



Lisa Musielewicz

Bill Analysis
Legislative Service Commission

Proposed Sub. H.B. 601

127th General Assembly
(LSC 127 1207-7)

Rep. Wachtmann

BILL SUMMARY

Medical orders for life-sustaining treatment

- Generally permits a physician, physician assistant, certified nurse practitioner, or clinical nurse specialist to issue medical orders for life-sustaining treatment (MOLST) for a patient of any age by completing a MOLST form and specifies who, in addition to such a medical professional, must participate in a form's completion.
- Requires a health care facility initiating the transfer of a patient who is the subject of a MOLST form to send a copy of the form to the receiving facility prior to the transfer.
- Specifies how a MOLST form can be revoked.
- Specifies when an instruction in a MOLST form is superseded by an inconsistent instruction in a general consent to treatment form or advance directive.
- Specifies what happens when a section of a MOLST form is left incomplete.
- Generally prohibits a health care facility, health care professional, or emergency services worker from being subject to criminal prosecution or civil liability, or being subject to professional disciplinary action, for acting in accordance with a valid MOLST form or the bill's provisions governing medical orders for life-sustaining treatment.
- Specifies that the death of an individual that occurs as a result of actions taken consistent with instructions in a MOLST form does not constitute for any purpose a suicide, aggravated murder, or any other homicide.

- Prohibits completion of a MOLST form from being used to discriminate against a person for purposes of life or health care insurance.
- Requires the Director of Health to adopt rules prescribing the MOLST form and specifying other matters necessary to implement the bill's provisions governing medical orders for life-sustaining treatment.
- Creates the Medical Orders for Life-Sustaining Treatment Advisory Council and specifies that the Council ceases to exist when the Director of Health adopts the initial rules required by the bill.

Do-not-resuscitate orders

- Specifies that the do-not-resuscitate protocol and standard forms of DNR identification adopted by the Department of Health under current law are effective only for DNR orders issued before the bill's effective date.
- Specifies that nothing in the DNR law prohibits a physician from issuing a directive on or after the bill's effective date and that identifies a person and specifies that CPR should not be administered to that person, but requires that it be issued in accordance with reasonable and prevailing standards of care.
- Prohibits health care facilities and certain health care professionals and persons who work under the direction of such professionals from being held criminally and civilly liable, or being subject to professional disciplinary action, for actions arising out of or relating to the withholding or withdrawal of CPR pursuant to (1) a declaration (living will) that includes a specific authorization for CPR use, withholding, or withdrawal, (2) a DNR order, or (3) a MOLST form that includes a specific authorization for CPR use, withholding, or withdrawal, as long as the use, withholding, or withdrawal is consistent with instructions in the relevant document.
- Requires emergency medical services personnel, when presented with DNR identification, a declaration, DNR order, or MOLST form, to comply with the instructions regarding the withholding or withdrawal of CPR in the declaration, order, or form.
- Specifies what must happen when a person's attending physician or the health care facility in which the person is located is unwilling to comply

with the instructions regarding CPR withholding or withdrawal in the person's declaration, order, or form.

- Specifies that the death of a person resulting from the withholding or withdrawal of CPR pursuant to instructions in a declaration, written DNR order, or MOLST form and in circumstances where an individual is the subject of a declaration, DNR order, MOLST form, or in possession of DNR identification does not constitute for any purpose a suicide, aggravated murder, or any other homicide.
- Prohibits a person who is any of the following from being discriminated against for purposes of life or health care insurance: (1) the subject of a living will that includes a specific authorization for CPR use, withholding, or withdrawal, (2) the subject of a written DNR order, (3) the subject of a MOLST form that includes a specific authorization for CPR use, withholding, or withdrawal, or (4) in possession of DNR identification.

Distribution of information regarding umbilical cord donations

- Requires the Department of Health to prepare and distribute, free of charge, to health and maternal care professionals written materials that contain standardized, objective information about umbilical cord blood banking.
- Requires the Department to encourage health and maternal care professionals to provide pregnant women with the materials prior to the third trimester.
- Specifies that a health or maternal care professional or health care institution is not subject to civil liability, criminal prosecution, or professional disciplinary action for acting in good faith with respect to providing the materials to a pregnant woman.

TABLE OF CONTENTS

OVERVIEW	5
MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT (MOLST)	5
Background.....	5
Completion of MOLST form	6
Operability of MOLST forms.....	7
Who must participate in MOLST form completion	7
Limitations on participation	9
Form preparer's responsibilities.....	9
Role of advance directives.....	9
Authorization for surrogate to make medical decisions.....	10
Resolution of surrogate disagreements.....	10
Availability of completed MOLST form.....	10
Transfer of MOLST form between health care facilities	10
Revocation.....	11
Expiration	12
Inconsistent instructions in DNR orders and advance directives	12
DNR orders.....	12
Consent to treatment forms, declarations, and durable powers of attorney	12
Incomplete MOLST forms	12
Immunity for acting in accordance with MOLST form	12
Death resulting from actions consistent with MOLST form.....	13
Effect of MOLST forms on life insurance policies.....	13
Denial of coverage or provision of care with or in absence of MOLST form	13
Presumption that completed MOLST form complies with law	14
MOLST and assisted suicide	14
Rulemaking by the Director of Health	14
Deadline for rules to be adopted.....	18
Electronic availability of MOLST form.....	18
Advisory Council.....	18
Membership	18
Duties.....	20
Compensation	20
Term	20
DO-NOT-RESUSCITATE ORDERS	21
Background.....	21
DNR orders issued pursuant to the do-not- resuscitate protocol.....	22
DNR orders issued after the bill's effective date	23
Immunity in connection with withholding or withdrawing CPR.....	23

Exception	24
Compliance with do not resuscitate protocol or relevant instructions	25
Transfer to physician or facility willing to comply	25
Patient's transfer from one health care facility to another	26
Death is not suicide or homicide	26
Effect of DNR instructions on life insurance policies.....	27
Effect of DNR instructions on health insurance policies	27
Falsification or forgery of documents	28
Concealment of information regarding CPR administration.....	28
DNR Protocol Advisory Committee	29
DISTRIBUTION OF INFORMATION REGARDING	
UMBILICAL CORD DONATIONS	29
Preparation and distribution of materials on umbilical cord blood banking	29
Provision of materials by health and maternal care professionals	30
Update of materials.....	30
Availability of materials	30
Acceptance of gifts, grants, and donations.....	31
No liability for good faith compliance	31
TECHNICAL OR CONFORMING CHANGES	31

CONTENT AND OPERATION

OVERVIEW

The bill does three things: (1) requires the Director of Health to prescribe a "medical orders for life-sustaining treatment" form and specifies how the form operates, (2) specifies that the do-not-resuscitate protocol adopted, and the standard forms of DNR identification approved, by the Department of Health under current law are effective only for do-not-resuscitate orders issued prior to the bill's effective date, and (3) requires the Department to prepare and distribute information regarding umbilical cord blood banking.

