

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

729B0539

HOUSE JUDICIARY ENGROSSED NO. **SB 118** 3/6/2019

Introduced by: Senators Soholt, Rusch, Solano, and Steinhauer and Representatives Reed, Barthel, Borglum, Cwach, Diedrich, Healy, Jensen (Kevin), Rasmussen, Smith (Jamie), and York

1 FOR AN ACT ENTITLED, An Act to establish certain provisions regarding advance care
2 planning.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:.

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Advance health care directive," a durable power of attorney executed under
7 §§ 59-7-2.1 to 59-7-2.4, inclusive, a living will executed under chapter 34-12D, or
8 an EMS cardiopulmonary resuscitation directive executed pursuant to chapter
9 34-12F;
- 10 (2) "Authorized representative," a person authorized to make health care decisions for
11 a patient pursuant to chapters 29A-5 or 34-12C or §§ 59-7-2.1 to 59-7-2.4, inclusive;
- 12 (3) "Decision-making capacity," a patient's ability to understand to a reasonable extent
13 the nature of and the significant benefits, risks and alternatives to any proposed
14 health care and to make and communicate, with reasonable accommodation when



1 necessary, a decision regarding the health care;

2 (4) "Department," the Department of Health;

3 (5) "Health care provider," as defined in § 34-12D-1;

4 (6) "Informed consent," consent voluntarily, knowingly, and competently given without
5 any element of force, fraud, deceit, duress, threat, or other form of coercion after
6 conscientious explanation of all information that a reasonable person would consider
7 significant to the decision in a manner reasonably comprehensible to general lay
8 understanding;

9 (7) "Life-sustaining treatment," as defined in subdivision 34-12D-1(4);

10 (8) "Medical provider," a physician, physician assistant or certified nurse practitioner
11 designated by a patient or the patient's authorized representative, to have
12 responsibility for the patient's health care;

13 (9) "Medical order for scope of treatment," or "MOST," a document, other than an
14 advance health care directive, executed by a patient who has been diagnosed with a
15 terminal condition, or the patient's authorized representative, and the patient's
16 medical provider and entered in the patient's medical record that provides direction
17 to health care providers about the patient's goals and preferences regarding the use
18 of medical interventions, including cardiopulmonary resuscitation and other
19 life-sustaining treatment;

20 (10) "Patient," a person who has been diagnosed with a terminal condition;

21 (11) "Secretary," the secretary of the Department of Health;

22 (12) "Terminal condition," as defined in § 34-12D-1.

23 Section 2. That the code be amended by adding a NEW SECTION to read:

24 A patient with decision-making capacity, or in the case that a patient lacks decision-making

1 capacity, the patient's authorized representative, may execute a MOST in the form and manner
2 prescribed by section 4 of this Act.

3 Section 3. That the code be amended by adding a NEW SECTION to read:

4 A patient's authorized representative may execute a MOST only if the patient lacks
5 decision-making capacity. The patient's lack of decision-making capacity shall be recorded in
6 the patient's medical record.

7 Section 4. That the code be amended by adding a NEW SECTION to read:

8 The secretary shall develop a standardized form for a MOST and instructions for completion
9 of the form. The secretary shall make the form available to the public on the department's
10 website. A completed form includes:

- 11 (1) The name and date of birth of the patient;
- 12 (2) A statement that the patient either has or does not have an advance health care
13 directive;
- 14 (3) Information regarding the patient's diagnosis of a terminal condition;
- 15 (4) Information indicating the preference of the patient or the patient's authorized
16 representative regarding the use of cardiopulmonary resuscitation, specified medical
17 interventions, and the intensity of treatment for each intervention, and if there is no
18 such indication of the patient or authorized representative's preference, a directive to
19 health care providers to use all necessary and appropriate medical interventions;
- 20 (5) A provision directing the administration of artificial nutrition and hydration unless
21 it is determined that:
 - 22 (a) Artificial nutrition and hydration cannot reasonably be expected to prolong the
23 patient's life;
 - 24 (b) The burden of providing artificial nutrition and hydration outweighs its

1 benefit, if the determination of burden refers to the provision of artificial
2 nutrition and hydration itself and not to the quality of the continued life of the
3 patient;

