as authorized by this subtitle;

22 (4) If signed by the patient in accordance with item (3)(i) of this
23 subsection, shall include contact information for the patient’s health care agent;

24 (5) If signed by a health care agent or surrogate decision maker in
25 accordance with item (3)(ii) of this subsection, shall include contact information for the
26 health care agent or surrogate decision maker;

27 (6) Shall be dated;

28 (7) Shall include a statement that the form may be reviewed, modified,
29 or rescinded at any time;

1 (8) Shall designate under which conditions the form must be reviewed
2 or modified, including promptly after the patient becomes incapable of making an
3 informed decision; and

4 (9) Shall contain a conspicuous statement that the original form shall
5 accompany the individual when the individual is transferred to another health care
6 provider or discharged.

7 (d) A health care provider shall review any “Instructions on Current
8 Life–Sustaining Treatment Options” form received from another health care provider
9 as part of the process of establishing a plan of care for an individual.

10 (e) The Office of the Attorney General, in developing the “Instructions on
11 Current Life–Sustaining Treatment Options” form in accordance with subsection (a) of
12 this section, shall consult with:

13 (1) The Department;

14 (2) Religious groups and institutions with an interest in end–of–life
15 care;

16 (3) One or more representatives from the community of individuals
17 with disabilities; and

18 (4) Any other group the Office of the Attorney General identifies as
19 appropriate for consultation.]

20 **5–608.1.**

21 **(A) IN THIS SECTION, “HEALTH CARE FACILITY” MEANS:**

22 **(1) AN ASSISTED LIVING PROGRAM;**

23 **(2) A HOME HEALTH AGENCY;**

24 **(3) A HOSPICE;**

25 **(4) A HOSPITAL;**

26 **(5) A KIDNEY DIALYSIS CENTER; OR**

27 **(6) A NURSING HOME.**

28 **(B) (1) (I) THE DEPARTMENT, IN CONJUNCTION WITH THE**
29 **MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS AND**
30 **THE STATE BOARD OF PHYSICIANS, SHALL DEVELOP AND MAY REVISE**

1 PERIODICALLY A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT”
2 FORM AND INSTRUCTIONS FOR COMPLETING AND USING THE FORM.

3 (II) THE “MEDICAL ORDERS FOR LIFE-SUSTAINING
4 TREATMENT” FORM AND THE INSTRUCTIONS FOR ITS COMPLETION AND USE
5 SHALL BE DEVELOPED IN CONSULTATION WITH:

6 1. THE OFFICE OF THE ATTORNEY GENERAL;

7 2. THE STATE BOARD OF NURSING;

8 3. THE STATE ADVISORY COUNCIL ON QUALITY
9 CARE AT THE END OF LIFE; AND

10 4. ANY OTHER INDIVIDUAL OR GROUP THE
11 DEPARTMENT DETERMINES IS APPROPRIATE.

12 (2) THE “MEDICAL ORDERS FOR LIFE-SUSTAINING
13 TREATMENT” FORM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION
14 SHALL BE SUITABLE FOR CONTAINING A PHYSICIAN’S OR NURSE
15 PRACTITIONER’S WRITTEN MEDICAL ORDERS RELATING TO A PATIENT’S
16 MEDICAL CONDITION, INCLUDING:

17 (I) THE USE OF LIFE-SUSTAINING PROCEDURES;

18 (II) THE USE OF MEDICAL TESTS;

19 (III) TRANSFER OF THE PATIENT TO A HOSPITAL FROM A
20 NONHOSPITAL SETTING; AND

21 (IV) ANY OTHER MATTER CONSIDERED APPROPRIATE BY
22 THE DEPARTMENT TO IMPLEMENT TREATMENT PREFERENCES AND ORDERS
23 REGARDING LIFE-SUSTAINING TREATMENTS ACROSS HEALTH CARE SETTINGS.

24 (3) THE “MEDICAL ORDERS FOR LIFE-SUSTAINING
25 TREATMENT” FORM IS NOT AN ADVANCE DIRECTIVE.