MEDICAL ORDERS FOR LIFE-SUSTAINING TREATMENT (MOLST)

Background

The Physician Orders for Life-Sustaining Treatment (POLST) Paradigm was developed over a four-year period beginning in 1991 by a task force comprised of representatives of health care organizations convened by the Center for Ethics in Health Care at Oregon Health & Science University. These representatives were concerned that patient wishes for life-sustaining treatment

were not being honored consistently despite the availability of advance directives such as living wills and durable powers of attorney for health care (see **COMMENT**, below).¹ As a result of their efforts, Oregon became the first state to implement a program based on the POLST Paradigm. According to a Spring 2008 article in the *JOURNAL OF LAW, MEDICINE & ETHICS*, Oregon's program, as well as the POLST programs of other states and communities, is designed to convert patient preferences for life-sustaining treatments into immediately actionable medical orders. The centerpiece of these programs is a standardized, brightly colored form that provides specific treatment orders for cardiopulmonary resuscitation, medical interventions, artificial nutrition, and antibiotics. It is based on conversations of health care professionals with the patient or the appropriate proxy decision makers, in conjunction with any existing advance directive for incapacitated patients.²

Some states and communities that have POLST programs call their programs other names, such as "Medical Orders for Life-Sustaining Treatment (MOLST)" or "Physician Orders for Scope of Treatment (POST) programs."³

Completion of MOLST form

(R.C. 2133.33(A), (C), and (D) and 2133.36)

The bill generally permits a physician, physician assistant, or advanced practice nurse to at any time issue medical orders for life-sustaining treatment for a patient by completing a MOLST form. The bill prohibits, however, these same medical professionals from having a MOLST form completed for a patient if any of the following makes known to the medical professional that completion of a MOLST form is not desired: (1) the patient, (2) the patient's parent, guardian, or legal custodian if the patient is under 18 years of age, or (3) the patient's surrogate determined according to the priority list described in "**Who must participate in MOLST form completion**," below, if the patient is at least 18 years of age and incapacitated. If there is any disagreement among a class of individuals regarding

¹ Center for Ethics in Health Care at Oregon Health & Science University. *History of the POLST Paradigm Initiative* (last visited Nov. 3, 2008), available at <<http://www.ohsu.edu/ethics/polst/developing/history.htm>>.

² Susan Hickman et al. *The POLST (Physician Orders for Life-Sustaining Treatment) Paradigm to Improve End-of-Life Care: Potential State Legal Barriers to Implementation*, *JOURNAL OF LAW, MEDICINE & ETHICS* (2008) 36: 119-140, available at <<http://www.ohsu.edu/ethics/polst/resources/research+references.htm>>.

³ For example, New York uses the term "MOLST," while West Virginia uses "POST." *Id.*

whether a form should be completed, the bill requires the disagreement to be resolved (1) by a majority of individuals who are not incapacitated, are available within a reasonable period of time, and willing to participate, or (2) if a majority cannot reach a decision, by a physician who is not the issuing practitioner but who has reviewed the patient's medical record. Such a physician is required by the bill to make the decision that the physician believes is most consistent with reasonable medical standards.

Operability of MOLST forms

(R.C. 2133.33(A) and (B))

Once completed and signed in accordance with the bill's provisions governing who must participate in a MOLST form's completion and the form preparer's responsibilities, the MOLST form is generally valid and the instructions in it become operative and govern how the patient who is the subject of the form is to be treated with respect to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care, administration of CPR, and other treatment the Director of Health specifies in rules the bill requires the Director to adopt. The bill specifies that a MOLST form is not operative and does not govern how a patient is to be treated when the form is superseded or revoked as described below.

Who must participate in MOLST form completion

(R.C. 2133.34)

The bill specifies that a MOLST form is valid only if all of the following participate in its completion:

(1) The issuing practitioner,⁴ who must sign and date the form but may complete the form or delegate responsibility for its completion to an individual who meets the requirements established by the Director of Health in rules.

(2) If the issuing practitioner is not the form preparer, the form preparer,⁵ who must sign and date the form.

⁴ The bill defines an "issuing practitioner" as a physician, physician assistant, or advanced practice nurse who issues medical orders for life-sustaining treatment for a patient by signing as the issuing practitioner the MOLST form for the patient (R.C. 2133.30(K)). (An "advanced practice nurse" is defined as a registered nurse who holds a valid certificate that authorizes the practice of nursing as a certified nurse practitioner or a clinical nurse specialist in accordance with law (R.C. 4723.43) governing advanced practice nurses (R.C. 2133.30(A)).

(3) The patient (unless the patient is under 18 years of age or at least age 18 and incapacitated), who must sign and date the form.

(4)(a) If the patient is at least age 18 years and incapacitated, the patient's surrogate, who is the individual or class of individuals determined in the following descending order of priority and subject to the limitations discussed below, who must sign and date the form and indicate the relationship to the patient:

(i) The patient's attorney-in-fact under the patient's durable power of attorney for health care.

(ii) The patient's guardian.⁶

(iii) The patient's spouse.

(iv) An adult child of the patient or, if there is more than one adult child, all of the patient's adult children.

(v) The patient's parents.

(vi) An adult sibling of the patient or, if there is more than one adult sibling, all of the adult's siblings.

(vii) The adult not described in (4)(a)(i) to (vi), above, who is most closely related to the patient by blood or adoption.

(viii) The individual or class of individuals designated by the Director of Health in rules.

(b) If the patient is under age 18, the parent, guardian, or legal custodian, who must sign and date the form in the space designated for such signature and indicate the relationship to the patient.

⁵ The bill defines "form preparer" as the issuing practitioner who completes a MOLST form or the individual who completes the form pursuant to the practitioner's delegation (R.C. 2133.30(I)).

