A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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 Act of 2015".

Sec. 2. Definitions.

For the purposes of this act, the term:

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

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

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

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

(B) A surrogate on behalf of a minor.
(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. It 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 care or medical transport to a person who is ill, injured, or incapacitated by disease or a medical condition.

(9) “EMS personnel” means an emergency medical technician/basic, emergency medical technician/paramedic, or emergency medical technician/intermediate 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 under D.C. Official Code § 44-501.

(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) of the Health Care Decisions Act of 1988, effective March 16, 1989 (D.C. Law 7-189; D.C. Official Code § 21-2202(5)).

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

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

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

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

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

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

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

(b) (1) DOH shall establish the MOST Advisory Committee.
(2) Members of the MOST Advisory Committee shall be appointed by DOH and shall include:

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

(B) One pediatric health care professional;

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

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

(E) Three representatives of patient advocacy groups.

(c) The MOST Advisory Committee shall:

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

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

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

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

Sec. 4. 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, whether the authorized representative made the treatment choices reflected in the MOST on behalf of the patient;

(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 and the date, location, and outcome of any subsequent revisions to the MOST, by an authorized health care professional and the patient or the patient’s authorized representative.

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

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

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

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

(f) The MOST must be kept in a prominent manner in a patient’s records printed on bright blue paper 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 or private medical practice or to the patient’s residence.

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

Sec. 5. Execution and Issuance of MOST.

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

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

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

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

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

(c) The MOST 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) The patient or the patient’s authorized representative requests.

(d) If a patient with a MOST is transferred from one health care institution to another, the
health care institution transferring the patient shall communicate the existence of the MOST to
the receiving health care institution prior to the transfer. The MOST shall accompany the patient
to the receiving health care institution and remain in effect. Within 24 hours of a transfer, the
MOST shall be reviewed by an authorized health care professional and the patient or the
patient’s authorized representative.

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

Sec. 6. Revocation of Consent to a MOST.

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

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

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

Sec. 7. Relationship with Other Legal Documents

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

Sec. 8. Compliance with MOST.

(a) (1) If an EMS personnel or health care professional encounters a person who is in
possession of a MOST, the EMS personnel or health care professional shall determine whether
the person is the subject of the MOST and whether the MOST has been revoked.
(2) If there is uncertainty, or a reason to question, whether the MOST has been revoked, the EMS personnel or health care professional shall act as if there were no MOST and resuscitate the patient.

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

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

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

(d) If the EMS personnel does not resuscitate 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 Fire and EMS Department within 5 business days of the incident. The Fire and EMS Department shall provide the Mayor and DOH with data on do-not-resuscitate responses biannually.

Sec. 10. 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, excluding artificial ventilation, esophageal obturator airway, or endotracheal intubation;

(2) Administer suction;

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

(4) Provide pain medication;

(5) Control bleeding; or

(6) Make comfort adjustments.

Sec. 11. Reciprocity.

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

Sec. 12. Liability.

(a) No health care professional, EMS personnel, EMS agency, health care institution, government entity, or government employee shall be subject to criminal or civil liability, including liability for homicide or assistance in a homicide or suicide, or be found to have committed an unprofessional act, because the person or entity, in good faith, complies with a
MOST Form or declines to comply with a MOST in good faith pursuant to this section. This subsection shall be liberally construed to protect from liability a person or entity who in good faith attempts to act in compliance with this act.

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

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

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

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

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

(3) If a health care professional who, for religious or moral reasons, is unwilling or unable to comply with a MOST Form for a patient under the health care professional’s care has insufficient time because of emergency medical circumstances to effectuate a transfer in accordance with this subsection, the health care professional is not required to comply with the MOST Form and shall not be found criminally or civilly liable to have committed an
unprofessional act, or to have violated any provision of this act, because the health care
professional attempts to resuscitate the patient.

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

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

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

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

(B) Transfer the patient as soon as practicable to a qualified health care
institution that is willing and able to honor the MOST in full if medically safe and otherwise
feasible.
(2) A transfer pursuant to this section shall not constitute abandonment of the patient or unprofessional conduct. A patient may not be charged for the costs of a transfer pursuant to this paragraph, or for services related to such a transfer.

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

Sec. 13. Prohibitions and penalties.

(a) A person who, without authorization of the patient, willfully alters, forges, conceals, or destroys a MOST Form, a reinstatement or revocation of a MOST Form, or any other evidence or document reflecting the patient’s desires and interests, with the intent and 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 of the principal, willfully alters, forges, conceals, or destroys a MOST Form, a reinstatement or revocation of a MOST Form, or any other evidence or document reflecting the principal’s desires and interests, with the intent or effect or affecting a health care decision shall be fined no 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 no more than 180 days, or both.


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

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

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

Sec. 15. Study of electronic registry.

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.

Sec. 16. Rules.
The Mayor, pursuant to subchapter I of chapter 5 of title 2, may issue rules to implement
the provisions of this act.

Sec. 17. Conforming amendment.

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

Sec. 18. 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. 19. 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.