Bill 21-171, "Health Care Decisions Act of 2015"

Committee on Health and Human Services

October 14, 2015

Committee Print

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Health-Care Decisions Act of 1988 to create a MOST Form to capture patients' wishes for medical intervention; to establish a MOST Advisory Committee to assist the Department of Health with the development of a MOST Form; to encourage use of MOST Forms by the medical community; to establish a process for completing, executing, and complying with a MOST Form; and to determine the feasibility of creating an electronic registry for MOST Forms.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health-Care Decisions Amendment Act of 2015".

Sec. 2. The Health-Care Decisions Act of 1988, effective March 16, 1989 (D.C. Law 7-189; D.C. Official Code § 21-2201 *et seq*.), is amended as follows:

(a) Designate the existing text as TITLE I. DURABLE POWER OF ATTORNEY.

(b) A new Title II is added to read as follows:

"Title II. MOST FORM.

"Sec. 201.

"For the purposes of this title, the term:

"(1) "Advanced life support" means endotracheal intubation, defibrillation, or administration of cardiopulmonary resuscitation medications.

34 "(2) "Advanced practice nurse" means a licensed registered nurse engaged in the
35 practice of advanced practice registered nursing, as defined in section 102 of the District of
36 Columbia Health Occupations Revision Act of 1985, effective March 25, 1984 (D.C. Law 6-99;
37 D.C. Official Code § 3-1201.02)

38 "(3) "Authorized representative" means a person who is authorized to make a
39 health-care decision on behalf of an incapacitated individual or minor in accordance with section
40 6 and section 11.

41 "(4) "Authorized health care professional" means a licensed physician or
42 advanced practice nurse who has responsibility for the medical care of a patient.

43 "(5) "Cardiopulmonary resuscitation" means chest compression or artificial
44 ventilation.

45 "(6) "DOH" means the Department of Health.

46 "(7) "Emergency medical service" ("EMS") means a medical service provided in
47 response to a person's need for immediate medical care and is intended to prevent loss of life, the
48 aggravation of a physiological illness or injury, or the aggravation of a psychological illness. The
49 term "emergency medical service" includes any service recognized in the District as first
50 response, basic life support, advanced life support, specialized life support, patient
51 transportation, medical control, or rescue.

52 "(8) "EMS agency" means a government department or agency, person, firm,
53 corporation, or organization authorized to provide emergency medical service.

54 "(9) "EMS personnel" means an emergency medical responder, emergency
55 medical technician, emergency medical technician/intermediate, advanced emergency medical
56 technician, or paramedic who is certified to provide emergency medical services in the District.

57 “(10) “Health care institution” means a hospital, maternity center, nursing home,
58 community residence facility, group home for persons with intellectual disabilities, hospice,
59 home care agency, ambulatory surgical facility, or renal dialysis facility, as those terms are
60 defined in the Health-Care and Community Residence Facility, Hospice and Home Care
61 Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-
62 501) and acute care hospitals, skilled nursing facilities, and long term care facility.
63 “(11) “Health care professional” means a person who has graduated from an
64 accredited program for physicians, registered nurses, advanced practice nurses, physician
65 assistants, clinical social workers, clinical psychologists, or professional counselors, and is
66 licensed to practice in the District.
67 “(12) “Incapacitated individual” shall have the same meaning as in section 3(5).
68 “(13) “Minor” means a person who is less than 18 years of age.
69 “(14) “Medical Orders for Scope of Treatment Form” (“MOST Form”) means a
70 set of portable, medical orders on a form issued by DOH that results from a patient’s or a
71 patient’s authorized representative’s informed decision-making with a health care professional.
72 “(15) “Patient” means a person who has been determined by an authorized health
73 care professional to be approaching the end stage of a serious, life-limiting illness
74 such that the person’s life expectancy is twelve months or less.
75 “(16) “Resuscitate” means the administration of cardiopulmonary resuscitation or
76 advanced life support.
77 “Sec. 202. Creation of a MOST Form.
78 “(a)(1) Within 9 months after the effective date of the Health-Care Decisions Amendment
79 Act of 2015, as approved by the Committee on Health and Human Services on October 15, 2015

80 (Committee Print of Bill 21-171), DOH shall develop, and make available online, a MOST Form
81 and instructions for health care institutions, health care professionals, and patients and authorized
82 representatives completing and using the MOST Form.

