ENGROSSED ORIGINAL

A BILL

21-171

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.

"(2) "Advanced practice nurse" means a licensed registered nurse engaged in the practice of advanced practice registered nursing, as defined in section 102 of the District of

Columbia Health Occupations Revision Act of 1985, effective March 25, 1984 (D.C. Law 6-99; D.C. Official Code § 3-1201.02)

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

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

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

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

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

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

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

"(10) "Health care institution" means a hospital, maternity center, nursing home, community residence facility, group home for persons with intellectual disabilities, hospice, home care agency, ambulatory surgical facility, or renal dialysis facility, as those terms are defined in the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501) and an acute care hospital, skilled nursing facility, and long term care facility.

"(11) "Health care professional" means a person who has graduated from an accredited program for physicians, registered nurses, advanced practice nurses, physician assistants, clinical social workers, clinical psychologists, or professional counselors, and is licensed to practice in the District.

"(12) "Incapacitated individual" shall have the same meaning as in section 3(5).

"(13) "Minor" means a person who is less than 18 years of age.

"(14) "Medical Orders for Scope of Treatment Form" ("MOST Form") means a set of portable, medical orders on a form issued by DOH that results from a patient's or a patient's authorized representative's informed decision-making with a health care professional.

"(15) "Patient" means a person who has been determined by an authorized health care professional to be approaching the end stage of a serious, life-limiting illness such that the person's life expectancy is 12 months or less.

"(16) "Resuscitate" means the administration of cardiopulmonary resuscitation or advanced life support.

"Sec. 202. Creation of a MOST Form.

"(a)(1) Within 9 months after the effective date of the Health-Care Decisions Amendment Act of 2015, as approved by the Committee on Health and Human Services on October 14, 2015 (Committee Print of Bill 21-171), DOH shall develop, and make available online, a MOST Form and instructions for health care institutions, health care professionals, and patients and authorized representatives completing and using the MOST Form.

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

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

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

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

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

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

"(D) Awareness of factors that may affect the use of a MOST Form,

including race, ethnicity, age, gender, socioeconomic position, immigrant status, sexual orientation, language disability, homelessness, mental illness, and geographic area of residence; and

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

"Sec. 203. Most Advisory Committee.

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

"(2) Members of the MOST Advisory Committee shall be appointed by DOH. Except for provided in paragraph (3) of this subsection, members of the advisory committee shall be appointed for terms of 6 years.

"(3) Of the members initially appointed under this section, 3 shall be appointed for a term of 2 years, 4 shall be appointed for a term of 4 years, and 4 shall be appointed for a term of 6 years. The terms of the members first appointed shall begin on the date that a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments.

"(4) The MOST Advisory Committee shall include:

"(A) One representative from the EMS agency;

"(B) One commercial EMS representative;

"(C) One pediatric health care professional;

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

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

"(F) One representative of a skilled nursing facility;

"(G) One representative of an acute care hospital;

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

"(I) One representative of a patient advocacy group.

"(b) The MOST Advisory Committee shall:

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

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

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

"Sec. 204. The MOST Form.

"(a) The MOST Form shall be designed to provide the following information regarding the patient's care and medical condition:

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

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

"(3) If the patient has an authorized representative;

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

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

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

"(c) An executed MOST Form must be kept in a prominent manner in a patient's printed and electronic medical records in a health care institution or private medical practice, and a copy shall be transferred with the patient whenever the patient is transferred to another health care institution, private medical practice, or to the patient's residence.

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

"Sec. 205. Completion and execution of the MOST Form.

"(a) A patient shall be given the option to complete a MOST Form, but no patient shall be required to complete or execute a MOST Form.

"(b) Only an authorized health care professional treating a patient may complete a MOST Form for that patient.

"(2) The authorized health care professional shall complete the MOST Form in accordance with the instructions of the patient or the patient's authorized representative.

"(c)(1) Only the following persons may execute a MOST Form :

"(A) Any patient, who is 18 years of age or older, on behalf of himself or herself; or

"(B) An authorized representative.

"(2) Execution of a MOST Form must be evidenced by the patient's or the authorized representative's signature.

"(d) The MOST Form shall be reviewed by an authorized health care professional with the patient or with the patient's authorized representative at least once per year and whenever:

"(1) The patient's condition changes significantly; or

"(2) At the patient's or the patient's authorized representative's request.

"(e)(1) If a patient with a MOST Form is transferred from one health care institution to another, the health care institution transferring the patient shall communicate the existence of the MOST Form to the receiving health care institution prior to the transfer.

