CHAPTER 78

Emergency Medical Services Do Not Resuscitate Order Act

**SECTION 44‑78‑10.** Short title.

This chapter may be cited as the Emergency Medical Services Do Not Resuscitate Order Act.

HISTORY: 1994 Act No. 485, Section 2.

**SECTION 44‑78‑15.** Definitions.

As used in this chapter:

(1) "Do not resuscitate bracelet" or "bracelet" means a standardized identification bracelet that:

(a) meets the specifications established under Section 44‑78‑30(B) or that is approved by the department under Section 44‑78‑30(B);

(b) bears the inscription "Do Not Resuscitate"; and

(c) signifies that the wearer is a patient who has obtained a do not resuscitate order which has not been revoked.

(2) "Do not resuscitate order for emergency services" means a document made pursuant to this article to prevent EMS personnel from employing resuscitative measures or any other medical process that would only extend the patient's suffering with no viable medical reason to perform the procedure.

(3) "EMS personnel" means emergency medical personnel certified by the South Carolina Department of Health and Environmental Control including first responders who have completed a Department of Health and Environmental Control approved medical first responder program.

(4) "Health care provider" means a person licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.

(5) "Palliative treatment" means the degree of treatment which must be provided to a patient in the routine delivery of emergency medical services, which assures the comfort and alleviation of pain and suffering to all extents possible, regardless of whether the patient has executed a document as provided for in this chapter.

(6) "Resuscitative treatment" means artificial stimulation of the cardiopulmonary systems of the human body, through either electrical, mechanical, or manual means including, but not limited to, cardiopulmonary resuscitation.

(7) "Terminal condition" means an incurable or irreversible condition that within reasonable medical judgment will cause death within a reasonably short period of time with or without the administration of life‑sustaining treatment.

(8) "Child" means a person under the age of eighteen who is neither married nor judicially emancipated and who is medically eligible for hospice care as a result of a terminal condition.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 2, eff June 3, 2016; 2022 Act No. 122 (S.508), Sections 1.A, 1.B, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 1.A, in (7), substituted "will cause death within a reasonably short period of time with or without the administration of life‑sustaining treatment" for "could cause death within a reasonably short period of time if life sustaining procedures are not used".

2022 Act No. 122, Section 1.B, added (8), relating to the definition of "child".

**SECTION 44‑78‑20.** Terminal patient may request health care provider execute "do not resuscitate order for emergency services"; conditions; "do not resuscitate bracelet"; parents or legal guardians.

(A) Except as prohibited in subsections (C) and (D), a patient who has a terminal condition, a surrogate for a patient with a terminal condition under the Adult Health Care Consent Act, an agent of a patient with a terminal condition named by the patient in a Health Care Power of Attorney, or a parent or legal guardian with the legal authority to make medical decisions for a child with a terminal condition may request a health care provider responsible for the care of the patient to execute a "do not resuscitate order for emergency services" if:

(1) the patient has a terminal condition; and

(2) the terminal condition has been diagnosed by a health care provider and the health care provider's record establishes the time, date, and medical condition which gives rise to the diagnosis of a terminal condition.

(B) At the request of the patient for whom a "do not resuscitate order" is written, the patient's surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child, the health care provider who executes the "do not resuscitate order" shall make the order in writing on a form conforming to the requirements of Section 44‑78‑30(A), and either shall:

(1) affix to the wrist of the patient a "do not resuscitate bracelet" that meets the specifications established under Section 44‑78‑30(B); or

(2) provide the patient, the patient's surrogate or agent, or a parent or legal guardian with the legal authority to make medical decisions for the child with an order form, from a commercial vendor approved by the department pursuant to Section 44‑78‑30(B), to allow a "do not resuscitate bracelet" to be ordered from the commercial vendor.

(C) Neither parent nor legal guardian with the legal authority to make medical decisions for a child shall request a "do not resuscitate for emergency services order" for the child unless a reasonable attempt has been made to inform, either orally or in writing, the second parent or legal guardian of the child with the legal authority to make medical decisions for the child of the intention of the first parent or legal guardian to request a "do not resuscitate order", if the second parent or legal guardian is reasonably available. Accordingly, the following shall be entered in the child's medical

(1) the date, time, and mode of communication of the provision of such information, as well as the name of the sender;

(2) if the second parent or legal guardian of the child does not respond to the provision of such information within forty‑eight hours; and

(3) the nature of the lack of availability of the second parent or legal guardian if an attempt to provide such information is not made.

