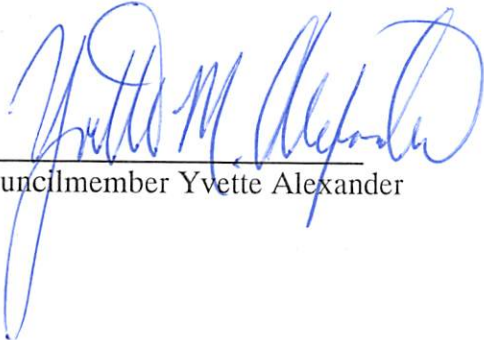


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3 Councilmember Yvette Alexander
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Councilmember Mary M. Cheh

5 A BILL
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9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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14 To create a MOST Form to capture patients' wishes for medical intervention; to establish a
15 MOST Advisory Committee to assist the Department of Health with the development of
16 a MOST Form; to encourage use of MOST Forms by the medical community; to
17 establish a process for completing, executing, and complying with a MOST Form; and to
18 determine the feasibility of creating an electronic registry for MOST Forms.
19

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

22 Sec. 2. Definitions.

23 For the purposes of this act, the term:

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

26 (2) "Advanced practice nurse" means a person who has graduated from an
27 accredited program for nurse practitioners, clinical nurse specialists, or nurse midwives and is
28 licensed to practice in the District.

29 (3) "Authorized representative" means a person who is:

30 (A) Authorized to make a health care decision on behalf of an
31 incapacitated individual in accordance with D.C. Official Code §§ 21-2205 and 21-2210; or

32 (B) A surrogate on behalf of a minor.

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

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

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

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

43 (8) "EMS agency" means a government department or agency, person, firm,
44 corporation, or organization authorized to provide emergency medical care or medical transport
45 to a person who is ill, injured, or incapacitated by disease or a medical condition.

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

49 (10) "Health care institution" means a hospital, maternity center, nursing home,
50 community residence facility, group home for persons with intellectual disabilities, hospice,
51 home care agency, ambulatory surgical facility, or renal dialysis facility, as those terms are
52 defined under D.C. Official Code § 44-501.

53 (11) "Health care professional" means a person who has graduated from an
54 accredited program for physicians, registered nurses, advanced practice nurses, physician

55 assistants, clinical social workers, clinical psychologists, or professional counselors, and is
56 licensed to practice in the District.

57 (12) "Incapacitated individual" shall have the same meaning as in section 3(5) of
58 the Health Care Decisions Act of 1988, effective March 16, 1989 (D.C. Law 7-189; D.C. Official
59 Code § 21-2202(5)).

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

61 (14) "Medical Orders for Scope of Treatment" ("MOST") means a set of portable,
62 medical orders resulting from a patient's or a patient's authorized representative's informed
63 decision-making with health care professionals that respects the patient's goals for care regarding
64 the use of medical interventions, is applicable across health care settings, and can be reviewed
65 and revised as needed or desired by the patient or the patient's authorized representative.

66 (15) "MOST Form" means a form issued by DOH for use in setting out,
67 capturing, and authorizing a MOST that meets the requirements set forth in section 5.

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

70 (17) "Surrogate" means the natural parent, adoptive parent, or legal guardian of a
71 minor who executes a comfort care order on behalf of the minor.

72 Sec. 3. Establishment of the MOST Advisory Committee and creation of a MOST Form.

73 (a) DOH shall develop and periodically revise a MOST Form, including instructions for
74 health care institutions, health care professionals, and patients for completing and using the
75 MOST Form.

76 (b) (1) DOH shall establish the MOST Advisory Committee.

77 (2) Members of the MOST Advisory Committee shall be appointed by DOH and
78 shall include:

79 (A) One representative from the Fire and Emergency Medical Services
80 Department;

81 (B) One pediatric health care professional;

82 (C) Two physicians, advanced practice nurses, or other health care
83 professionals involved in treating covered patients;

84 (D) Two representatives of health care institutions or long-term care
85 facilities; and

86 (E) Three representatives of patient advocacy groups.

87 (c) The MOST Advisory Committee shall:

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

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

90 (3) Recommend ongoing training of health care professionals and EMS personnel
91 about best practices regarding the use of a MOST and the nature and development of related
92 medical protocols;

93 (d) DOH shall strive to minimize any record-keeping burden imposed on health care
94 institutions under this act and ensure the confidentiality of any patient-specific information.

