

SENATE BILL 257

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 32, Chapter 11; Title 34, Chapter 6 and Title 68, Chapter 11, relative to health care decisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-224, is amended by deleting the section in its entirety and by substituting instead the following:

(a) For the purposes of this section:

(1) "Clinical nurse specialist" means a nurse duly licensed under title 63, chapter 7 who has a master's degree or higher in a nursing specialty, has national specialty certification as a clinical nurse specialist, and is recognized by the board of nursing as an advanced practice nurse under § 63-7-126; and

(2) "Do-not-resuscitate order" means a written order, other than a "POST" as defined by this section, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices; and

(3) "Emergency responder" means a paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer operating within the scope of the person's proper function under the law or rendering emergency care at the scene of an emergency; and

(4) "Health care provider" shall have the same meaning as ascribed to that term in § 68-11-1802(a), and shall include, but shall not be limited to, qualified emergency medical services personnel; and

(5) "Nurse practitioner" means a nurse duly licensed under title 63, chapter 7 who has a master's degree or higher in a nursing specialty, has

national specialty certification as a nurse practitioner, and is recognized by the board of nursing as an advanced practice nurse under § 63-7-126;

(6) "Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making any informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law;

(7) "Physician orders for scope of treatment" or "POST" means written orders that:

(A) Are on a form approved by the board for licensing health care facilities;

(B) Apply regardless of the treatment setting that are signed as required herein by the patient's physician, nurse practitioner, or clinical nurse specialist; and

(C)

(i) Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

(ii) Specify other medical interventions that are to be provided or withheld; or

(iii) Specify both (i) and (ii); and

(8) "Qualified emergency medical service personnel" includes, but is not limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the course of their professions, and other emergency responders; and

(9) "Unlicensed individuals who provide direct care and support to persons supported" means the unlicensed individuals, including their unlicensed direct care and support supervisors, who are employed to provide direct care and

support to persons supported within the department of intellectual and developmental disabilities ICF/ID homes and facilities or by agencies that are licensed under title 33 and under contract with this department.

(b) Physician orders for scope of treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

(1) With the informed consent of the patient;

(2) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter; or

(3) Where the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(c) A POST may be issued by a nurse practitioner or clinical nurse specialist for a patient with whom such nurse practitioner or clinical nurse specialist has a bona fide nurse-patient relationship, but only if:

(1) No physician who has a bona fide physician-patient relationship with the patient is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with

the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act;

(2) Such authority to issue is contained in the nurse practitioner's or clinical nurse specialist's protocols;

(3) Either:

(A) The patient is a resident of a nursing home licensed under this title or an ICF/MR facility licensed under title 33; or

(B) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

(4) Either:

(A) With the informed consent of the patient;

(B) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(C) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available and such authority to issue is contained in the nurse practitioner or clinical nurse specialist's protocols and the nurse determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(d) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(e)

(1) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the board for licensing health care facilities, the department of mental health and substance abuse services, or the department of intellectual and developmental disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the board for licensing health care facilities.

(2) The department of intellectual and developmental disabilities shall allow unlicensed individuals who provide direct support and care to persons supported and who are employed by agencies that are licensed under title 33 and under contract to provide residential or adult day

programs and personal assistance or who provide direct support and care to persons supported within the ICE/ID homes and department facilities, to follow universal do not resuscitate orders that are made available to them in a form approved by the board.

(f) Nothing in this section shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or to alleviate pain.

(g) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(h) This section shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in this section.

(i) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided, in this section.

(j)

(1) The board for licensing health care facilities shall promulgate rules and create forms regarding procedures for the withholding of resuscitative services from patients in accordance with the Tennessee Health Care Decisions Act, and this section.

(2) The rules shall address:

(A) The mechanism or mechanisms for reaching decisions about the withholding of resuscitative services from individual patients;

(B) The mechanism or mechanisms for resolving conflicts in decision making, should they arise; and

(C) The roles of physicians, nurse practitioner or clinical nurse specialists and, when applicable, other nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services.

(3) The rules shall include provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services and shall include the requirement that appropriate orders be written by the physician, nurse practitioner or clinical nurse specialist, primarily responsible for the patient, and that documentation be made in the patient's current clinical record if resuscitative services are to be withheld.

(4) This section shall not be construed or implemented in any manner which restricts or impairs the decision-making authority of the agent, surrogate, or other person designated in the Tennessee Health

Care Decisions Act. This section does not authorize a surrogate to give consent for or take any action on behalf of a patient on any matter governed by title 33.

(k) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability for:

(1) Complying with a POST;

(2) Declining to comply with a POST based on reasonable belief that the order then lacked validity; or

(3) Complying with a POST and assuming that the order was valid when made and has not been revoked or terminated.

SECTION 2. Tennessee Code Annotated, Section 32-11-105, is amended by deleting the following language:

The declaration may be substantially in the following form, but not to the exclusion of other written and clear expressions of intent to accept, refuse, or withdraw medical care: and by substituting instead the following:

(a) The declaration may be substantially in a form approved by the board for licensing health care facilities, but not to the exclusion of:

(1) Other written and clear expressions of intent to accept, refuse, or withdraw medical care consistent with the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18; or

(2) Other forms valid at the time and place of execution.

(b) Subject to subsection (a), the declaration may be substantially in the following form:

SECTION 3. Tennessee Code Annotated, Section 34-6-205, is amended by adding the following at the end of the section:

No such warning statement shall be required for any appointment of agent that complies with the Tennessee Health Care Decisions Act, Tennessee Code Annotated, Title 68, Chapter 11, Part 18, which shall be recognized for all purposes as the equivalent of a durable power of attorney for health care authorized under this part.

SECTION 4. For purposes of rulemaking this act shall take effect on becoming a law, for all other purposes this act shall take effect July 1, 2013, the public welfare requiring it.