

SHORT TITLE: Health care instructions; creating the Oklahoma Do-Not-Resuscitate Act; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 715

By: Henry

AS INTRODUCED

An Act relating to health care instructions; creating the Oklahoma Do-Not-Resuscitate Act and providing short title; stating legislative findings; 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 facilities provide certain treatment, facilities, or services; requiring health care facility to communicate certain policy to certain persons; authorizing issuance of certain health care order for certain persons and 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; 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:

A. The Legislature finds that, although cardiopulmonary resuscitation has proved invaluable in the prevention of sudden, unexpected death, it is appropriate for an individual or an individual's representative, together with an attending physician in certain circumstances, to issue an advance written order not to attempt cardiopulmonary resuscitation.

B. The Legislature further finds that the trend to empower family members in the treatment decision-making process raises

serious questions about the potential for a violation of the incapacitated patient's rights.

C. The Legislature further finds that an incapacitated patient's rights are best protected by allowing only an attorney-in-fact under a durable power of attorney or a guardian under a guardianship to act as a surrogate decision maker for an incapacitated patient.

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:

It is the intention of the Legislature to recognize that the existence of do-not-resuscitate identification 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.

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:

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

1. "Attending physician" means a licensed physician, selected by or assigned to the person, 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 this act;

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

3. "Do-not-resuscitate identification" means a standardized identification necklace, bracelet, or card as set forth in this act that signifies that a do-not-resuscitate order has been issued 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 facility" means a facility 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, and extended care facilities operated in connection with rehabilitation centers;

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

9. "Home" means any place of residence other than a health care facility and includes residential board and care homes and personal care homes;

10. "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

11. "Representative" means an attorney-in-fact appointed under the Uniform Durable Power of Attorney Act or a guardian appointed under the Oklahoma Guardianship and Conservatorship Act.

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. 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. A do-not-resuscitate order in accordance with the provisions of this act has been issued for that person; or

2. A completed advance directive for health care for that person is in effect, pursuant to the provisions of Section 3101.1 et seq. of Title 63 of the Oklahoma Statutes.

B. Nothing in this act shall require a nursing home, personal care home, or extended care facility operated in connection with a hospital 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 a health care facility does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person or representative prior to admission.

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:

A. An attending physician may issue a do-not-resuscitate order for persons who are present in or residing at home or in a health care facility provided that the person or representative has consented to the order. A do-not-resuscitate order shall be issued in writing in the form described in this section. For persons

present in health care facilities, a do-not-resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this act.

B. Unless otherwise directed by the patient when competent, a representative may consent to a do-not-resuscitate order for an incapacitated person. A do-not-resuscitate order written by a physician for an incapacitated person with the consent of the representative is valid and shall be respected by health care providers.

C. For persons not present or residing in a health care facility, the do-not-resuscitate order shall be in substantially the following form:

OKLAHOMA DO-NOT-RESUSCITATE (DNR) ORDER

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 oxygen and other comfort care measures.

I understand that I may revoke this order at any time.

I give permission for this information to be given to EMS personnel, doctors, nurses, and other health care providers. I hereby agree to this do-not-resuscitate order.

\_\_\_\_\_ OR \_\_\_\_\_

Signature

Signature/Representative

I affirm that this patient/representative is making an informed decision and that this is the expressed directive of the patient. I hereby certify that I or my designee have explained to the patient the full meaning of the order, available alternatives, and how the

order may be revoked. I or my designee have provided an opportunity for the patient/representative to ask and have answered any questions regarding the execution of this form. A copy of this order has been placed in the medical record. In the event of cardiopulmonary arrest, no chest compressions, artificial ventilations, intubation, defibrillation, or cardiac medications are to be initiated.

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Physician's Signature/Date

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Physician's Name (PRINT)

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Physician's Address/Phone

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. Health care providers shall comply with the do-not-resuscitate order when presented with:

1. A do-not-resuscitate order signed by a physician in the form specified in Section 6 of this act;

2. Do-not-resuscitate identification as set forth in Section 13 of this act; or

3. A do-not-resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures.

B. Health care providers shall respect do-not-resuscitate orders.

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. At any time, a person in a health care facility may revoke his or her previous request for a consent to a do-not-resuscitate order by making either a written, oral, or other act of



communication to a physician or other professional staff of a health care facility.

B. At any time, a person residing at home may revoke his or her do-not-resuscitate order by destroying the order and removing do-not-resuscitate identification on his or her person. The person is responsible for notifying his or her physician of the revocation.

C. At any time, a representative may revoke his or her consent to a do-not-resuscitate order for an incapacitated person in a health care facility by notifying a physician or other professional staff of a health care facility of the revocation of consent in writing or by orally notifying the attending physician in the presence of a witness eighteen (18) years of age or older.

D. At any time, a representative may revoke his or her consent to a do-not-resuscitate order for an incapacitated person residing at home by destroying the order and removing do-not-resuscitate identification from the person. The representative is responsible for notifying the person's 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 in a health care facility and shall notify the professional staff of the health care facility responsible for the person's care of the revocation and cancellation. Any professional staff of the health care facility 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.

F. Only a licensed physician may cancel the issuance of a do-not-resuscitate order.

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 health care provider, health care facility, or individual employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability for carrying out in good faith a do-not-resuscitate order authorized by this 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 this act.

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

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

2. Reasonably and in good faith believed that consent to the 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 to comply with a do-not-resuscitate order entered pursuant to this act shall take reasonable steps to advise the person or representative of the person promptly that the physician is unwilling to effectuate the order.

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:

A. No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of a do-not-resuscitate 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 order for an individual as a condition of insurance or for receiving health care services.

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:

If a person with a do-not-resuscitate order is transferred from one health care facility to another health care facility, the existence of a do-not-resuscitate order shall be communicated to the receiving facility prior to the transfer, and a copy of the written do-not-resuscitate order shall accompany the person to the health care facility receiving the person and shall remain effective until a physician at the receiving facility issues admission orders.

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. Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In this respect, the provisions of this act are cumulative.

B. Nothing in this 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 this act.

C. Do-not-resuscitate orders which comply with the provisions of this act but which were executed prior to the effective date of this act shall be valid.

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:

A. The Director of the Department of Human Services, no later than one (1) year after the passage of this act, shall implement the

statewide distribution of do-not-resuscitate forms which comply with Section 6 of this act.

B. Do-not-resuscitate identification as set forth in this act shall consist of either a medical condition bracelet or necklace 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 this act. This identification shall be issued only upon presentation of a properly executed do-not-resuscitate order form as set forth in Section 6 of this act or a do-not-resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

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

D. The legal services developer from the Aging Services Division of the Department of Human Services, no later than one (1) year after the passage 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 facilities within this state to utilize a form which complies with Section 6 of this act.

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 withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this act does not, for any purpose, constitute homicide. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this act, however, shall not relieve any individual of

responsibility for any criminal acts that may have caused the person's condition. Nothing in this act shall be construed to legalize, condone, authorize, or approve mercy killing or assisted suicide.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3131.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of this act apply to all persons regardless of whether or not they have completed an advance directive for health care.

SECTION 16. This act shall become effective November 1, 1997.

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