COMMITTEE AMENDMENT ADOPTED AND AMENDED

May 7, 2019

**H. 4004**

Introduced by Reps. Clary, G.M. Smith, Lucas, Ridgeway, Gilliard and Moore

S. Printed 5/7/19--S.

Read the first time April 10, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST) ACT” BY ADDING CHAPTER 80 TO TITLE 44 SO AS TO ENABLE CERTAIN PERSONS TO EXECUTE A POST FORM SIGNED BY A PHYSICIAN THAT SETS FORTH THE PATIENT’S WISHES AS TO LIFE‑SUSTAINING CARE; TO REQUIRE HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES TO ACCEPT A POST FORM AS A VALID MEDICAL ORDER WHICH TAKES PRECEDENCE OVER AN ADVANCE DIRECTIVE AND TO COMPLY WITH THE ORDER, WITH EXCEPTIONS; TO ESTABLISH A PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST) ADVISORY COUNCIL AND TO PROVIDE FOR ITS MEMBERSHIP AND DUTIES; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PERFORM CERTAIN DUTIES WITH RESPECT TO OVERSEEING POST FORMS AND TO PROMULGATE REGULATIONS; TO PROVIDE IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY AND FROM DISCIPLINARY ACTION FOR CERTAIN PERSONS ACTING IN ACCORDANCE WITH PROVISIONS OF THE CHAPTER; AND FOR OTHER PURPOSES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This chapter may be cited as the “Physician Orders for Scope of Treatment (POST) Act”.

SECTION 2. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 80

Physician Orders for Scope of Treatment

Section 44‑80‑10. As used in this chapter:

(1) ‘Advance care planning’ or ‘ACP’ means the making of decisions by a person about the care the person wants to receive if the person becomes unable to communicate or consent to care and the documentation of those decisions by acceptable methods recognized by the State.

(2) ‘Advance directive’ means a written statement such as a health care power of attorney executed in accordance with Section 62‑5‑504, in which an individual expresses certain wishes relating to life‑sustaining treatment, including resuscitative services.

(3) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(4) ‘Director’ means the Director of the South Carolina Department of Health and Environmental Control.

(5) ‘Emergency medical technician (EMT)’ when used in general terms for emergency medical personnel, means an individual possessing a valid EMT, advanced EMT (AEMT), or paramedic certificate issued by the State pursuant to the provisions of Section 44‑61‑20.

(6) ‘Health care facility’ means any nonfederal public or private institution, building, agency, or portion thereof, whether for‑profit or not‑for‑profit, that is used, operated, or designed to provide health services; medical treatment; or nursing, rehabilitative or preventive care to any person or persons. This includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long‑term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, skilled nursing facilities, and adult daycare centers. The term also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities, health personnel training and lodging facilities; patient, guest and health personnel food service facilities; and offices or office buildings for persons engaged in health care professions or services.

(7) ‘Health care provider’ means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(8) ‘Legal representative’ means a person with priority to make health care decisions for a patient pursuant to the Adult Health Care Consent Act.

(9) ‘Patient’ means an individual who presents or is presented to a health care provider for treatment.

(10) ‘Physician’ means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

(11) ‘Physician Orders for Scope of Treatment (POST) form’ means a designated document designed for use as part of advance care planning, the use of which must be limited to situations where the patient has been diagnosed with a serious illness or, based upon medical diagnosis, may be expected to lose capacity within twelve months and consists of a set of medical orders signed by a patient’s physician addressing key medical decisions consistent with patient goals of care concerning treatment at the end of life that is portable and valid across health care settings.

(12) Serious illness means a condition which, based upon best medical judgment, is likely to result in death within a period of not to exceed twelve months.

Section 44‑80‑20. The department shall:

(1) oversee the POST form and its future iterations;

(2) display a printable sample of the POST form currently being used by the department on the department’s or a designee’s publicly accessible website, along with any related information the department chooses to post; however, if posted on a designee’s website, the department shall post a link on its website to the form and any related information;

(3) develop a statewide, uniform process for identifying a patient who has executed any advance directive, a POST form, or a combination of advance directives and a POST form;

(4) develop a process for collecting feedback to facilitate the periodic redesign of the POST form in accordance with current health care best practices;

(5) develop POST‑related education efforts for health care professionals and the public; and

(6) promulgate regulations necessary to perform the duties assigned and ensure compliance with the provisions of this chapter.

Section 44‑80‑30. (A) The POST form must be a uniform document based on the standards recommended by the National Physician Order for Life‑Sustaining Treatment (POLST) paradigm and must include the information set forth in subsection (C).

(B) A copy, facsimile, or electronic version of a completed POST form is considered to be legal.

(C) The POST form must include the following information:

(1) patient name and contact information;

(2) date of birth;

(3) effective date of form;

(4) diagnosis;

(5) treatment plan;

(6) health care representative or health care agent contact information;

(7) CPR preference;

(8) medical intervention preferences;

(9) preferences for antibiotics; and

(10) assisted nutrition and hydration preferences.

Section 44‑80‑40. (A) A POST form executed in South Carolina as provided in this chapter, or a similar form executed in another jurisdiction in compliance with the laws of that jurisdiction, must be deemed a valid expression of a patient’s wishes as to health care. A South Carolina health care provider or health care facility may accept a properly executed POST form as a valid expression of whether the patient consents to the provision of health care in accordance with Section 44‑66‑60 of the Adult Health Care Consent Act.

