

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

3RD CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
SENATE BILL NO. 715

By: Henry of the Senate

and

Deutschendorf of the
House

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to health care instructions; creating the Oklahoma Do-Not-Resuscitate Act and providing short title; declaring intention that certain health care orders be given full faith and credit; defining terms; declaring certain health care presumption to exist unless certain conditions have been met; prohibiting requirement that certain health care agencies provide certain treatment, facilities, or services; requiring health care facility to communicate certain policy to certain persons; providing form; requiring compliance with certain health care order under certain circumstances; providing for cancellation and revocation of certain health care order; providing protection for certain persons under certain circumstances from criminal prosecution and civil liability for compliance with or failure to comply with certain health care order; requiring notification of certain person by physician refusing to comply with certain health care order; prohibiting certain conditions for insurance; requiring transfer of certain health care orders and communication of such orders between health care facilities; preserving certain existing rights; making provisions cumulative; requiring Department of Human Services to distribute certain health care order forms; providing for certain health care order identification and requiring Department of Human Services to develop system for distribution; requiring Department of Human Services to develop and implement certain public education program; requiring certain construction of act; providing for application of act; amending 30 O.S. 1991, Section 3-119, as amended by Section 19, Chapter 114, O.S.L. 1992 (30 O.S. Supp. 1996, Section 3-119), which relates to powers of guardians; updating language; conforming language; amending Section 5, Chapter 274, O.S.L. 1992, as amended by Section 13, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1996, Section 1072.1), which relates to durable power of attorney; conforming language; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Do-Not-Resuscitate Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

It is the intention of the Legislature to recognize that the existence of do-not-resuscitate identification or consent correctly expresses the will of any person who bears it and that foreign courts recognize this expression and give full faith and credit to do-not-resuscitate identification or consent.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Do-Not-Resuscitate Act:

1. "Attending physician" means a licensed physician who has primary responsibility for treatment or care of the person. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under the provisions of the Oklahoma Do-Not-Resuscitate Act;

2. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest;

3. "Do-not-resuscitate identification" means a standardized identification necklace, bracelet, or card as set forth in the Oklahoma Do-Not-Resuscitate Act that signifies that a do-not-resuscitate consent or order has been executed for the possessor;

4. "Do-not-resuscitate order" means an order issued by a licensed physician that cardiopulmonary resuscitation should not be administered to a particular person;

5. "Emergency medical services personnel" means firefighters, law enforcement officers, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities, acting within the usual course of their professions;

6. "Health care decision" means a decision to give, withhold, or withdraw informed consent to any type of health care including, but not limited to, medical and surgical treatments including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other extended care facility, home health care, and the gift or donation of a body organ or tissue;

7. "Health care agency" means an agency established to administer or provide health care services and which is commonly known by a wide variety of titles including, but not limited to, hospitals, medical centers, ambulatory health care facilities, physicians' offices and clinics, extended care facilities operated in connection with hospitals, nursing homes, extended care facilities operated in connection with rehabilitation centers, home care agencies and hospices;

8. "Health care provider" means any physician, dentist, nurse, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, hospice, or other health care services of any kind;

9. "Incapacity" means the inability, because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner; and

10. "Representative" means an attorney-in-fact for health care decisions acting pursuant to the Uniform Durable Power of Attorney Act, a health care proxy acting pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, or a guardian of the person appointed under the Oklahoma Guardianship and Conservatorship Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following

conditions, of which the health care provider has actual knowledge, apply:

1. The person has notified such person's attending physician that such person does not consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest and such notification has been entered in the patient's medical records; or

2. An incapacitated person's representative has notified the incapacitated person's attending physician that the representative, based on the known wishes of the incapacitated person, does not consent to the administration of cardiopulmonary resuscitation in the event of the incapacitated person's cardiac or respiratory arrest and such notification has been entered in the patient's medical records; or

3. An attending physician of an incapacitated person without a representative knows by clear and convincing evidence that the incapacitated person, when competent, decided on the basis of information sufficient to constitute informed consent that such person would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Clear and convincing evidence for this purpose shall include oral, written, or other acts of communication between the patient, when competent, and family members, health care providers, or others close to the patient with knowledge of the patient's personal desires; or

4. A do-not-resuscitate consent form in accordance with the provisions of the Oklahoma Do-Not-Resuscitate Act has been executed for that person; or

5. An executed advance directive for health care, or other document recognized by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, directing that life-sustaining treatment not be performed in the event of cardiac or respiratory arrest, is in effect for that person, pursuant to the provisions of paragraph 1 of Section 3101.3 or Section 3101.14 of Title 63 of the Oklahoma Statutes.