26 (C) (1) A HEALTH CARE FACILITY SHALL:

27 (I) COMPLETE A “MEDICAL ORDERS FOR
28 LIFE-SUSTAINING TREATMENT” FORM OR ACCEPT A COMPLETED “MEDICAL
29 ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM DURING THE ADMISSION
30 PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY;

1 **(II) UPDATE THE FORM AS INDICATED IN THE**
2 **INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM; AND**

3 **(III) OFFER A PATIENT, HEALTH CARE AGENT, OR**
4 **SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE**
5 **COMPLETION OF THE FORM.**

6 **(2) A HEALTH CARE FACILITY SHALL NOTE IN THE MEDICAL**
7 **RECORD WHEN A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION**
8 **MAKER DECLINES TO PARTICIPATE IN THE COMPLETION OF A “MEDICAL**
9 **ORDERS FOR LIFE–SUSTAINING TREATMENT” FORM.**

10 **(3) EXCEPT AS PROVIDED FOR A TREATMENT THAT HAS BEEN**
11 **CERTIFIED AS MEDICALLY INEFFECTIVE IN ACCORDANCE WITH § 5–611 OF THIS**
12 **SUBTITLE, THE “MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT” FORM**
13 **SHALL BE CONSISTENT WITH:**

14 **(I) THE KNOWN DECISIONS OF:**

15 1. **THE PATIENT IF THE PATIENT IS A COMPETENT**
16 **INDIVIDUAL; OR**

17 2. **A HEALTH CARE AGENT OR SURROGATE DECISION**
18 **MAKER AS AUTHORIZED BY THIS SUBTITLE; AND**

19 **(II) ANY KNOWN ADVANCE DIRECTIVE OF THE PATIENT IF**
20 **THE PATIENT IS INCAPABLE OF MAKING AN INFORMED DECISION.**

21 **(D) (1) A HEALTH CARE PROVIDER OTHER THAN A HEALTH CARE**
22 **FACILITY MAY CHOOSE TO USE A “MEDICAL ORDERS FOR LIFE–SUSTAINING**
23 **TREATMENT” FORM.**

24 **(2) A HEALTH CARE PROVIDER WHO CHOOSES TO USE A**
25 **“MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT” FORM SHALL OFFER**
26 **A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE**
27 **OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.**

28 **(E) THE ORIGINAL OR A COPY OF A “MEDICAL ORDERS FOR**
29 **LIFE–SUSTAINING TREATMENT” FORM SHALL:**

30 **(1) BE KEPT BY A HEALTH CARE PROVIDER IN THE PATIENT’S**
31 **MEDICAL RECORD;**

1 **(2) PHYSICALLY ACCOMPANY THE PATIENT OR BE TRANSMITTED**
2 **ELECTRONICALLY OR BY FACSIMILE IN ACCORDANCE WITH THE INSTRUCTIONS**
3 **FOR THE USE OF THE FORM WHEN THE PATIENT IS TRANSFERRED TO A HEALTH**
4 **CARE FACILITY; AND**

5 **(3) BE GIVEN TO THE PATIENT, HEALTH CARE AGENT, OR**
6 **SURROGATE DECISION MAKER IF THE PATIENT RESIDES AT HOME OR IS**
7 **DISCHARGED FROM A HEALTH CARE FACILITY TO THE PATIENT’S HOME.**

8 **(F) EXCEPT AS PROVIDED IN § 5-611 OR § 5-613 OF THIS SUBTITLE, A**
9 **HEALTH CARE FACILITY SHALL COMPLY WITH ALL MEDICAL ORDERS**
10 **CONTAINED IN A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT”**
11 **FORM REGARDLESS OF WHETHER THE PHYSICIAN OR NURSE PRACTITIONER**
12 **WHO SIGNED THE FORM HAS ADMITTING PRIVILEGES OR IS OTHERWISE**
13 **CREDENTIALLED AT THE HEALTH CARE FACILITY.**

14 **(G) IN THE EVENT OF A CONFLICT BETWEEN MORE THAN ONE**
15 **“MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM, THE MOST**
16 **RECENT FORM SHALL BE FOLLOWED.**

17 **(H) A HEALTH CARE PROVIDER MAY RELY IN GOOD FAITH ON THE**
18 **PRESUMED VALIDITY OF A “MEDICAL ORDERS FOR LIFE-SUSTAINING**
19 **TREATMENT” FORM.**

