

Chapter 434

(House Bill 82)

AN ACT concerning

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

FOR the purpose of repealing certain provisions of law relating to the “Instructions on Current Life–Sustaining Treatment Options” form; requiring the Department of Health and Mental Hygiene, in conjunction with the Maryland Institute for Emergency Medical Services Systems and the State Board of Physicians, to develop and periodically revise a “Medical Orders for Life–Sustaining Treatment” form and instructions for its completion and use; requiring that the form and instructions be developed in consultation with certain individuals and groups; requiring that the form be suitable for containing certain medical orders; providing that the form is not an advance directive; requiring certain health care facilities and authorizing other health care providers to use a “Medical Orders for Life–Sustaining Treatment” form; requiring certain health care facilities ~~and authorizing other health care providers to use~~ accept and update or complete a “Medical Orders for Life–Sustaining Treatment” form for certain patients during the admission process or, under certain circumstances, during an inpatient hospital stay; requiring certain health care facilities and health care providers, when updating or completing a “Medical Orders for Life–Sustaining Treatment” form, to offer certain individuals the opportunity to participate in ~~the completion of a~~ updating or completing the “Medical Orders for Life–Sustaining Treatment” form; requiring health care facilities to note in a patient’s medical record when certain individuals decline to participate in ~~the completion of a~~ updating or completing the “Medical Orders for Life–Sustaining Treatment” form; requiring, under certain circumstances, that certain health care facilities offer any physician or nurse practitioner selected by the patient the opportunity to participate in updating or completing a “Medical Orders for Life–Sustaining Treatment” form; requiring, under certain circumstances, that certain health care facilities provide certain information to certain individuals; requiring, under certain circumstances, that a “Medical Orders for Life–Sustaining Treatment” form be consistent with certain health care decisions of certain individuals; requiring a health care facility to comply with the “Medical Orders for Life–Sustaining Treatment” form under certain circumstances; requiring certain health care providers to keep the “Medical Orders for Life–Sustaining Treatment” form in the patient’s medical record; requiring that the “Medical Orders for Life–Sustaining Treatment” form accompany certain patients and be given to certain individuals ~~under certain circumstances~~ within a certain time period; requiring that the most recent “Medical Orders for Life–Sustaining Treatment” form be followed if there is a

conflict between forms; authorizing a health care provider to rely in good faith on the presumed validity of a “Medical Orders for Life–Sustaining Treatment” form; requiring the Department to adopt certain regulations; requiring the Department to make the “Medical Orders for Life–Sustaining Treatment” ~~form~~ and form, certain instructions, and training materials available on the Department’s Web site; authorizing the Department to print and distribute the form ~~and~~, instructions, and training materials; requiring that a “Medical Orders for Life–Sustaining Treatment” form containing an order that resuscitation not be attempted be given the same effect as an emergency medical services “do not resuscitate order”; specifying that orders regarding life–sustaining treatment executed in another state are to be deemed valid under certain circumstances and construed in a certain manner; repealing the requirement that a nursing home offer patients an “Instructions on Current Life–Sustaining Treatment Options” form; requiring ~~certain health care facilities~~ nursing homes and assisted living programs, on or before a certain date, to complete a “Medical Orders for Life–Sustaining Treatment” form for certain patients admitted to the health care facility before a certain date, and to offer the patients or certain other individuals an opportunity to participate in the completion of the form; altering a certain definition; defining a certain term; and generally relating to health care decisions and the “Medical Orders for Life–Sustaining Treatment” form.

BY repealing

Article – Health – General

Section ~~5–602(f)(4)~~ 5–602(f)(3) and (4) and 5–608.1

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 5–608, 5–609, 5–617, 5–619, and 19–344(f)

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

BY adding to

Article – Health – General

Section 5–608.1

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

5–602.

(f) ~~[(4) (3)]~~ If the care of a declarant is transferred from one health care provider to another, the transferring health care provider may prepare an “Instructions on Current Life–Sustaining Treatment Options” form in accordance with § 5–608.1 of this subtitle.

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

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

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

5–608.