⁶ The bill specifies that the reference to the patient's guardian cannot be construed as permitting or requiring the appointment of a guardian for the patient (R.C. 2133.34(C)).

Limitations on participation

(R.C. 2133.34(D) and (E))

The bill specifies that if an appropriate individual entitled to participate in a MOLST form's completion is not available within a reasonable period of time to participate in the form's completion, is incapacitated, or declines to participate, the next priority individual or class of individuals specified above is authorized to participate. It specifies further that if at least one individual in a class of individuals entitled to participate in a MOLST form's completion is incapacitated, not willing to participate, or is not available within a reasonable period of time, participation in the form completion must be limited to individuals in the class who are not incapacitated and are willing to participate and available within a reasonable period of time.

Form preparer's responsibilities

(R.C. 2133.35(A))

The bill generally requires the form preparer, when completing a MOLST form, to discuss the instructions in the form with the patient. The only exceptions to this requirement are when the patient is incapacitated or under age 18 years. If the patient is at least age 18 and incapacitated, the bill requires the MOLST form preparer to discuss the instructions in the form with the patient's surrogate; if the patient is under age 18, the form preparer must discuss the form's instructions with the patient's parent, guardian, or legal custodian.

The bill requires the instructions the form preparer lists on the form to reflect the desires of the patient; the patient's parent, guardian, or legal custodian; or the patient's surrogate as expressed during the discussion.

Role of advance directives

(R.C. 2133.35(A))

The bill specifies that a declaration (living will) or durable power of attorney for health care, or both, if a copy of one or both documents is furnished to the form preparer, may guide the discussion the bill requires the form preparer to have with a patient or patient surrogate.

Authorization for surrogate to make medical decisions

(R.C. 2133.35(B))

The bill permits a patient who participates in a MOLST form's completion to instruct the form preparer to document in the appropriate space on the form that the patient authorizes another person to (1) make all medical decisions on the patient's behalf, including those regarding CPR administration and other life-sustaining treatment, and (2) revoke the form at any time in accordance with the revocation procedure the Director of Health adopts in rules and to complete a new form.

Resolution of surrogate disagreements

(R.C. 2133.36)

If individuals in a class of surrogates disagree on any decision that must be made regarding completion of a patient's MOLST form, the bill specifies that the opinion of the majority of individuals who are not incapacitated, are available within a reasonable period of time, and willing to participate prevails. If a majority of the individuals cannot reach a decision, however, the bill requires a physician who is not the issuing practitioner but has reviewed the patient's medical record to make the decision that the physician believes is most consistent with reasonable medical standards.

Availability of completed MOLST form

(R.C. 2133.37)

The bill requires a completed MOLST form to be placed in a conspicuous location in the paper or electronic medical record of the patient. Whether maintained as part of a paper or electronic record, the form must be readily available and retrievable.

Transfer of MOLST form between health care facilities

(R.C. 2133.38)

If a patient with a MOLST form is transferred from one health care facility⁷ to another, the bill requires the health care facility initiating the transfer to

⁷ The bill defines "health care facility" consistent with the definition of this term in the law governing durable powers of attorney for health care (R.C. 1337.11) as (1) a hospital, (2) a hospice care program or other institution that specializes in comfort care of patients in a terminal condition or in a permanently unconscious state, (3) a nursing home, (4) a

communicate the existence of, and send a copy of, the form to the receiving facility prior to the transfer. The copy may be sent via regular mail or by facsimile or other means, but if maintained in paper format, on receipt by the receiving facility, it must be placed on the color of paper specified in rules the Director of Health adopts. The bill specifies that a copy of the form is the same as the original.

The bill requires the copy of the MOLST form to be placed in a conspicuous location in the patient medical record immediately on receipt by the receiving facility. Once the patient is admitted, the attending physician is required to review the MOLST form and discuss with the patient, the patient's parent, guardian, or legal custodian if the patient is under 18 years of age, or the patient's surrogate if the patient is at least age 18 and incapacitated, whether the form should be amended or revoked and whether a new form should be issued.

If a decision is made to amend the form, the bill requires the attending physician to proceed with the amendment consistent with rules adopted by the Director of Health. If a decision is made to revoke the form, whether or not there is an intention to issue a new form, the revocation must be done in accordance with law governing MOLST form revocations.

Revocation

(R.C. 2133.39)

The bill permits a patient, or if a patient is under 18 years of age, the patient's parent, guardian, or legal custodian, to revoke a MOLST form at any time in accordance with the procedure for revocation in rules adopted by the Director of Health. If the patient is at least age 18 and incapacitated, the bill permits the patient's surrogate to revoke the MOLST form in accordance with the rules if the patient's attending physician determines either of the following: (1) there has been a change in the physical condition of the patient that significantly decreases the benefit of the instructions in the MOLST form to the patient, or (2) the instructions in the MOLST form are no longer significantly effective in achieving the purposes for which the patient or surrogate consented to their use.

home health agency, (5) an intermediate care facility for the mentally retarded, or (6) a regulated community mental health organization (R.C. 2133.30(J)).

Expiration

(R.C. 2133.40)

Unless revoked in accordance with the procedure described above, a MOLST form does not expire.

Inconsistent instructions in DNR orders and advance directives

(R.C. 2133.41)

DNR orders

The bill specifies that an instruction in a MOLST form that is inconsistent with an instruction in a DNR order always supersedes the inconsistent instruction in the DNR order.

Consent to treatment forms, declarations, and durable powers of attorney

The bill specifies that an instruction in a MOLST form that is inconsistent with an instruction in a general consent to treatment form signed by or on behalf of the patient, a declaration (living will), or a durable power of attorney for health care supersedes the inconsistent instruction in any of those documents unless (1) the document was executed after the MOLST form, as evidenced by the date on the document, and (2) the attending physician is made aware of the document and furnished a copy of it.

Incomplete MOLST forms

(R.C. 2133.42)

If a section of a MOLST form has not been completed, the bill permits the patient's attending physician to proceed with the understanding that full treatment relative to treatment covered by that section of the form is to be considered unless the form indicates that the patient has authorized another individual to make all medical decisions on the patient's behalf as described above.