20 **(I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT**
21 **SPECIFY THE “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM**
22 **AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM THAT**
23 **ARE DEVELOPED AS REQUIRED BY SUBSECTION (B) OF THIS SECTION,**
24 **INCLUDING INSTRUCTIONS ON HOW A “MEDICAL ORDERS FOR**
25 **LIFE-SUSTAINING TREATMENT” FORM BECOMES VOID.**

26 **(2) REGULATIONS ADOPTED UNDER PARAGRAPH (1) OF THIS**
27 **SUBSECTION SHALL BE CONSISTENT WITH THE HEALTH CARE DECISIONS ACT.**

28 **(J) THE DEPARTMENT SHALL MAKE THE “MEDICAL ORDERS FOR**
29 **LIFE-SUSTAINING TREATMENT” FORM AND THE INSTRUCTIONS FOR THE**
30 **COMPLETION AND USE OF THE FORM AVAILABLE ON ITS WEB SITE AND MAY**
31 **PRINT AND DISTRIBUTE THE FORM AND THE INSTRUCTIONS.**

32 5-609.

33 **(a) (1) A health care provider is not subject to criminal prosecution or civil**
34 **liability or deemed to have engaged in unprofessional conduct as determined by the**

1 appropriate licensing authority as a result of withholding or withdrawing any health
2 care under authorization obtained in accordance with this subtitle.

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

7 (b) A person who authorizes the provision, withholding, or withdrawal of
8 life-sustaining procedures in accordance with a patient's advance directive, A
9 **"MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM**, or as otherwise
10 provided in this subtitle is not subject to:

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

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

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

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

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

25 5-617.

26 An advance directive [or], AN emergency medical services "do not resuscitate
27 order", OR AN ORDER REGARDING LIFE-SUSTAINING TREATMENT executed in
28 another state shall be deemed to be validly executed for the purposes of this subtitle if
29 executed in compliance with the laws of Maryland or the laws of the state where
30 executed. Advance directives [or], emergency medical services "do not resuscitate
31 orders", OR AN ORDER REGARDING LIFE-SUSTAINING TREATMENT executed in
32 another state shall be construed to give effect to the patient's wishes to the extent
33 permitted by the laws of Maryland.

34 5-619.

35 (a) In this Part II of this subtitle the following words have the meanings
36 indicated.

1 (b) [(1)] “Advance directive” has the meaning stated in § 5–601 of this
2 subtitle.

3 [(2) “Advance directive” includes an “Instructions on Current
4 Life–Sustaining Treatment Options” form developed under § 5–608.1 of this subtitle.]

5 (c) “Registrant” means an individual who registers an advance directive with
6 the Department.

7 (d) “Registry” means the repository for advance directives in the
8 Department.

9 19–344.

10 (f) (1) A resident of a facility:

11 (i) Shall participate in the planning of the medical treatment;

12 (ii) May refuse medication or treatment; and

13 (iii) May know the medical consequences of these actions.

14 (2) The facility shall:

15 (i) Have the informed consent of a resident before the resident
16 participates in any experimental research; and

17 (ii) Keep the resident’s written acknowledgment of that consent.

18 (3) The resident shall receive information about the relationship of the
19 facility to other health care institutions if the information relates to the care of the
20 resident.

21 (4) The resident shall receive reasonable continuity of care, including
22 information as to the availability of physicians and times for medical appointments.

23 [(5) (i) A facility shall offer a resident, upon admission, the
24 opportunity for the preparation of an “Instructions on Current Life–Sustaining
25 Treatment Options” form in accordance with § 5–608.1 of this article.

26 (ii) If a facility prepares an “Instructions on Current
27 Life–Sustaining Treatment Options” form in accordance with subparagraph (i) of this
28 paragraph, the form shall remain conspicuously in the front of a resident’s medical
29 records.]

1 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before February 1,
2 2012, a health care facility, as defined in § 5–608.1 of the Health – General Article, as
3 enacted by Section 1 of this Act, shall:

4 (1) complete a “Medical Orders for Life–Sustaining Treatment” form,
5 developed in accordance with § 5–608.1(b)(1) of the Health – General Article enacted
6 by Section 1 of this Act, for each patient who was admitted to the health care facility
7 before October 1, 2011; and

8 (2) offer the patient, health care agent, or surrogate decision maker
9 the opportunity to participate in the completion of the form.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2011.