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

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

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

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

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

(4) AN ORDER CONTAINED IN A “MEDICAL ORDERS FOR LIFE–SUSTAINING TREATMENT” FORM THAT RESUSCITATION NOT BE ATTEMPTED SHALL BE GIVEN THE SAME EFFECT AS EMERGENCY MEDICAL

SERVICES “DO NOT RESUSCITATE ORDERS” DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

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

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

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

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

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

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

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

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

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

(iii) The emergency medical services provider:

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

2. Believes reasonably that subsection (a)(1) of this

section does not apply.

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

[5-608.1.

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

- (1) The use of life-sustaining procedures; and
- (2) Transfer to a hospital from a nonhospital setting.

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

- (1) The decisions of:
 - (i) The patient if the patient is a competent individual; or
 - (ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle; and
- (2) Any advance directive of the patient if the patient is incapable of making an informed decision.

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

- (1) May be completed by a health care provider under the direction of an attending physician;
- (2) If the attending physician has a reasonable basis to believe that the “Instructions on Current Life-Sustaining Treatment Options” form satisfies the requirements of subsection (b) of this section, shall be signed by the attending physician;
- (3) Shall be signed by:
 - (i) The patient if the patient is a competent individual; or
 - (ii) If the patient is incapable of making an informed decision, a health care agent or surrogate decision maker as authorized by this subtitle;
- (4) If signed by the patient in accordance with item (3)(i) of this subsection, shall include contact information for the patient’s health care agent;

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

(6) Shall be dated;

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

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

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

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

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

(1) The Department;

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

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

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

5–608.1.

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

(1) AN ASSISTED LIVING PROGRAM;

(2) A HOME HEALTH AGENCY;

(3) A HOSPICE;

- (4) A HOSPITAL;
- (5) A KIDNEY DIALYSIS CENTER; OR
- (6) A NURSING HOME.

(B) (1) (I) THE DEPARTMENT, IN CONJUNCTION WITH THE MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS AND THE STATE BOARD OF PHYSICIANS, SHALL DEVELOP AND ~~MAY~~ REVISE PERIODICALLY A "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM AND INSTRUCTIONS FOR COMPLETING AND USING THE FORM.

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

- 1. THE OFFICE OF THE ATTORNEY GENERAL;
- 2. THE STATE BOARD OF NURSING;
- 3. THE STATE ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE; AND
- 4. ANY OTHER INDIVIDUAL OR GROUP THE DEPARTMENT DETERMINES IS APPROPRIATE.

(2) THE "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUITABLE FOR CONTAINING A PHYSICIAN'S OR NURSE PRACTITIONER'S WRITTEN MEDICAL ORDERS RELATING TO A PATIENT'S MEDICAL CONDITION, INCLUDING:

- (I) THE USE OF LIFE-SUSTAINING PROCEDURES;
- (II) THE USE OF MEDICAL TESTS;
- (III) TRANSFER OF THE PATIENT TO A HOSPITAL FROM A NONHOSPITAL SETTING; AND
- (IV) ANY OTHER MATTER CONSIDERED APPROPRIATE BY THE DEPARTMENT TO IMPLEMENT TREATMENT PREFERENCES AND ORDERS REGARDING LIFE-SUSTAINING TREATMENTS ACROSS HEALTH CARE SETTINGS.

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

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

(I) ~~1. COMPLETE A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM OR ACCEPT~~ ACCEPT A COMPLETED “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; AND

~~(II) 2. UPDATE THE FORM AS INDICATED IN THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM; AND~~ OR

(II) COMPLETE A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM:

1. FOR A HEALTH CARE FACILITY THAT IS NOT A HOSPITAL, DURING THE ADMISSION PROCESS FOR EACH PATIENT BEING ADMITTED TO THE HEALTH CARE FACILITY; OR

2. FOR A HOSPITAL, DURING AN INPATIENT HOSPITAL STAY FOR PATIENTS WHO ARE BEING DISCHARGED TO ANOTHER HEALTH CARE FACILITY.