B. Nothing in the Oklahoma Do-Not-Resuscitate Act shall require a health care agency to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation; provided, if such health care agency does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person or representative prior to the person coming under the care of the health care agency.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For persons under the care of a health care agency, a do-not-resuscitate order shall, if issued, be in accordance with the policies and procedures of the health care agency as long as not in conflict with the provisions of the Oklahoma Do-Not-Resuscitate Act.

B. The do-not-resuscitate consent form shall be in substantially the following form:

FRONT PAGE

OKLAHOMA DO-NOT-RESUSCITATE (DNR) CONSENT FORM

I, _____, request limited health care as described in this document. If my heart stops beating or if I stop breathing, no medical procedure to restore breathing or heart function will be instituted by any health care provider including, but not limited to, emergency medical services (EMS) personnel.

I understand that this decision will not prevent me from receiving other health care such as the Heimlich maneuver or oxygen and other comfort care measures.

I understand that I may revoke this consent at any time in one of the following ways:

1. If I am under the care of a health care agency, by making an oral, written, or other act of communication to a physician or other health care provider of a health care agency;

2. If I am not under the care of a health care agency, by destroying my do-not-resuscitate form, removing all do-not-

resuscitate identification from my person, and notifying my attending physician of the revocation;

3. If I am incapacitated and under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by written notification of a physician or other health care provider of the health care agency or by oral notification of my attending physician; or

4. If I am incapacitated and not under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by destroying the do-not-resuscitate form, removing all do-not-resuscitate identification from my person, and notifying my attending physician of the revocation.

I give permission for this information to be given to EMS personnel, doctors, nurses, and other health care providers. I hereby state that I am making an informed decision and agree to a do-not-resuscitate order.

_____ OR _____

Signature of Person

Signature of Representative

(Limited to an attorney-in-fact for health care decisions acting under the Durable Power of Attorney Act, a health care proxy acting under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act or a guardian of the person appointed under the Oklahoma Guardianship and Conservatorship Act.)

This DNR consent form was signed in my presence.

Date

Signature of Witness

Address

Signature of Witness

Address

BACK OF PAGE

CERTIFICATION OF PHYSICIAN

(This form is to be used by an attending physician only to certify that an incapacitated person without a representative would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. An attending physician of an incapacitated person without a representative must know by clear and convincing evidence that the incapacitated person, when competent, decided on the basis of information sufficient to constitute informed consent that such person would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Clear and convincing evidence for this purpose shall include oral, written, or other acts of communication between the patient, when competent, and family members, health care providers, or others close to the patient with knowledge of the patient's desires.)

I hereby certify, based on clear and convincing evidence presented to me, that I believe that _____

Name of Incapacitated Person

would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Therefore, in the event of cardiac or respiratory arrest, no chest compressions, artificial ventilation, intubations, defibrillation, or emergency cardiac medications are to be initiated.

Physician's Signature/Date

Physician's Name (PRINT)

Physician's Address/Phone

C. Witnesses must be individuals who are eighteen (18) years of age or older who are not legatees, devisees or heirs at law.

D. It is the intention of the Legislature that the preferred, but not required, do-not-resuscitate form in Oklahoma shall be the form set out in subsection B of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

Health care providers shall, when presented with the original or copy of any do-not-resuscitate consent form created as provided under Section 5 of this act, take appropriate actions to comply with the do-not-resuscitate request.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. At any time, a person under the care of a health care agency may revoke such person's do-not-resuscitate consent by making an oral, written, or other act of communication to a physician or other health care provider of a health care agency.