95 Sec. 4. The MOST Form.

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

98 (1) The orders of an authorized health care professional regarding
99 cardiopulmonary resuscitation and level of medical intervention in the event of a medical

100 emergency in accordance with the choices, goals, and preferences of a patient or the patient's
101 authorized representative;

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

103 (3) If the patient has an authorized representative, whether the authorized
104 representative made the treatment choices reflected in the MOST on behalf of the patient;

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

107 (5) The date and location of the initial authorization of the MOST and the date,
108 location, and outcome of any subsequent revisions to the MOST, by an authorized health care
109 professional and the patient or the patient's authorized representative.

110 (b) DOH shall make MOST Forms and instructions regarding MOST Forms and
111 protocols available to health care professionals and health care institutions in a hard copy and
112 electronic copy.

113 (c) DOH shall provide patients with the option of obtaining a bracelet to signify the
114 existence of a MOST Form for the patient.

115 (d) When, if ever, a new MOST is completed, the date of authorization shall become the
116 date of initial authorization and it shall not be required to record the dates and locations of each
117 previous authorization or review on the new MOST.

118 (e) A copy of a patient's operative MOST Form shall be provided to the patient or the
119 patient's authorized representative on bright blue paper by the signing authorized health care
120 professional upon execution.

121 (f) The MOST must be kept in a prominent manner in a patient's records printed on
122 bright blue paper and electronic medical records in a health care institution or private medical

123 practice, and a copy shall be transferred with the patient whenever the patient is transferred to
124 another health care institution or private medical practice or to the patient's residence.

125 (g) A copy of a MOST Form shall be as effective as an original.

126 Sec. 5. Execution and Issuance of MOST.

127 (a) (1) The following persons may give consent to a MOST:

128 (A) Any competent person, who is 18 years of age or older, on behalf of
129 himself or herself; or

130 (B) An authorized representative on behalf of an incapacitated person or a
131 minor.

132 (2) Consent to execute a MOST must be evidenced by the patient's or the
133 authorized representative's signature.

134 (b) Only an authorized health care professional treating a patient may issue a MOST for
135 that patient. The authorized health care professional shall complete the MOST Form in
136 accordance with the patient's wishes or, if the patient is incapacitated or a minor, in accordance
137 with the patient's wishes to the extent known and otherwise in accordance with the patient's
138 authorized representative.

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

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

142 (2) The patient or the patient's authorized representative requests.

143 (d) If a patient with a MOST is transferred from one health care institution to another, the
144 health care institution transferring the patient shall communicate the existence of the MOST to
145 the receiving health care institution prior to the transfer. The MOST shall accompany the patient

146 to the receiving health care institution and remain in effect. Within 24 hours of a transfer, the
147 MOST shall be reviewed by an authorized health care professional and the patient or the
148 patient's authorized representative.

149 (e) Any patient may be given the option of completing and executing a MOST, but no
150 one will be required to complete a MOST.

151 Sec. 6. Revocation of Consent to a MOST.

152 A patient or the patient's authorized representative may revoke a MOST at any time by:

153 (1) Directing the authorized health care professional who issued the MOST to
154 cancel the MOST;

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

157 Sec. 7. Relationship with Other Legal Documents

158 If a patient has a durable power of attorney for health care pursuant to D.C. Official Code
159 § 21-2205 or a comparable statute in any other jurisdiction, or another legal document with
160 substantially equivalent purpose to a durable power of attorney or a MOST, the most recent
161 document to have been executed shall govern if any conflict exists between the directives in such
162 legal document and the directives in the patient's MOST Form. For purposes of this section, the
163 date of execution of a MOST Form shall be the latest date of any review or modification of the
164 MOST Form pursuant to sections 4(d) or (e).

165 Sec. 8. Compliance with MOST.

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

169 (2) If there is uncertainty, or a reason to question, whether the MOST has been
170 revoked, the EMS personnel or health care professional shall act as if there were no MOST and
171 resuscitate the patient.

172 (b)(1) If the MOST is has not been revoked, the EMS personnel or health care
173 professional shall comply with the applicable treatment instructions provided in the MOST,
174 except in the circumstances described in section 13.