Immunity for acting in accordance with MOLST form

(R.C. 2133.43)

In general, the bill prohibits a health care facility, a health care professional, or an emergency services worker from being subject to criminal prosecution or civil liability, or subject to professional disciplinary action, for acting in accordance with, or otherwise being in compliance with, a valid MOLST form or the law governing medical orders for life-sustaining treatment. However, the bill

specifies that (1) health care facilities, health care professionals, and emergency services workers are not immune from criminal or civil liability for actions that are outside their scope of authority, and (2) health care personnel are not immune from professional discipline for actions that are outside their scope of authority.

Death resulting from actions consistent with MOLST form

(R.C. 2133.44)

The bill specifies that the death of an individual that occurs as a result of actions taken consistent with instructions in a MOLST form does not constitute for any purpose a suicide, aggravated murder, or any other homicide.

Effect of MOLST forms on life insurance policies

(R.C. 2133.45)

The bill prohibits the issuance of a MOLST form from doing any of the following:

(1) Affecting in any manner the sale, procurement, issuance, or renewal of a life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary.

(2) Modifying in any manner or invalidating the terms of a life insurance policy or annuity that is in effect on the bill's effective date.

(3) Impairing or invalidating a life insurance policy or annuity or any health benefit plan.

Denial of coverage or provision of care with or in absence of MOLST form

(R.C. 2133.46)

The bill prohibits a physician, health care facility, other health care provider, sickness and accident insurer, health insuring corporation, other health benefit plan, self-insured employer, governmental entity, or other person from (1) requiring that an individual be the subject of a MOLST form, or (2) requiring an individual to revoke or refrain from being the subject of a MOLST form as a condition of being insured or of receiving health care benefits or services.

Presumption that completed MOLST form complies with law

(R.C. 2133.47)

The bill specifies that in the absence of actual knowledge to the contrary and if acting in good faith, an attending physician, other health care professional, emergency services worker, or health care facility may assume that a MOLST form complies with the law governing medical orders for life-sustaining treatment and is valid.

MOLST and assisted suicide

(R.C. 3795.03; R.C. 3795.01 and 3795.92, not in the bill)

Current law declares assisted suicide to be against the public policy of Ohio, establishes a court action to obtain an injunction against assisted suicide, authorizes the Board of Nursing, State Medical Board, and Ohio Respiratory Care Board to take disciplinary action against an individual whose professional practice is regulated by one of those boards if the individual assists a suicide, and establishes the Compassionate Care Task Force.

Current law also specifies that nothing in the assisted suicide law⁸ affects or limits the authority of a person to refuse to give informed consent to health care, including consent through the execution of a durable power of attorney for health care, a declaration (living will), or authorizing the withholding or withdrawal of CPR in accordance with law governing CPR withholding and withdrawal.⁹

The bill also specifies that nothing in the assisted suicide law affects or limits the authority of a person to refuse to give informed consent to health care through the completion of a MOLST form.

Rulemaking by the Director of Health

(R.C. 2133.31)

The bill requires the Director of Health to adopt rules to prescribe a MOLST form for use by patients in Ohio.¹⁰ The rules must address, at a minimum, all of the following:

⁸ R.C. 3795.01 through 3795.03.

⁹ R.C. 2133.21 through 2133.26.

¹⁰ The rules must be adopted in accordance with R.C. Chapter 119. Ohio Administrative Procedure Act, which requires public hearings on proposed rules.

- (1) The color of the MOLST form, if it is on paper.
- (2) The logo that identifies a form, whether in paper or electronic format, as an official MOLST form.
- (3) The inclusion of a space designated for the patient's name.
- (4) The inclusion of spaces designated for the names, telephone numbers, signatures, and dates of signature of the issuing practitioner, the form preparer, the patient, the surrogate or surrogates who participate in a form's completion, and the parent, guardian, or custodian of the patient to be used if the patient is under age 18.
- (5) The inclusion of boxes for the form preparer to indicate whether a physician or advanced practice nurse has issued a DNR order for the patient and whether the patient has executed a declaration (living will) or a durable power of attorney for health care.¹¹
- (6) The inclusion of boxes corresponding to a range of preferences the patient, the patient's parent, guardian, or legal custodian, or the patient's surrogate or surrogates can select regarding various medical treatments and when such treatments should be administered, including, but not limited to, CPR,¹² antibiotics, artificially or technologically administered nutrition¹³ and hydration, and other medical interventions and the inclusion of spaces next to the boxes for the names of the patient, individual, or individuals who make the selections.
- (7) The inclusion of a box for the form preparer to indicate whether the patient, the patient's parent, guardian, or legal custodian, or the patient's surrogate or surrogates who participate in a form's completion authorize the temporary administration of medical treatments that may be contrary to the medical treatment selections made under (6), above, if the patient has an advanced chronic progressive illness and the temporary medical treatments would be administered for a different injury or illness.

¹¹ The bill defines "durable power of attorney for health care" as a document created pursuant to R.C. 1337.11 to 1337.17 (R.C. 2133.30(G)).

¹² The bill defines "CPR" as cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, but not including clearing a person's airway for a purpose other than as a component of CPR (R.C. 2133.30(D)).

¹³ The bill defines "nutrition" as sustenance that is artificially or technologically administered (R.C. 2133.30(O)).

(8) The inclusion of a space where the form preparer can indicate whether the patient authorizes another individual to (a) make all medical decisions on the patient's behalf, including those regarding the administration of CPR and other life-sustaining treatment,¹⁴ or (b) revoke the form at any time in accordance with the procedure for revocation of MOLST forms prescribed in rules and complete a new form.

(9) The inclusion of a space for the form preparer to list the name and contact information for the attorney-in-fact under the patient's durable power of attorney for health care or, if the patient has not executed such a document or the form preparer is not told who the attorney-in-fact is, the patient's next of kin.

(10) The inclusion of a space designated for the signature of a patient's attorney-in-fact under a durable power of attorney for health care, to be signed by the attorney-in-fact if the attorney-in-fact is present when the form is completed.

(11) The inclusion of a space for the form preparer to indicate the date that the form was completed and signed in accordance with the bill's provisions governing MOLST forms.

(12) The inclusion of spaces designated for the names of individuals who review the form after it is completed, the dates on which reviews are completed, and the reviewer to indicate the review's outcome.

(13) The inclusion of the following advisory statements, in boldface type:

(a) "There is no requirement that a patient, a patient's parent, guardian, or legal custodian, or a patient's representative execute a MOLST form. You are not required to sign this form for the patient to receive treatment."