(D) A "do not resuscitate order for emergency services order" shall not be requested by either parent or legal guardian with the legal authority to make medical decisions for a child nor executed by a health care provider responsible for the care of the child if either parent or legal guardian with the legal authority to make medical decisions for the child explicitly refuses consent, either orally or in writing, for requesting a "do not resuscitate order" for the child, except in accordance with a court order pursuant to subsection (E). Such refusal of consent shall be entered in the child's medical record.

(E) If the parents or legal guardians of a child with the legal authority to make medical decisions for the child are unable to agree to request a "do not resuscitate order for emergency services" of a health care provider responsible for the care of the child, either parent or legal guardian may institute a proceeding under subsection (F) to resolve the conflict. Pending the final determination of such proceedings, including any appeals, a "do not resuscitate order for emergency services" shall not be requested by either parent or legal guardian nor executed by the health care provider.

(F) A parent or legal guardian with legal authority to make medical decisions for the child may petition the family court or circuit court of the county in which the child resides or in which the child is receiving treatment for an order to a health care provider responsible for the care of the child to execute a "do not resuscitate order for emergency services" for the child, or an order to enjoin a violation of or threat to violate subsection (D). Upon receiving such a petition, the family court or circuit court shall issue an order fixing the date, time, and place of a hearing on the petition and order that notice of the hearing shall be given to such persons as the court shall direct. A preliminary hearing may be held without notice if the court determines that doing so is necessary to prevent imminent danger to the child's life. In the court's discretion, a hearing may be conducted in a courtroom, a treatment facility, or at some other suitable place.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 3, eff June 3, 2016; 2022 Act No. 122 (S.508), Section 2, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 2, rewrote the section, allowing a parent or legal guardian of a medically eligible child to request and revoke a "do not resuscitate order for emergency services" for the child, with exceptions.

**SECTION 44‑78‑25.** Duties of EMS personnel when presented with "do not resuscitate order".

When called to render emergency medical services, EMS personnel must not use any resuscitative treatment if the patient has a "do not resuscitate order for emergency services" and the document is presented to the EMS personnel upon their arrival or if the patient is wearing a do not resuscitate bracelet. EMS personnel must provide that degree of palliative care called for under the circumstances which exist at the time treatment is rendered.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 4, eff June 3, 2016.

**SECTION 44‑78‑30.** Required form for "do not resuscitate order"; revocation procedure; "do not resuscitate bracelet".

(A) A document purporting to be a "do not resuscitate order" for EMS purposes must be in substantially the following form:

NOTICE TO EMS PERSONNEL

This notice is to inform all emergency medical personnel who may be called to render assistance to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that he/she has a terminal condition which has been diagnosed by me, and has specifically requested that no resuscitative efforts including artificial stimulation of the cardiopulmonary system by electrical, mechanical, or manual means be made in the event of cardiopulmonary arrest or, if he/she is a child, such a request has been specifically made by a parent or legal guardian with the legal authority to make medical decisions for the child.

REVOCATION PROCEDURE

THIS FORM MAY BE REVOKED BY AN ORAL STATEMENT BY THE PATIENT OR, IF THE PATIENT IS A CHILD, BY A PARENT OR LEGAL GUARDIAN WITH THE LEGAL AUTHORITY TO MAKE MEDICAL DECISIONS FOR THE CHILD TO EMS PERSONNEL OR BY MUTILATING, OBLITERATING, OR DESTROYING THE DOCUMENT IN ANY MANNER.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Patient's signature (or surrogate or agent)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parent or Legal Guardian

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician's signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician's address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Physician's telephone number

(B) The department may approve a "do not resuscitate bracelet" developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words "South Carolina Do Not Resuscitate EMS" and the patient's first name and last name on the back. The department may not approve a "do not resuscitate bracelet" developed and distributed by a commercial vendor if the vendor does not require a health care provider's order for the bracelet before distributing it to a patient.

(C) The cost of obtaining a bracelet must be borne by the patient or, if the patient is a child, the parent or legal guardian of the child and may not be provided by the department at the expense of the department.

(D) The vendor approved by the department shall not fulfill a request for a "do not resuscitate bracelet" without receiving a health care provider's order for the bracelet with the request.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 5, eff June 3, 2016; 2022 Act No. 122 (S.508), Section 3, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 3, rewrote the section.