83 "(2) DOH shall evaluate the design and use of MOST Forms, including
84 compliance or non-compliance with MOST Forms by EMS personnel and health care
85 professionals at least every 3 years.

86 "(b)(1) DOH shall require, and provide or provide for, ongoing training of health care
87 professionals and EMS personnel about best practices regarding the use of a MOST Form.

88 "(2) Such training shall include, at a minimum:

89 "(A) The importance of talking to each patient or their authorized
90 representative about the patient's prognosis, the likely course of illness, and personal goals of
91 care;

92 "(B) Methods for presenting choices for care that elicit information
93 concerning each patient's preferences and respecting those preferences without directing patients
94 toward a particular care option;

95 "(C) The importance of fully informing patients about the benefits and
96 risks of an immediately-effective MOST Form;

97 "(D) Awareness of factors that may affect the use of a MOST Form,
98 including race, ethnicity, age, gender, socioeconomic position, immigrant status, sexual
99 orientation, language disability, homelessness, mental illness, and geographic area of residence;
100 and

101 "(E) Procedures for properly completing and effectuating a MOST Form.

102 "Sec. 203. Most Advisory Committee.

103 “(a)(1) DOH shall establish the MOST Advisory Committee.

104 “(2) Members of the MOST Advisory Committee shall be appointed by DOH.
105 Except for provided in paragraph (3) of this subsection, members of the advisory committee shall
106 be appointed for terms of 3 years.

107 “(3) Of the members initially appointed under this section, 3 shall be appointed
108 for a term of 1 year, 4 shall be appointed for a term of 2 years, and 4 shall be appointed for a
109 term of 3 years. The terms of the members first appointed shall being on the date that a majority
110 of the first members are sworn in, which shall become the anniversary date for all subsequent
111 appointments. The MOST Advisory Committee shall include:

112 “(A) One representative from the EMS agency;

113 “(B) One commercial EMS representative;

114 “(C) One pediatric health care professional;

115 “(D) Two physicians, advanced practice nurses, or other health care
116 professionals involved in treating patients;

117 “(E) One representative of a long-term care facility;

118 “(F) One representative of a skilled nursing facility;

119 “(G) One representative of an acute care hospital;

120 “(H) Two representatives of a disability advocacy group; and

121 “(I) One representative of a patient advocacy group.

122 “(b) The MOST Advisory Committee shall:

123 “(1) Assist DOH in the development and periodic review of the MOST Form;

124 “(2) Promote public awareness about the option to complete a MOST Form; and

125 “(3) Provide recommendations to DOH for ongoing training of health care
126 professionals and EMS personnel about best practices regarding the use of a MOST Form and
127 the nature and development of related medical protocols.

128 “Sec. 204. The MOST Form.

129 “(a) The MOST Form shall be designed to provide the following information regarding
130 the patient’s care and medical condition:

131 “(1) The orders of an authorized health care professional regarding
132 cardiopulmonary resuscitation and level of medical intervention in the event of a medical
133 emergency in accordance with the choices, goals, and preferences of a patient or the patient’s
134 authorized representative;

135 “(2) The signature of the authorized health care professional;

136 “(3) If the patient has an authorized representative;

137 “(4) The signature of the patient or the authorized representative acknowledging
138 agreement with the orders of the authorized health care professional; and

139 “(5) The date and location of the initial authorization of the MOST Form and the
140 date, location, and outcome of any subsequent revisions to the MOST Form.

141 “(b) Upon execution, a hard copy of a patient’s operative MOST Form shall be provided
142 to the patient or the patient’s authorized representative.