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

(2) ~~A~~ WHEN A HEALTH CARE FACILITY UPDATES OR COMPLETES A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH CARE FACILITY SHALL NOTE:

(I) OFFER THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM; AND

(II) NOTE IN THE MEDICAL RECORD WHEN A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER DECLINES TO PARTICIPATE IN THE COMPLETION OF A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM UPDATING OR COMPLETING THE FORM, INDICATING THE DATE AND WITH WHOM THE FORM WAS DISCUSSED;

(III) ON REQUEST OF THE PATIENT, OFFER ANY PHYSICIAN OR NURSE PRACTITIONER SELECTED BY THE PATIENT THE OPPORTUNITY TO PARTICIPATE IN UPDATING OR COMPLETING THE FORM; AND

(IV) INFORM THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THAT THE FORM WILL BECOME A PART OF THE PATIENT'S MEDICAL RECORD AND CAN BE ACCESSED THROUGH THE PROCEDURES USED TO ACCESS A MEDICAL RECORD.

(3) EXCEPT AS PROVIDED FOR A TREATMENT THAT HAS BEEN CERTIFIED AS MEDICALLY INEFFECTIVE IN ACCORDANCE WITH § 5-611 OF THIS SUBTITLE, THE "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM SHALL BE CONSISTENT WITH:

(I) THE KNOWN DECISIONS OF:

1. THE PATIENT IF THE PATIENT IS A COMPETENT INDIVIDUAL; OR

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

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

(D) (1) A HEALTH CARE PROVIDER OTHER THAN A HEALTH CARE FACILITY MAY CHOOSE TO USE A "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM.

(2) A HEALTH CARE PROVIDER WHO CHOOSES TO USE A "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM SHALL OFFER A PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER THE OPPORTUNITY TO PARTICIPATE IN THE COMPLETION OF THE FORM.

(E) THE ORIGINAL OR A COPY OF A "MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT" FORM SHALL:

(1) BE KEPT BY A HEALTH CARE PROVIDER IN THE PATIENT'S MEDICAL RECORD;

(2) PHYSICALLY ACCOMPANY THE PATIENT OR BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE IN ACCORDANCE WITH THE INSTRUCTIONS

FOR THE USE OF THE FORM WHEN THE PATIENT IS TRANSFERRED TO A HEALTH CARE FACILITY; AND

(3) BE GIVEN TO THE PATIENT, HEALTH CARE AGENT, OR SURROGATE DECISION MAKER ~~IF THE PATIENT RESIDES AT HOME OR IS DISCHARGED FROM A HEALTH CARE FACILITY TO THE PATIENT'S HOME~~ WITHIN 48 HOURS OF COMPLETION OF THE FORM OR SOONER IF THE PATIENT IS TRANSFERRED OR DISCHARGED.

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

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

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

(I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SPECIFY THE “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM THAT ARE DEVELOPED AS REQUIRED BY SUBSECTION (B) OF THIS SECTION, INCLUDING INSTRUCTIONS ON HOW A “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM ~~BECOMES VOID~~ IS REVISED OR REVOKED.

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

(J) THE DEPARTMENT SHALL MAKE THE “MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT” FORM AND THE INSTRUCTIONS FOR THE COMPLETION AND USE OF THE FORM, INCLUDING INSTRUCTIONS ON HOW THE FORM IS REVISED OR REVOKED, AVAILABLE ON ITS WEB SITE AND MAY PRINT AND DISTRIBUTE THE FORM, ~~AND~~ THE INSTRUCTIONS, AND TRAINING MATERIALS.

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

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

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

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

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

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

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

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

5-617.

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

5–619.

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

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

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

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

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

19–344.

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

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

(ii) May refuse medication or treatment; and

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

(2) The facility shall:

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

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

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

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

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

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

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

(1) complete a “Medical Orders for Life-Sustaining Treatment” form, developed in accordance with § 5-608.1(b)(1) of the Health – General Article enacted by Section 1 of this Act, for each patient who was admitted to the ~~health care facility~~ nursing home or assisted living program before October 1, 2011, and who is a patient of the nursing home or assisted living program on April 1, 2012; and

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

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

Approved by the Governor, May 19, 2011.