B. At any time, a person not under the care of a health care agency may revoke such person's do-not-resuscitate consent by destroying the form and removing all do-not-resuscitate identification from the person. The person is responsible for notifying such person's attending physician of the revocation.

C. At any time, a representative may revoke the do-not-resuscitate consent for an incapacitated person under the care of a health care agency by notifying a physician or other health care provider of the health care agency of the revocation of consent in writing or by orally notifying the attending physician.

D. At any time, a representative may revoke the do-not-resuscitate consent for an incapacitated person not under the care of a health care agency by destroying the form and removing all do-not-resuscitate identification from the person. The representative is responsible for notifying the person's attending physician of the revocation.

E. The attending physician who is informed of or provided with a revocation of consent to a do-not-resuscitate order pursuant to this section shall immediately cancel the order if the person is under the care of a health care agency and shall notify the health care providers of the health care agency responsible for the person's care of the revocation and cancellation. Any professional staff of the health care agency who is informed of or provided with a revocation of consent for a do-not-resuscitate

order pursuant to this section shall immediately notify the attending physician of the revocation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No health care provider, health care agency, or individual employed by, acting as the agent of, or under contract with any such health care provider, health care agency, or individual shall be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for carrying out in good faith a do-not-resuscitate consent or order authorized by the Oklahoma Do-Not-Resuscitate Act on behalf of a person as instructed by the person or representative or for those actions taken in compliance with the standards and procedures set forth in the Oklahoma Do-Not-Resuscitate Act.

B. No health care provider, health care agency, individual employed by, acting as agent of, or under contract with any such health care provider, health care agency or individual or other individual who witnesses a cardiac or respiratory arrest shall be subject to criminal prosecution, civil liability or discipline for unprofessional conduct for providing cardiopulmonary resuscitation to a person for whom a do-not-resuscitate consent or order has been issued; provided, that such individual:

1. Reasonably and in good faith was unaware of the issuance of a do-not-resuscitate consent or order; or

2. Reasonably and in good faith believed that consent to a do-not-resuscitate order had been revoked or canceled.

C. Any physician who refuses to issue a do-not-resuscitate order at a person's request or any health care provider or health care agency who refuses to comply with a do-not-resuscitate consent or order entered pursuant to the Oklahoma Do-Not-Resuscitate Act shall take reasonable steps to advise the person or representative of the person promptly that the physician is unwilling to effectuate the consent or order and shall as promptly as practicable take all reasonable steps to arrange care of the person by another physician or health care provider.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No policy of life insurance shall be impaired, modified, or invalidated in any manner by the issuance of a do-not-resuscitate consent or order, notwithstanding any term of the policy to the contrary.

B. A person may not prohibit or require the issuance of a do-not-resuscitate consent or order for an individual as a condition of insurance or for receiving health care services.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

If a person with a do-not-resuscitate consent or order is transferred from such person's home to the care of a health care agency or from the care of one health care agency to another health care agency, the existence of a do-not-resuscitate consent or order shall be communicated to the receiving health care agency prior to the transfer, and a copy of the written do-not-resuscitate consent or order shall accompany the person to the health care agency receiving the person and shall remain effective unless revoked as provided in Section 7 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the Oklahoma Do-Not-Resuscitate Act, a person's right to receive and a health care provider's responsibility to administer cardiopulmonary resuscitation shall not be impaired. Nothing in the Oklahoma Do-Not-Resuscitate Act shall impair or supersede a person's right to choose to have cardiopulmonary resuscitation withheld or a health care provider's responsibility to withhold cardiopulmonary resuscitation as provided by law. In this respect, the provisions of the Oklahoma Do-Not-Resuscitate Act are cumulative.

B. In the event of cardiac or respiratory arrest, a patient's attending physician or other health care provider must comply with such patient's request for cardiopulmonary resuscitation whether requested by such patient or such patient's representative, or required by such patient's advance directive.

C. Nothing in the Oklahoma Do-Not-Resuscitate Act shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do-not-resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of the Oklahoma Do-Not-Resuscitate Act.