143 “(c) A completed MOST Form must be kept in a prominent manner in a patient’s printed
144 and electronic medical records in a health care institution or private medical practice, and a copy
145 shall be transferred with the patient whenever the patient is transferred to another health care
146 institution, private medical practice, or to the patient’s residence.

147 “(d) A copy of a MOST Form shall be as effective as an original.

148 “Sec. 205. Completion and execution of the MOST Form.

149 “(a)(1) Only the following persons may execute a MOST Form :

150 “(A) Any patient, who is 18 years of age or older, on behalf of

151 himself or herself; or

152 “(B) An authorized representative.

153 “(b)(1) Any patient may be given the option to execute a MOST Form, but no patient will

154 be required to complete a MOST Form.

155 “(2) Only an authorized health care professional treating a patient may

156 complete a MOST Form for that patient.

157 “(3) The authorized health care professional shall complete the MOST

158 Form in accordance with the instructions of the patient or the patient’s authorized

159 representative.

160 “(4) Execution of a MOST Form must be evidenced by the patient’s or the

161 authorized representative’s signature.

162 “(c) The MOST Form shall be reviewed by an authorized health care professional with

163 the patient or with the patient’s authorized representative at least once per year and whenever:

164 “(1) The patient’s condition changes significantly; or

165 “(2) At the patient’s or the patient’s authorized representative’s request.

166 “(d)(1) If a patient with a MOST Form is transferred from one health care institution to

167 another, the health care institution transferring the patient shall communicate the existence of the

168 MOST Form to the receiving health care institution prior to the transfer.

169 “(2) The MOST Form shall accompany the patient to the receiving health care

170 institution and remain in effect.

171 "(3) Within 72 hours after a patient is transferred, the MOST Form shall be

172 reviewed by an authorized health care professional and the patient, provided that the patient is

173 not incapacitated or the patient authorized representative, is present.

174 "Sec. 206. Revocation of a MOST Form.

175 "(a) A patient or the patient's authorized representative may revoke a MOST Form at any

176 time by:

177 "(1) Directing the authorized health care professional who issued the MOST Form

178 to cancel the MOST Form;

179 "(2) Communicating the patient's or the patient's authorized representative's

180 intent to revoke the MOST Form to the treating EMS personnel or health care professional.

181 "(b) If a patient or the patient's authorized representative revokes a MOST Form pursuant

182 to subsection (a)(2) of this section, the treating EMS personnel or health care professional shall

183 note the circumstances in which the MOST Form was revoked.

184 "Sec. 207. Compliance with a MOST Form.

185 "(a)(1) If an EMS personnel or health care professional encounters a person who is in

186 possession of a MOST Form, the EMS personnel or health care professional shall determine

187 whether the person is the subject of the MOST Form and whether the MOST Form has been

188 revoked.

189 "(2) If there is uncertainty as to whether the MOST Form has been revoked, the

190 EMS personnel or health care professional shall act as if there were no MOST Form and

191 resuscitate the patient.

192 “(b) If an EMS personnel or health care professional encounters a patient in emergency
193 medical circumstances with a MOST Form that is unreadable, he or she shall proceed as if there
194 were no MOST Form.
195 “(c) If the EMS personnel does not resuscitate on the basis of applicable treatment
196 instructions on a MOST Form, EMS personnel shall record the do-not-resuscitate response in the
197 run report and report the do-not-resuscitate response to the Department of Health within 5
198 business days after the incident.
199 “(d) On a biannual basis, DOH shall provide the Mayor with data on do-not-resuscitate
200 responses.
201 “Sec. 208. Comfort care.
202 “Regardless of the treatment orders on the MOST Form, EMS personnel and other health
203 care professionals may provide the following interventions, as needed, to a patient for comfort or
204 to alleviate pain:
205 “(1) Clear the airway, without the use of artificial ventilation, esophageal
206 obturator airway, or endotracheal intubation;
207 “(2) Administer suction;
208 “(3) Provide oxygen, without the use of artificial ventilation, esophageal obturator
209 airway, or endotracheal intubation;
210 “(4) Provide pain medication;
211 “(5) Control bleeding; or
212 “(6) Make any other necessary adjustments.
213 “Sec. 209. Reciprocity.
214 “EMS personnel and other health care professionals shall recognize a MOST Form or

215 similar instrument executed in another state as if the instrument were executed in accordance
216 with with the laws of that state.