**SECTION 44‑78‑35.** Liability of health care provider or EMS personnel regarding "do not resuscitate order".

No health care provider or EMS personnel is liable for damages, may be the subject of disciplinary proceedings, or may be subject to civil or criminal liability due to:

(1) issuing a "do not resuscitate order for emergency medical services" or a "do not resuscitate bracelet";

(2) good faith reliance on a "do not resuscitate order for emergency medical services" or a "do not resuscitate bracelet" resulting in:

(a) the withholding of resuscitative treatment; or

(b) the withholding of resuscitative treatment already in progress once a duly executed "do not resuscitate order for emergency medical services" is identified;

(3) initiating resuscitative treatment on a "do not resuscitate patient" if EMS personnel were unaware of the existence of the order or bracelet or if EMS personnel reasonably and in good faith believed the "do not resuscitate order" had been canceled or revoked or, where applicable, if the do not resuscitate bracelet has been tampered with or removed; or

(4) initiating resuscitative treatment on a "do not resuscitate patient" where in the best medical judgment of EMS personnel, the care was necessary to relieve pain or suffering or to provide comfort care to the patient.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 6, eff June 3, 2016.

**SECTION 44‑78‑40.** Full resuscitative measures required in absence of order or bracelet.

In the absence of a "do not resuscitate order for emergency medical services" or a "do not resuscitate" bracelet, EMS personnel shall give full resuscitative measures as are medically indicated in all cases.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 7, eff June 3, 2016.

**SECTION 44‑78‑45.** Health care provider or EMS personnel must honor order or bracelet; exceptions; transfer care of patient.

(A) A health care provider and an EMS personnel shall follow the request of the patient or, if the patient is a child, the parent or legal guardian with the legal authority to make medical decisions for the child and must not provide resuscitative measures when the patient has a "do not resuscitate order for emergency medical services" or is wearing a "do not resuscitate bracelet", except where the:

(1) order is revoked pursuant to Section 44‑78‑60; or

(2) bracelet, when applicable, appears to have been tampered with or removed.

(B) A health care provider or EMS personnel who cannot honor the order or bracelet immediately must transfer care of the patient to an EMS personnel or health care provider who will honor the order or bracelet.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 8, eff June 3, 2016; 2022 Act No. 122 (S.508), Section 4, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 4, in (A), inserted "or, if the patient is a child, the parent or legal guardian with the legal authority to make medical decisions for the child" following "request of the patient".

**SECTION 44‑78‑50.** Chapter not condonation of mercy killing; children ineligible for "do not resuscitate orders"; compliance with article not suicide.

(A) Nothing in this chapter may be construed to condone, authorize, or approve mercy killing or euthanasia or to permit any affirmative action or deliberate act to end life other than to allow the natural process of dying.

(B) No child may request a "do not resuscitate order for emergency medical services" as provided for in this article.

(C) The withholding of resuscitative measures pursuant to this article does not constitute suicide for any purpose.

HISTORY: 1994 Act No. 485, Section 2; 2022 Act No. 122 (S.508), Section 5, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 5, in (B), substituted "No child may request" for "No person under the age of eighteen years may request or receive".

**SECTION 44‑78‑60.** Means of revocation of "do not resuscitate order for emergency services".

A patient or, if the patient is a child, a parent or legal guardian with the legal authority to make medical decisions for the child, may revoke a "do not resuscitate order for emergency services" by:

(1) mutilating, obliterating, or destroying the "do not resuscitate order for emergency medical services" document in any manner;

(2) orally expressing to an emergency medical technician, first responder, or to a person who serves as a member of an emergency health care facility's personnel, the desire to be resuscitated, after which the emergency medical technician, first responder, or the member of the emergency health care facility shall disregard the "do not resuscitate order for emergency medical services" document and, if applicable, promptly remove the bracelet;

(3) defacing, burning, cutting, or otherwise destroying the bracelet, if applicable; or

(4) removing the bracelet or asking another person to remove the bracelet.

HISTORY: 1994 Act No. 485, Section 2; 2016 Act No. 233 (H.4773), Section 9, eff June 3, 2016; 2022 Act No. 122 (S.508), Section 6, eff March 14, 2022.

Effect of Amendment

2022 Act No. 122, Section 6, in the first undesignated paragraph, inserted "or, if the patient is a child, a parent or legal guardian with the legal authority to make medical decisions for the child," following "A patient".

**SECTION 44‑78‑65.** Regulations to provide direction to emergency personnel in identifying patients having "do not resuscitate orders".

The South Carolina Department of Health and Environmental Control shall promulgate regulations necessary to provide direction to emergency personnel in identifying patients who have a "do not resuscitate order for emergency services".

HISTORY: 1994 Act No. 485, Section 2.