The bill requires this statement to appear in the space immediately above the space designated for the signature of the patient; the patient's parent, guardian, or legal custodian; or the patient's surrogate or surrogates.

(b) "The instructions in this form may supersede an inconsistent instruction in a declaration (living will), durable power of attorney for health care, or a DNR identification as described in section 2133.41 of the Ohio Revised Code."

(c) "This form may be revoked in accordance with section 2133.39 of the Ohio Revised Code."

¹⁴ The bill defines "life-sustaining treatment" as any medical procedure, treatment, intervention, or other measure that, when administered to a patient, is intended to serve principally to prolong the process of dying (R.C. 2133.30(L)).

The bill also requires the Director of Health, when prescribing a MOLST form, to consider the design and content of forms used in other states to document medical or physician orders for life-sustaining treatment.

The bill also requires the Director to adopt rules to do the following:

(1) Specify the treatment, in addition to hospitalization, administration or withdrawal of life-sustaining treatment and comfort care,¹⁵ and administration of CPR that may be included in instructions that constitute medical orders for life-sustaining treatment.

(2) Specify procedures for a MOLST form to be amended or revoked.

(3) Specify what constitutes "full treatment" for purposes of the law governing what happens when a MOLST form has not been completed in full (R.C. 2133.42).

(4) Specify the requirements an individual must meet to be authorized to complete a MOLST form when this responsibility is delegated by an issuing practitioner.

(5) Specify the extent to which MOLST forms, physician orders for life-sustaining treatment forms (POLST forms), or physician orders for scope of treatment forms (POST forms) executed under the laws or regulations of other states are valid.

(6) Specify the individual or class of individuals who must sign and date a MOLST form if the following individuals, in the following descending order of priority, are incapacitated, are not willing to participate, or are not available within a reasonable period of time to participate in the completion of a MOLST form: the patient's attorney-in-fact under the patient's durable power of attorney for health care; the patient's guardian; the patient's spouse; an adult child of the patient or, if there is more than one adult child, all of the patient's adult children;¹⁶ the

¹⁵ The bill defines "comfort care" as (1) nutrition or hydration when administered to diminish pain or discomfort, but not to postpone death or (2) any other medical or nursing procedure, treatment, intervention, or other measure that is taken to diminish pain or discomfort, but not to postpone death (R.C. 2133.30(C)).

¹⁶ However, if at least one adult child is incapacitated, not willing to participate, or is not available within a reasonable period of time, the bill requires that participation be limited to the individual or individuals in the class who are not incapacitated, willing to participate, and available within a reasonable period of time (R.C. 2133.34(E)). In addition, if there is more than one adult child and the adult children in the class disagree on any decision that must be made with regard to completion of the form, the bill requires

patient's parents; an adult sibling of the patient or, if there is more than one adult sibling, all of the adult's siblings;¹⁷ or the adult not described in this list who is most closely related to the patient by blood or adoption.

(7) Address any other matters necessary or appropriate to implement or clarify the law governing medical orders for life-sustaining treatment.

Deadline for rules to be adopted

(R.C. 2133.31(D))

The bill requires the Director to adopt the initial rules not later than six months after the bill's effective date.

Electronic availability of MOLST form

(R.C. 2133.32)

The bill requires the MOLST form the Director prescribes to be made available on the Department of Health's web site in a format that can be downloaded free of charge and reproduced.

Advisory Council

(Section 3)

Membership

The bill creates the Medical Orders for Life-Sustaining Treatment Advisory Council and requires that it consist of the following 29 members:

(1) An employee of the Department of Aging, appointed by the Director of Aging;

that the opinion of the majority of individuals who are not incapacitated, are available within a reasonable period of time, and willing to participate must prevail (R.C. 2133.36(A)). If a majority of individuals cannot reach a decision, a physician who is not the issuing practitioner but who has reviewed the patient's medical record must break the tie by making the decision that the physician believes is most consistent with reasonable medical standards (R.C. 2133.36(B)).

¹⁷ The same circumstances that apply to a class of adult children described in the footnote above apply to a class of adult siblings.

(2) An employee of the Department of Mental Health, appointed by the Director of Mental Health;

(3) An employee of the Department of Mental Retardation and Developmental Disabilities, appointed by the Director of Mental Retardation and Developmental Disabilities;

(4) The Executive Director of the Ohio Medical Transportation Board;

(5) The Executive Director of the State Board of Emergency Medical Services;

(6) One representative from each of the following organizations, appointed by the president or chief administrative officer of the organization:

(a) The Ohio Hospital Association;

(b) The Ohio State Medical Association;

(c) The Ohio Chapter of the American College of Emergency Physicians;

(d) The Ohio Hospice and Palliative Care Organization;

(e) The Ohio Health Care Association;

(f) The Ohio Ambulance and Medical Transportation Association;

(g) The Ohio Medical Directors Association;

(h) The Ohio Association of Emergency Medical Services;

(i) The Bioethics Network of Ohio;

(j) The Ohio Nurses Association;

(k) The Ohio Academy of Nursing Homes;

(l) The Ohio Association of Professional Firefighters;

(m) The Ohio Osteopathic Association;

(n) The Association of Ohio Philanthropic Homes, Housing and Services for the Aging;

(o) The Catholic Conference of Ohio;

(p) The Ohio Private Residential Association;



- (q) The Northern Ohio Fire Fighters Association;
- (r) The Ohio Assisted Living Association;
- (s) The Ohio Council for Home Care;
- (t) Lifeline of Ohio;
- (u) The Ohio State Bar Association;
- (v) The Ohio Association of Advanced Practice Nurses;
- (w) The Ohio Fire Chiefs Association;
- (x) The Ohio State Firefighters Association.

Duties

The bill requires the Council to meet at the call of the Director of Health. The Department of Health must provide meeting space, staff services, and technical assistance required by the Council in carrying out its duties.

The bill also requires the Council to advise the Director of Health regarding the rules the Director must adopt under the bill. It further specifies that each member of the Council has one vote, that a majority of the members present at a meeting constitutes a quorum, and the affirmative vote of a majority of the members present is necessary for the Council to make an official recommendation to the Director on a particular rule.

In addition, the bill permits the Director of Health to assign other duties to the Council as the Director considers appropriate.