"(2) The MOST Form shall accompany the patient to the receiving health care institution and remain in effect.

"(3) Within 72 hours after a patient is transferred, the MOST Form shall be reviewed by an authorized health care professional and the patient, provided that the patient is not incapacitated, or the patient's authorized representative, if present.

"Sec. 206. Revocation of a MOST Form.

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

"(1) Directing the authorized health care professional who issued the MOST Form to cancel the MOST Form;

"(2) Communicating the patient's or the patient's authorized representative's intent to revoke the MOST Form to the treating EMS personnel or health care professional.

"(b) If a patient or the patient's authorized representative revokes a MOST Form pursuant to subsection (a)(2) of this section, the treating EMS personnel or health care professional shall record the circumstances in which the MOST Form was revoked."

"Sec. 207. Compliance with a MOST Form.

"(a)(1) If an EMS personnel or health care professional encounters a person who is in possession of a MOST Form, the EMS personnel or health care professional shall determine whether the person is the subject of the MOST Form and whether the MOST Form has been revoked.

"(2) If there is uncertainty as to whether the MOST Form has been revoked, the EMS personnel or health care professional shall act as if there were no MOST Form and resuscitate the patient.

"(b) If an EMS personnel or health care professional encounters a patient in an emergency medical circumstance with a MOST Form that is unreadable, he or she shall proceed as if there were no MOST Form.

"(c) If the EMS personnel does not resuscitate the patient on the basis of applicable treatment instructions on a MOST Form, EMS personnel shall record the do-not-resuscitate response in the run report and report the do-not-resuscitate response to the Department of Health within 5 business days after the incident.

"(d) On a biannual basis, DOH shall provide the Mayor with data on do-not-resuscitate responses.

"Sec. 208. Comfort care.

"Regardless of the treatment orders on the MOST Form, EMS personnel and other health care professionals may provide the following interventions, as needed, to a patient for comfort or to alleviate pain:

"(1) Clear the airway, without the use of artificial ventilation, esophageal obturator airway, or endotracheal intubation;

"(2) Administer suction;

"(3) Provide oxygen, without the use of artificial ventilation, esophageal obturator airway, or endotracheal intubation;

"(4) Provide pain medication;

"(5) Control bleeding; or

"(6) Make any other necessary adjustments.

"Sec. 209. Reciprocity.

"EMS personnel and other health care professionals shall recognize a MOST Form or similar instrument executed in another state as if the instrument were executed in accordance with the laws of that state.

"Sec. 210. Relationship with other legal documents.

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

"Sec. 211. Liability.

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

"Sec. 212. Penalties.

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

"(b) Except as provided in subsection (a) of this section, a person who, without authorization by the patient or the patient's authorized representative willfully alters, forges, conceals, or destroys a MOST Form, an amendment or revocation of a MOST Form, or any other evidence or document reflecting the patient's desires and interests, with the intent or effect of impacting any decision regarding the provision of a health care service, treatment, or procedure shall not be fined more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 190317; D.C. Official Code § 22-3571.01), or incarcerated for not more than 180 days, or both.

"Sec. 213. Insurance.

"(a) The execution of a MOST Form shall not alter an insurance policy or annuity contract, unless the insurance policy or contract state otherwise.

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

"(c) The execution of a MOST form cannot be used as a condition for being insured, receiving health care services, or receiving other employment benefits.

"Sec. 214. Study of electronic registry.

"(a) DOH shall conduct a study regarding the feasibility of implementing an electronic registry for MOST Forms in the District while preserving the privacy of patient's records.

"(b) If an electronic registry is determined to be feasible upon the conclusion of the DOH's review, DOH shall implement an electronic registry.

"(c) DOH shall make a determination regarding the feasibility of an electronic registry within 180 days after the effective date of the Health-Care Decisions Amendment Act of 2015, as approved by the Committee on Health and Human Services on October 14, 2015 (Committee Print of Bill 21-171).

"Sec. 215. Repealer.

The Emergency Medical Services Non-Resuscitation Procedures Act of 2000, effective April 3, 2001 (D.C. Law 13-224; D.C. Official Code § 7-651.01 *et seq.*), is repealed as of the date that DOH develops, and makes available, the MOST Form in accordance with section 202.

"Sec. 216. Rulemaking.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules

to implement the provisions of the Health Care Decisions Amendment Act of 2015, as approved by the Committee on Health and Human Services on October 14, 2015 (Bill 21-171).".

Sec. 3. Applicability

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. ~~3~~4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. ~~4~~5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional

review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.