175 (2) If an EMS personnel or health care professional encounters a patient in
176 emergency medical circumstances whose MOST is has not been revoked, but the patient or the
177 patient's authorized representative orally requests resuscitation contrary to treatment instructions
178 in the MOST Form, then the EMS personnel or health care professional shall resuscitate the
179 patient. The EMS personnel or health care professional shall note the circumstance on the MOST
180 Form as a revocation of the MOST.

181 (c) If an EMS personnel or health care professional encounters a patient in emergency
182 medical circumstances with a MOST Form that has been defaced, he or she shall proceed as if
183 there were no MOST Form.

184 (d) If the EMS personnel does not resuscitate on the basis of applicable treatment
185 instructions on a MOST Form, EMS personnel shall record the do-not-resuscitate response in the
186 run report and report the do-not-resuscitate response to the Fire and EMS Department within 5
187 business days of the incident. The Fire and EMS Department shall provide the Mayor and DOH
188 with data on do-not-resuscitate responses biannually.

189 Sec. 10. Comfort care.

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

193 (1) Clear the airway, excluding artificial ventilation, esophageal obturator airway,
194 or endotracheal intubation;

195 (2) Administer suction;

196 (3) Provide oxygen, excluding artificial ventilation, esophageal obturator airway,
197 or endotracheal intubation;

198 (4) Provide pain medication;

199 (5) Control bleeding; or

200 (6) Make comfort adjustments.

201 Sec. 11. Reciprocity.

202 EMS personnel and other health care professionals shall recognize a MOST Form or
203 similar instrument issued executed in another state as if the instrument were issued in accordance
204 with this act. In emergency medical circumstances, EMS personnel and health care professionals
205 may assume in good faith, when presented with a MOST Form or similar instrument from
206 another state, that the MOST Form or similar instrument was executed in compliance with the
207 laws of that state.

208 Sec. 12. Liability.

209 (a) No health care professional, EMS personnel, EMS agency, health care institution,
210 government entity, or government employee shall be subject to criminal or civil liability,
211 including liability for homicide or assistance in a homicide or suicide, or be found to have
212 committed an unprofessional act, because the person or entity, in good faith, complies with a

213 MOST Form or declines to comply with a MOST in good faith pursuant to this section. This
214 subsection shall be liberally construed to protect from liability a person or entity who in good
215 faith attempts to act in compliance with this act.

216 (b)(1) Any health care professional who, for religious or moral reasons, is unwilling or
217 unable to comply with all or any portion of a MOST Form for a patient under the health care
218 professional's care is not required to do so, and shall:

219 (A) Immediately notify the patient or the patient's authorized
220 representative orally or in writing of the health care professional's unwillingness or inability to
221 comply with all or any part of the MOST;

222 (B) Immediately notify the health care professional's supervisor or
223 employer in writing of the health care professional's unwillingness or inability to comply with all
224 or any part of the MOST; and

225 (C) Transfer the patient to a qualified health care professional who is
226 willing and able to honor the MOST in full as soon as possible.

227 (2) A transfer pursuant to this section shall not constitute abandonment of the
228 patient or unprofessional conduct. A patient may not be charged for the costs of a transfer
229 pursuant to this paragraph or for services related to such a transfer.

230 (3) If a health care professional who, for religious or moral reasons, is unwilling
231 or unable to comply with a MOST Form for a patient under the health care professional's care
232 has insufficient time because of emergency medical circumstances to effectuate a transfer in
233 accordance with this subsection, the health care professional is not required to comply with the
234 MOST Form and shall not be found criminally or civilly liable to have committed an

235 unprofessional act, or to have violated any provision of this act, because the health care
236 professional attempts to resuscitate the patient.

237 (c)(1) Any EMS personnel who for religious or moral reasons is unwilling or unable to
238 comply with all or any portion of a MOST is not required to do so and shall immediately notify
239 the patient or the patient's authorized representative orally and the EMS agency that employs the
240 EMS personnel in writing of the EMS personnel's unwillingness or inability to comply with the
241 MOST.

242 (2) Any EMS personnel who for religious or moral reasons is unwilling or unable
243 to comply with a MOST is not required to comply with the MOST and shall not be found
244 criminally or civilly liable, to have committed an unprofessional act, or to have violated any
245 provision of this act, because the EMS personnel attempted to resuscitate a patient.