Compensation

The bill specifies that members of the Council serve without compensation, but will be reimbursed for their actual and necessary expenses incurred in attending meetings or performing assignments for the Council.

Term

The bill specifies that the Council ceases to exist on the Director of Health's adoption of initial rules required by the bill.

DO-NOT-RESUSCITATE ORDERS

Background

The term, "cardiopulmonary resuscitation (CPR)," has a broad meaning. According to a publication of the Ohio Hospice and Palliative Care Association, the Ohio State Medical Association, the Ohio Hospital Association, and the Ohio Osteopathic Association, CPR includes any or all of the following:¹⁸

- Administration of chest compressions;
- Insertion of an artificial airway;
- Administration of resuscitation drugs;
- Defibrillation or cardioversion;
- Provision of respiratory assistance;
- Initiation of a resuscitative intravenous line;
- Initiation of cardiac monitoring.

In 1998, the 122nd General Assembly enacted law¹⁹ to create the "do-not-resuscitate" or "DNR" order.²⁰ A patient or patient's surrogate who does not wish to have CPR performed on the patient when it would otherwise be medically appropriate can ask a physician, certified nurse practitioner, or clinical nurse specialist to issue a DNR order for the patient.²¹ Thus, in contrast to a living will or a durable power of attorney for health care, a DNR order is not an advance directive executed by the patient--rather, it is an order executed by a medical professional.

¹⁸ Ohio Hospice & Palliative Care Organization et al. *Choices: Living Well at the End of Life* (last visited Oct. 28, 2008), accessible at <<http://209.235.219.117/pdf/choices.pdf>>.

¹⁹ R.C. 2133.21 through 2133.26.

²⁰ Sub. H.B. 354 of the 122nd General Assembly.

²¹ R.C. 2133.211 specifies that a certified nurse practitioner or clinical nurse specialist may take any action that may be taken by an attending physician under the DNR order and identification law (R.C. 2133.21 through 2133.27). The bill defines an "attending physician" as the physician to whom a patient or patient's family has assigned primary responsibility for the medical treatment or care of the patient or, if the responsibility has not been assigned, the physician who has accepted that responsibility (R.C. 2133.30(B)).

DNR orders issued pursuant to the do-not-resuscitate protocol

(R.C. 2133.25 and 2133.21(E))

Current law requires the Department of Health, by rulemaking conducted in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.), to adopt a standardized method of procedure for the withholding of CPR by physicians, emergency medical services personnel, and health care facilities pursuant to DNR orders. This standardized method, called the "do not resuscitate protocol," is codified in Ohio Administrative Code 3701-62-05. When the protocol is activated, an emergency medical services worker or other health care professional is required to do, or prohibited from doing, the following:

REQUIRED	PROHIBITED
Suction the airway	Administer chest compressions
Administer oxygen	Insert artificial air way
Position for comfort	Administer resuscitative drugs
Splint or immobilize	Defibrillate or cardiovert
Control bleeding	Provide respiratory assistance other than that listed above
Provide pain medication	Initiate resuscitative IV
Provide emotional support	Initiate cardiac monitoring
Contact other appropriate health care providers such as hospice, home health, attending physician, certified nurse practitioner, or clinical nurse specialist	

The Department has adopted two types of DNR orders that a person, in consultation with a physician, certified nurse practitioner or clinical nurse specialist, may seek: (1) the DNR Comfort Care-Arrest Order, and (2) the DNR Comfort Care Order.²² The difference between the orders is the time at which the do-not-resuscitate protocol is activated: with a DNR Comfort Care-Arrest Order, the protocol is activated when the patient experiences cardiac or respiratory arrest;

²² O.A.C. 3701-62-05.

with a DNR Comfort Care Order, the protocol is activated when the DNR order is issued.²³

Current law requires the Department to approve one or more standard forms of DNR identification. The standard forms of DNR identification the Department has approved are in O.A.C. 3701-62-04 and include several different forms, jewelry, and a wallet card. The bill specifies that the do-not-resuscitate protocol and standard forms of DNR identification adopted by the Department of Health are effective only for DNR orders issued before the bill's effective date. The bill also specifies that the criteria for determining when a DNR order is current apply only to orders issued prior to that date.

DNR orders issued after the bill's effective date

(R.C. 2133.27)

The bill specifies that nothing in the DNR law²⁴ prohibits a physician from issuing a directive on or after the bill's effective date that identifies a person and specifies that CPR should not be administered to the person identified, but requires that the directive be issued in accordance with reasonable and prevailing standards of care.

Immunity in connection with withholding or withdrawing CPR

(R.C. 2133.22)

Current law specifies that the following are not subject to criminal or civil liability or professional disciplinary action arising out of or relating to the withholding or withdrawal of CPR from a person after DNR identification²⁵ is discovered in the person's possession, reasonable efforts have been made to determine that the person in possession of the identification is the person named

²³ *Id.*

²⁴ R.C. 2133.21 through 2133.26.

²⁵ Current law (R.C. 2133.21(C)) defines "DNR identification" as a standardized identification card, form, necklace, or bracelet that is of uniform size and design, that has been approved by the Department of Health, and that signifies (1) that the person who is named on and possesses the identification has executed a declaration (living will) that authorizes the withholding or withdrawal of CPR and has not been revoked, or (2) that the attending physician of the person who is named on and possesses the identification has issued a current DNR order, in accordance with the DNR protocol adopted by the Department of Health, for that person and has documented the grounds for the order in that person's medical record.

on the identification, and the withholding or withdrawal is in accordance with the DNR protocol adopted by the Department of Health:

(1) A physician who causes the withholding or withdrawal of CPR from the person possessing the identification;

(2) A person who participates under the direction of or with the authorization of a physician in the withholding or withdrawal of CPR from the person possessing the identification;

(3) Any emergency medical services personnel who cause or participate in the withholding or withdrawal of CPR from the person possessing the identification;

(4) If the person is in a health care facility, the facility or administrator of the facility, a physician who causes the withholding or withdrawal of CPR from the person possessing the DNR identification, or any person who works for the facility as an employee, contractor, or volunteer and participates under the direction of or with the authorization of a physician in the withholding or withdrawal of CPR from the person possessing the identification.

The bill specifies that the persons and entities, described in (1) through (4), above, are also immune from civil and criminal liability and not subject to professional disciplinary action arising out of or relating to the withholding or withdrawal of CPR from any of the following:

(1) An individual, whether or not in a health care facility, who has executed a declaration (living will).