D. The provisions of the Oklahoma Do-Not-Resuscitate Act shall not affect the validity of do-not-resuscitate consents or orders that were executed prior to the effective date of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Department of Human Services, no later than one (1) year after the effective date of this act, shall implement the statewide distribution of do-not-resuscitate forms which comply with Section 5 of this act.

B. Do-not-resuscitate identification as set forth in the Oklahoma Do-Not-Resuscitate Act shall consist of either a medical condition bracelet, necklace, or card with the inscription of the patient's name, date of birth in numerical form, and "Oklahoma do-not-resuscitate" on it. No other identification or wording shall be deemed to comply with the provisions of the Oklahoma Do-Not-Resuscitate Act. This identification shall be issued only upon presentation of a properly executed do-not-resuscitate consent form as set forth in Section 5 of this act.

C. The Director of the Department of Human Services, no later than one (1) year after the effective date of this act, shall be responsible for establishing a system for distribution of the do-not-resuscitate forms and identification bracelets, necklaces, or cards.

D. The legal services developer from the Aging Services Division of the Department of Human Services, no later than one (1) year after the effective date of this act, shall develop and implement a statewide educational effort to inform the public of their right to accept or refuse cardiopulmonary resuscitation and to request their physician to write a do-not-resuscitate order for them, and to urge health care agencies within this state to utilize a do-not-resuscitate form which complies with Section 5 of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of the Oklahoma Do-Not-Resuscitate Act shall not, for any purpose, constitute suicide or homicide. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of the Oklahoma Do-Not-Resuscitate Act, however, shall not relieve any individual of responsibility for any civil or criminal acts that may have caused the person's condition. Nothing in the Oklahoma Do-Not-Resuscitate Act shall be construed to legalize, condone, authorize, or approve mercy killing or assisted suicide.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of the Oklahoma Do-Not-Resuscitate Act apply to all persons regardless of whether or not they have completed an advance directive for health care, provided that the provisions of the Oklahoma Do-Not-Resuscitate Act may not be construed to authorize issuance of a do-not-resuscitate order in violation of a currently valid advance directive for health care.

SECTION 15. AMENDATORY 30 O.S. 1991, Section 3-119, as amended by Section 19, Chapter 114, O.S.L. 1992 (30 O.S. Supp. 1996, Section 3-119), is amended to read as follows:

Section 3-119. A guardian shall have no powers except as provided by the Oklahoma Statutes or given to ~~him~~ such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures as defined by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act from the ward, except:

- a. with specific authorization of the court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment, ~~or~~
- b. as authorized by an advance directive executed pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, or
- c. as authorized by a consent not to resuscitate made pursuant to the Oklahoma Do-Not-Resuscitate Act;

2. No guardian or court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward, ;

3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the court having jurisdiction of the guardianship proceeding, ;

4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the court having jurisdiction of the guardianship proceeding, ; and

5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed

pursuant to the laws of this state absent formal commitment proceedings in which the ward has independent counsel.

SECTION 16. AMENDATORY Section 5, Chapter 274, O.S.L. 1992, as amended by Section 13, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1996, Section 1072.1), is amended to read as follows:

Section 1072.1 A. The durable power of attorney may show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

2. The time and conditions under which the power is to become effective;

3. The extent and scope of the powers conferred; and

4. Who is to exercise the power, including any successor attorney-in-fact if a prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may grant complete or limited authority with respect to the principal's:

1. Person, including, but not limited to, health and medical care decisions and a do-not-resuscitate consent on the principal's behalf, but excluding:

a. the execution, on behalf of the principal, of a Directive to Physicians, an Advance Directive for Health Care, Living Will, or other document purporting to authorize life-sustaining treatment decisions, and

b. the making of life-sustaining treatment decisions unless the power complies with the requirements for a health care proxy under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act or the Oklahoma Do-Not-Resuscitate Act; and

2. Property, including homestead property, whether real, personal, intangible or mixed.

SECTION 17. This act shall become effective November 1, 1997.

46-1-1561 KSM