

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

729B0539

## SENATE ENGROSSED NO. **SB 118** - 2/5/2019

Introduced by: Senators Sohlt, 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, or a patient's authorized  
15 representative, and the patient's medical provider and entered in the patient's medical  
16 record that provides direction to health care providers about the patient's goals and  
17 preferences regarding the use of medical interventions, including cardiopulmonary  
18 resuscitation and other life-sustaining treatment;

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

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

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

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

23 A patient with decision-making capacity, or in the case that a patient lacks decision-making  
24 capacity, the patient's authorized representative, may execute a MOST in the form and manner

1 prescribed by section 4 of this Act.

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

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

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

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

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

1 nutrition and hydration itself and not to the quality of the continued life of the  
2 patient;

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

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

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

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

12 (8) The signature and date of signing of the patient or the patient's authorized  
13 representative;

14 (9) The signature and date of signing of the medical provider; and

15 (10) A statement that the duty of medicine is to care for patients even when they cannot  
16 be cured, that health care providers and their patients must evaluate the use of  
17 technology at their disposal based on available information, that judgments about the  
18 use of technology to maintain life must reflect the inherent dignity of the patient and  
19 the purpose of medical care, and that everyone is to be treated with dignity and  
20 respect.

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

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

1 record.

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

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

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

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

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

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

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

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

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

20 An authorized representative may not revoke a MOST unless the MOST was executed by  
21 the authorized representative. The authorized representative shall make the revocation in  
22 writing.

23 A revocation is effective upon communication to the health care provider. A health care  
24 provider who is informed of a revocation shall record the date and time of the notification of

1 revocation in the patient's medical record.

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

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

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

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

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

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

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

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

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

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

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

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