(2) An individual, whether or not in health care facility, for whom a DNR order has been issued.

(3) An individual, whether or not in a health care facility, for whom a MOLST form has been completed.

Exception

Under current law, the immunity from civil and criminal liability and professional disciplinary action does not apply, however, when CPR is withheld or withdrawn from an individual with DNR identification unless the withholding or withdrawal is in accordance with the do-not-resuscitate protocol.

The bill instead specifies that the immunity does not apply when CPR is withheld or withdrawn from an individual described in (1) through (3), above, unless the withholding or withdrawal is in accordance with the instructions

regarding the withholding or withdrawal of CPR in the declaration (living will), DNR order, or MOLST form.

Compliance with do-not-resuscitate protocol or relevant instructions

(R.C. 2133.23(A))

Current law requires emergency medical services personnel (other than physicians), when presented with DNR identification possessed by a person or a DNR order for a person, to comply with the do-not-resuscitate protocol for the person.

The bill eliminates the reference to "do-not-resuscitate protocol" and instead requires emergency medical services personnel, when presented with DNR identification, a declaration (living will), a DNR order, or a MOLST form, to comply with the instructions regarding the withholding or withdrawal of CPR in the declaration, written DNR order, or MOLST form.

Transfer to physician or facility willing to comply

(R.C. 2133.23(B))

If a person possesses DNR identification and the person's attending physician or the health care facility in which the person is located is unwilling to comply with the do-not-resuscitate protocol for the person, current law prohibits the attending physician or health care facility from preventing or attempting to prevent, or unreasonably delaying or attempting to delay, the transfer of the person to a different physician who will follow the protocol or to a different health care facility in which the protocol will be followed.

The bill eliminates the reference to "do-not-resuscitate protocol" and instead specifies that if a person possesses DNR identification and the person's attending physician or the health care facility in which the person is located is unwilling to comply with the instructions regarding the withholding or withdrawal of CPR in the person's declaration (living will), a written DNR order issued for the person, or a MOLST form completed for the person, the attending physician or health care facility is prohibited from preventing or attempting to prevent, or unreasonably delaying or attempting to delay, the transfer of the person to a different physician who will follow the instructions or to a different health care facility in which the instructions will be followed.

Patient's transfer from one health care facility to another

(R.C. 2133.23(C))

If a person who possesses DNR identification or for whom a current DNR order has been issued is being transferred from one health care facility to another, current law requires that, before or at the time of transfer, the transferring facility notify the receiving facility and the persons transporting the person of the existence of the DNR identification or order. In addition, current law requires the DNR identification or order to accompany the person to the receiving health care facility and specifies that it remains in effect unless it is revoked or unless, in the case of a DNR order, it is no longer current.

The bill imposes the same requirements on a health care facility that is transferring a person who has executed a declaration (living will) or for whom a MOLST form has been completed: before or at the time of transfer, the transferring facility must notify the receiving facility and the persons transporting the person of the existence of the declaration or MOLST form and the declaration or MOLST form must accompany the person to the receiving facility. Further, subject to the bill's provision regarding priority of documents, DNR identification, a declaration, a DNR order, or a MOLST form remains in effect unless:

- (1) In the case of a DNR identification, it has been revoked.
- (2) In the case of a declaration, it has been revoked.
- (3) In the case of a written DNR order, it is no longer current.
- (4) In the case of a MOLST form, it has been revoked.

Death is not suicide or homicide

(R.C. 2133.24(A))

Under current law, the death of a person resulting from the withholding or withdrawal of CPR for the person pursuant to the do-not-resuscitate protocol and in circumstances where DNR identification is found on the patient or a physician has issued a DNR order for the person does not constitute a suicide, aggravated murder, murder, or any other homicide.

The bill instead specifies that the death of a person resulting from the withholding or withdrawal of CPR pursuant to instructions in a declaration, written DNR order, or MOLST form and in circumstances where an individual is the subject of a declaration, DNR order, MOLST form, or in possession of DNR

identification does not constitute for any purpose a suicide, aggravated murder, or any other homicide.

Effect of DNR instructions on life insurance policies

(R.C. 2133.24(B)(1) and (2))

Current law specifies that if a person possesses DNR identification or if the person is the subject of a DNR order, the possession or order cannot do either of the following:

(1) Affect in any manner the sale, procurement, issuance, or renewal of a life insurance policy or annuity, notwithstanding any term of the policy or annuity to the contrary.

(2) Be deemed to modify in any manner or invalidate the terms of any life insurance policy or annuity that is in effect on the bill's effective date.

Current law also specifies that notwithstanding any term of a life insurance policy or annuity to the contrary, the withholding or withdrawal of CPR from a person who is insured or covered under the policy or annuity and who possesses DNR identification, or for whom a current DNR order is issued, cannot impair or invalidate the life insurance policy or annuity.

The bill specifies that if a person is the subject of a declaration, a written DNR order, or a MOLST form, or is in possession of DNR identification, the existence of the declaration, written DNR order, MOLST form, or possession of DNR identification cannot do the things described in (1) and (2), above. The bill also specifies that notwithstanding any term of a life insurance policy or annuity to the contrary, the withholding or withdrawal of CPR from a person who is insured or covered under the policy or annuity and who has executed a declaration, for whom a written DNR order has been issued, or for whom a MOLST form has been completed cannot impair or invalidate any life insurance policy or annuity.

Effect of DNR instructions on health insurance policies

(R.C. 2133.24(B)(3))

Current law specifies that, notwithstanding any term of a policy or plan to the contrary, neither of the following can impair or invalidate any health insurance policy or other health care benefit plan:

(1) The withholding or withdrawal of CPR, in accordance with the DNR law, from a person who is insured or covered under a policy or plan and who possesses DNR identification or for whom a current DNR order has been issued.

(2) The provision, in accordance with the DNR law, of CPR to a person described in (1), above.

The bill maintains the provision described in (2), above, but changes the provision in (1), above, to specify that the withholding or withdrawal of CPR, in accordance with the DNR law, from a person who is insured or covered under a policy or plan and who possesses DNR identification, who has executed a declaration, for whom a written DNR order has been issued, or for whom a MOLST form has been completed, cannot impair or invalidate a health care policy or other health benefit plan.