217 “Sec. 210. Relationship with other legal documents.

218 “If a patient has a durable power of attorney for health care under title I, or a comparable
219 statute in any other jurisdiction, or another legal document with a substantially equivalent
220 purpose to a durable power of attorney or a MOST Form, the most recent document to have been
221 executed shall govern if any conflict exists between the directives in that legal document and the
222 directives in the patient’s MOST Form.

223 “Sec. 211. Liability.

224 “This act shall not be construed to create a new private right of action.

225 “Sec. 212. Penalties.

226 “(a) A person who, without authorization by the patient or the patient’s authorized
227 representative, willfully alters, forges, conceals, or destroys a MOST Form, an amendment or
228 revocation of a MOST Form, or any other evidence or document reflecting the patient’s desires
229 and interests, with the intent or effect of causing a withholding or withdrawal of life-sustaining
230 procedures or of artificially administered nutrition and hydration which hastens the death of the
231 patient commits a Class A felony.

232 “(b) Except as provided in subsection (a) of this section, a person who, without
233 authorization by the patient or the patient’s authorized representative willfully alters, forges,
234 conceals, or destroys a MOST Form, an amendment or revocation of a MOST Form, or any other
235 evidence or document reflecting the patient’s desires and interests, with the intent or effect of
236 impacting a health care treatment decision shall be fined not more than the amount set forth in
237 section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11,

238 2013 (D.C. Law 190317; D.C. Official Code § 22-3571.01), or incarcerated for not more than

239 180 days, or both.

240 "Sec. 213. Insurance.

241 "(a) The execution of a MOST Form shall not alter an insurance policy or annuity

242 contract, unless the insurance policy or contract state otherwise.

243 "(b) Adherence to the medical orders in a MOST form shall not constitute suicide or

244 assisted suicide.

245 "(c) The execution of a MOST form cannot be used as a condition for being insured,

246 receiving health care services, or receiving other employment benefits.

247 "Sec. 214. Study of electronic registry.

248 "(a) DOH shall conduct a study regarding the feasibility of implementing an electronic

249 registry for MOST Forms in the District while preserving the privacy of patient's records.

250 "(b) If an electronic registry is determined to be feasible upon the conclusion of the

251 DOH's review, DOH shall implement an electronic registry.

252 "(c) DOH shall make a determination regarding the feasibility of an electronic registry

253 within 180 days after the effective date of the Health-Care Decisions Amendment Act of 2015,

254 as approved by the Committee on Health and Human Services on October 14, 2015 (Committee

255 Print of Bill 21-171).

256 "Sec. 215. Repealer.

257 The Emergency Medical Services Non-Resuscitation Procedures Act of 2000, effective

258 April 3, 2001 (D.C. Law 13-224; D.C. Official Code § 7-651.01 *et seq.*), is repealed as of the

259 date that DOH develops, and makes available, the MOST Form in accordance with section 202.

260 "Sec. 216. Rulemaking.

261 The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act,
262 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq*.), shall issue rules
263 to implement the provisions of the Health Care Decisions Amendment Act of 2015, as approved
264 by the Committee on Health and Human Services on October 14, 2015 (Bill 21-171).".
265 Sec. 3. Fiscal impact statement.
266 The Council adopts the fiscal impact statement in the committee report as the fiscal
267 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
268 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).
269 Sec. 4. Effective date.
270 This act shall take effect following approval by the Mayor (or in the event of veto by the
271 Mayor, action by the Council to override the veto), a 30-day period of congressional
272 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved
273 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the
274 District of Columbia Register.