246 (d)(1) Any health care institution that, for religious and moral reasons as set forth in the
247 health care institution's policies and procedures, is unwilling or unable to comply with all or any
248 portion of a MOST for a patient at the health care institution is not required to do so and may
249 prohibit compliance with the MOST by health care providers at the health care institution. In
250 such a case, the health care institution shall:

251 (A) Immediately notify the patient or the patient's authorized
252 representative orally or in writing; and

253 (B) Transfer the patient as soon as practicable to a qualified health care
254 institution that is willing and able to honor the MOST in full if medically safe and otherwise
255 feasible.

256 (2) A transfer pursuant to this section shall not constitute abandonment of the
257 patient or unprofessional conduct. A patient may not be charged for the costs of a transfer
258 pursuant to this paragraph, or for services related to such a transfer.

259 (3) If a health care institution that, for religious or moral reasons as set forth in the
260 health care institution's policies and procedures, is unwilling or unable to comply with a MOST
261 Form for a patient at a health care institution has insufficient time because of emergency medical
262 circumstances to effectuate a transfer in accordance with this subsection, the health care
263 institution, and any health care professionals employed by the health care institution involved in
264 the patient's care, are not required to comply with the MOST and shall not be found criminally
265 or civilly liable, to have committed an unprofessional act, or to have violated any provision of
266 this act, because resuscitation is attempted on the patient.

267 Sec. 13. Prohibitions and penalties.

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

273 (b) Except as provided in subsection (a) of this section, a person who, without
274 authorization of the principal, willfully alters, forges, conceals, or destroys a MOST Form, a
275 reinstatement or revocation of a MOST Form, or any other evidence or document reflecting the
276 principal's desires and interests, with the intent or effect or affecting a health care decision shall
277 be fined no more than the amount set forth in section 101 of the Criminal Fine Proportionality

278 Amendment Act of 2012, effective June 11, 2013 (D.C. Law 190317; D.C. Official Code § 22-
279 3571.01), or incarcerated for no more than 180 days, or both.

280 Sec. 14. Insurance.

281 (a) Authorizing or ordering the withholding or withdrawal of resuscitation or any other
282 medical intervention, or withholding or withdrawing resuscitation or any other medical
283 intervention, from a patient in accordance with this act shall not constitute a suicide or assistance
284 in a suicide for purposes of any life, disability, or health insurance policy or any annuity contract.

285 (b) The execution or issuance of a MOST pursuant to this act shall not affect the sale,
286 procurement, issuance, effectiveness, or terms of any life, disability, or health insurance policy or
287 any annuity contract, nor be deemed to modify the terms of an existing life, disability, or health
288 insurance policy or any annuity contract. No life, disability, or health insurance policy or any
289 annuity contract shall be legally impaired or invalidated because resuscitation or any other
290 medical intervention is provided to or withheld from a patient in accordance with this act,
291 notwithstanding any terms of such a policy or contract to the contrary.

292 (c) No health care professional, EMS personnel, health care institution, health service
293 plan, health maintenance organization, disability insurer, medical or health care insurer, self-
294 insured employee welfare benefit pan, nonprofit medical insurance corporation, or mutual
295 nonprofit hospital service corporation shall require any person to execute a MOST as a condition
296 of being insured for, or receiving, health care services or other insurance benefits.

297 Sec. 15. Study of electronic registry.

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

300 Sec. 16. Rules.

301 The Mayor, pursuant to subchapter I of chapter 5 of title 2, may issue rules to implement
302 the provisions of this act.

303 Sec. 17. Conforming amendment.

304 The Emergency Medical Services Non-Resuscitation Procedures Act of 2000, effective
305 April 3, 2001 (D.C. Law 13-224; D.C. Official Code Code §§ 7-651.01 *et seq.*) is repealed
306 effective the date DOH issues the MOST Form.

307 Sec. 18. Fiscal impact statement.

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

311 Sec. 19. Effective date.

312 This act shall take effect following approval by the Mayor (or in the event of veto by the
313 Mayor, action by the Council to override the veto), a 30-day period of congressional
314 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved
315 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the
316 District of Columbia Register.