4 (c) Administering artificial nutrition and hydration would cause the patient
5 significant discomfort; or

6 (d) The patient has expressed a desire not to receive artificial nutrition and
7 hydration by tube;

8 (6) A statement confirming that the medical provider and the patient or the patient's
9 authorized representative had a discussion about the patient's medical condition,
10 treatment goals, and use of medical intervention;

11 (7) A statement confirming that the execution of the MOST by the patient or the patient's
12 authorized representative is based on informed consent;

13 (8) A statement advising the patient that if there is a conflict between the MOST and the
14 patient's written directives in any previously executed and unrevoked durable power
15 of attorney or living will, the health care provider will treat the patient in accordance
16 with the instructions in the MOST;

17 (9) The signature and date of signing of the patient or the patient's authorized
18 representative;

19 (10) The signature and date of signing of the medical provider; and

20 (11) A statement that the duty of medicine is to care for patients even when they cannot
21 be cured, that health care providers and their patients must evaluate the use of
22 technology at their disposal based on available information, that judgments about the
23 use of technology to maintain life must reflect the inherent dignity of the patient and
24 the purpose of medical care, and that everyone is to be treated with dignity and

1 respect.

2 Section 5. That the code be amended by adding a NEW SECTION to read:

3 An original or a copy of a MOST form completed and signed in accordance with section 4
4 of this Act is a valid medical order for scope of treatment unless revoked. Any health care
5 provider who receives a valid MOST shall make the document part of the patient's medical
6 record.

7 Section 6. That the code be amended by adding a NEW SECTION to read:

8 A document executed in another state or jurisdiction that meets the requirements for a valid
9 medical order for scope of treatment in that state or jurisdiction is valid in this state.

10 Section 7. That the code be amended by adding a NEW SECTION to read:

11 Except as provided in sections 8 to 10, inclusive, of this Act, any health care provider who
12 has actual knowledge of a patient's MOST shall treat the patient in accordance with the
13 preferences indicated in the MOST.

14 Section 8. That the code be amended by adding a NEW SECTION to read:

15 If there is a conflict between a patient's MOST and a patient's oral directives or any written
16 directives in an advance health care directive, the health care provider shall treat the patient in
17 accordance with the most recent instruction.

18 Section 9. That the code be amended by adding a NEW SECTION to read:

19 A patient with decision-making capacity may revoke a MOST at any time by:

- 20 (1) Destroying or defacing the MOST with the intent to revoke;
- 21 (2) A written revocation of the MOST, signed and dated by the patient; or
- 22 (3) An oral expression of the intent to revoke the MOST, in the presence of a witness
23 eighteen years of age or older who signs and dates in writing, confirming that the
24 expression of intent was made.

1 An authorized representative may not revoke a MOST unless the MOST was executed by
2 the authorized representative. The authorized representative shall make the revocation in
3 writing.

4 A revocation is effective upon communication to the health care provider. A health care
5 provider who is informed of a revocation shall record the date and time of the notification of
6 revocation in the patient's medical record.

7 Section 10. That the code be amended by adding a NEW SECTION to read:

8 A health care provider who refuses to comply with the provisions of a duly executed MOST
9 shall:

10 (1) Not prevent the transfer of the patient to another health care provider who is willing
11 to comply with the MOST; and

12 (2) Continue providing care for the patient until the transfer is completed.

13 Section 11. That the code be amended by adding a NEW SECTION to read:

14 A health care provider may not require or prohibit the execution or revocation of a MOST
15 as a condition for providing health care.

16 Section 12. That the code be amended by adding a NEW SECTION to read:

17 A health care provider acting in good faith and in accordance with generally accepted health
18 care standards applicable to the health care provider is not subject to civil or criminal liability
19 or to discipline for unprofessional conduct for:

20 (1) Complying with a MOST and assuming that it was valid when made and has not
21 been revoked;

22 (2) Not complying with a MOST when it appears it was revoked or invalid when made;

23 (3) Not complying with a MOST due to the health care provider's beliefs as a matter of
24 conscience; or

- 1 (4) The good faith belief that the patient has or lacks decision-making capacity.