Falsification or forgery of documents

(R.C. 2133.26(A)(3))

Existing law prohibits a person from purposely falsifying or forging (1) a revocation of a declaration that is the basis of another person's DNR identification, or (2) an order of a physician that purports to supersede a DNR order issued for another person.

The bill also prohibits a person from purposely falsifying or forging a MOLST form that is the basis of another person's DNR identification and a MOLST form that purports to supersede a DNR order issued, or MOLST form completed, for another person.

Concealment of information regarding CPR administration

(R.C. 2133.26(A)(5))

If a person has personal knowledge that another person has revoked a declaration that is the basis of the other person's DNR identification or personal knowledge that a physician has issued an order that supersedes a DNR order that the physician issued for another person, current law prohibits the person with this knowledge from purposely concealing or withholding the knowledge with the intent to cause the use, withholding, or withdrawal of CPR for the other person.

The bill expands the prohibition in current law to a person who has personal knowledge that another person has revoked or superseded a MOLST form that is the basis of the other person's DNR identification.

DNR Protocol Advisory Committee

(R.C. 2133.25(C), repealed by the bill)

The bill eliminates the Department of Health's authority to appoint an advisory committee to advise the Department in the development of rules regarding the do-not-resuscitate protocol.

**DISTRIBUTION OF INFORMATION REGARDING
UMBILICAL CORD DONATIONS**

Preparation and distribution of materials on umbilical cord blood banking

(R.C. 2108.41(A))

The bill requires the Department of Health to prepare and distribute to health and maternal care professionals²⁶ written materials that contain standardized, objective information about umbilical cord blood²⁷ banking. The information is required to be sufficient to allow a pregnant woman to make an informed decision about whether to participate in an umbilical cord blood banking program and must include all of the following:

- (1) The medical processes involved in the collection of umbilical cord blood;
- (2) The medical risks of umbilical cord blood collection to the mother and the newborn child;
- (3) The options available to a mother regarding stem cells contained in the umbilical cord blood after delivery of the mother's newborn child, including:
 - (a) Having the stem cells discarded;
 - (b) Donating the stem cells to a public umbilical cord blood bank;

²⁶ The bill defines a "health care professional" as a physician, registered nurse, or physician assistant authorized to practice in Ohio (R.C. 2108.40(A)(2)). A "maternal care professional" is defined as an individual who is not authorized by Ohio law to practice as a health care professional but whose profession includes providing support and assistance to a woman during pregnancy and labor (R.C. 2108.40(A)(3)).

²⁷ The bill defines "umbilical cord blood" as the blood that remains in the umbilical cord and placenta after the birth of a newborn child (R.C. 2108.40(A)(4)).

(c) Having the stem cells stored in a private umbilical cord blood bank for use by immediate and extended family members;

(d) Storing the stem cells for use by the family through a family or sibling donor banking program that provides free collection, processing, and storage of the stem cells where there is a medical need;

(4) The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to the mother, newborn child, and biological family;

(5) The current and potential future medical uses, risks, and benefits of umbilical cord blood collection to individuals who are not biologically related to the mother or newborn child;

(6) Any costs that may be incurred by a pregnant woman who chooses to make an umbilical cord blood donation;

(7) The average cost of public and private umbilical cord blood banking.

Provision of materials by health and maternal care professionals

(R.C. 2108.40(B))

The bill permits the Department of Health to encourage health and maternal care professionals who provide health care services that are directly related to a woman's pregnancy to provide a pregnant woman before her third trimester with the umbilical cord blood banking materials the Department is required to prepare.

Update of materials

(R.C. 2108.41(B))

The bill permits the Department of Health to update, as the Department considers necessary, the umbilical cord blood banking materials the Department is required to prepare.

Availability of materials

(R.C. 2108.41(C))

The bill requires the Department of Health to distribute, free of charge, the umbilical cord blood banking materials it is required to prepare to health and

maternal care professionals and health care institutions²⁸ and to make the materials available on the Department's web site.

Acceptance of gifts, grants, and donations

(R.C. 2108.41(D))

The bill permits the Department of Health to accept gifts, grants, and donations for purposes of facilitating the preparation and distribution of umbilical cord blood banking materials the Department is required to prepare.

No liability for good faith compliance

(R.C. 2108.42)

The bill specifies that a health or maternal care professional or health care institution is not liable for damages in a civil action, subject to criminal prosecution, or subject to professional disciplinary action by the State Medical Board or Board of Nursing for acting in good faith with respect to providing umbilical cord blood banking materials prepared by the Department of Health to a pregnant woman pursuant to the bill.

TECHNICAL OR CONFORMING CHANGES

The following sections appear in the bill solely to make changes to statutory cross-references necessitated by other changes made by the bill: 2133.02 and 2133.211.

COMMENT

A living will (called a "declaration" under Ohio law) is an advance directive an individual (the "declarant") can execute to govern the use or continuation of, or the withholding or withdrawal of, life-sustaining treatment when the declarant becomes (1) terminally ill and unable to express wishes regarding health care, or (2) permanently unconscious. For a living will to become operative, it must be communicated to the attending physician of the declarant, the attending physician and one other physician who examines the

²⁸ The bill defines a "health care institution" as a hospital registered with the Department of Health or a freestanding birthing center (R.C. 2108.40(A)(1)). A "freestanding birthing center" is any facility in which deliveries routinely occur, regardless of whether the facility is located on the campus of another health care facility, and which is not licensed as a level one, two, or three maternity unit or a limited maternity unit (R.C. 3702.51).

declarant must determine that the declarant is in a terminal condition or in a permanently unconscious state and that the declarant is beyond medical help and will not recover, and the attending physician must determine that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment.²⁹

A durable power of attorney for health care is an advance directive an individual (the "principal") can execute to designate another individual (the "attorney-in-fact") to make health care decisions should the principal lose the ability to make such decisions. In contrast to the law governing living wills, the law governing durable powers of attorney for health care does not require the principal to be in a terminal condition or permanently unconscious for the document to become operative. A durable power of attorney for health care becomes operative when the principal's attending physician determines that the principal cannot make his or her own health decisions.³⁰

HISTORY

ACTION	DATE
Introduced	07-17-08

H0601-Prop-127.doc/jc

²⁹ R.C. 2133.02 and 2133.03.

³⁰ R.C. 1337.12 and 1337.13.