(B) A health care provider or health care facility that is unwilling to comply with an executed POST form based on policy, religious beliefs, or moral convictions shall contact the patient’s health care representative, health care agent, or the person authorized to make health care decisions for the patient pursuant to Section 44‑66‑30 of the Adult Health Care Consent Act, and the health care provider or health care facility shall allow the transfer of the patient to another health care provider or health care facility.

(C) A health care provider including, but not limited to, a physician, physician assistant, advance practice registered nurse, registered nurse, or emergency medical technician, who in good faith complies with a POST form, is not subject to criminal prosecution, civil liability or disciplinary penalty for complying with the POST form executed in accordance with this chapter and the Adult Health Care Consent Act.

Section 44‑80‑50. (A) A POST form may be revoked at any time by an oral or written statement by the patient or a patient’s legal representative.

(B) A revocation is only effective upon communication to the health care provider or health care facility by the patient or the patient’s legal representative (C) The execution of a POST form by a patient, or the patient’s legal representative, pursuant to this chapter automatically revokes any previously executed POST form.

Section 44‑80‑60. (A) Any individual acting in good faith as a legal representative who executes a POST form on behalf of an incapacitated patient in accordance with this chapter, the Adult Heath Care Consent Act, and regulations promulgated pursuant to those statutes is not subject to criminal prosecution or civil liability for executing the POST form.

(B) A health care provider, health care facility, or other person who has not received actual notice of the revocation of a POST form and complies with the wishes stated in the POST form is not subject to civil or criminal liability or professional disciplinary action for actions taken pursuant to this chapter which are in accordance with reasonable medical standards. This subsection provides an affirmative defense to any civil, criminal, or professional disciplinary action filed or instituted against a health care provider, health care facility, or other person for conduct authorized by this chapter.

Section 44‑80‑70. This chapter may not be construed to condone, authorize, or approve suicide, physician‑assisted suicide, or euthanasia, or to permit any affirmative or deliberate act or omission of an act to end life other than to permit the natural process of dying. Death resulting from the withholding or withdrawal of life‑sustaining procedures pursuant to an executed POST form and in accordance with this chapter does not, for any purpose, constitute a suicide, homicide, or vulnerable adult abuse or neglect.

Section 44‑80‑80. (A) The executing of a POST form does not in any manner affect the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life‑sustaining procedures pursuant to this chapter notwithstanding any term of the policy to the contrary.

(B) Execution of a POST form is voluntary. A health care provider, health care facility, health care service plan, insurer issuing disability insurance, self‑insured employee benefit plan, or nonprofit hospital plan may not require any person to execute a POST form as a condition of being insured for, or receiving, health care services.

Section 44‑80‑90. (A) The absence of a POST form does not give rise to a presumption concerning the intent of a patient with respect to the consent to or refusal of life‑sustaining procedures. A health care provider or health care facility must be guided by the patient’s stated wishes, or if unable to consent or otherwise communicate, the wishes as stated by the patient’s surrogate decision maker as provided in Section 44‑66‑30 of the Adult Health Care Consent Act, as well as the established standards of care.

(B) Nothing in this chapter may be interpreted to interfere with the right of an individual to make decisions regarding use of life‑sustaining procedures as long as the individual is able to do so, or to impair or supersede any right or responsibility that any legal representative or other authorized person has to order the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

(C) The execution of a POST form is always voluntary and is for a person with an advanced illness. The POST form records a patient’s wishes for medical treatment in the patient’s current state of health. Preferred medical treatment as stated by the patient on the POST form may be changed at any time by the patient or a designated health care representative or health care agent of the patient to reflect the patient’s new wishes. While no form can anticipate and address all medical treatment decisions that may need to be made, an advance health care directive applies regardless of health status. An advance directive allows a patient to document in detail future health care instructions and to name a health care agent to speak on the patient’s behalf if the patient is unable to communicate to ensure that the patient’s advance directive wishes as to life‑sustaining medical treatment are fulfilled.

Section 44‑80‑100. A POST form executed pursuant to this chapter remains effective until revoked or until a new POST form is executed pursuant to this chapter. Any physician who is responsible for the creation and execution of a POST form shall make reasonable efforts to periodically review and update the POST form with the patient as the patient’s needs dictate but at least once per year.

Section 44-80-110. An advanced practice registered nurse (APRN) may create, execute, and sign a POST form if authorized to do so by his or her practice agreement. The POST form must be for a patient of the APRN, the physician with whom the APRN has entered into a practice agreement, or both.

Section 44-80-120. A physician assistant (PA) may create, execute, and sign a POST form if authorized to do so by his or her scope of practice guidelines. The POST form must be for a patient of that PA, the PA’s supervising physician, or both.”

SECTION 3. Section 1-3-210 of the 1976 Code is amended to read:

“Section 1-3-210. (A)(1) ~~During the recess of the Senate, vacancy which occurs in an~~ If an office filled by an appointment of the Governor with the advice and consent of the Senate becomes vacant during the interim period between regular legislative sessions, then the office may be filled by an interim appointment of the Governor only if the Governor acts to fill the office during the same interim period during which the office became vacant. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session. If the Senate votes to reject an interim appointee’s formal appointment during the next ensuing regular session then the office is immediately vacant and may not be filled by another interim appointment.

(2) If the Senate does not advise and consent ~~thereto~~ to the formal appointment prior to ~~sine die adjournment~~ the second Thursday in May following the interim period during which the interim appointment was made ~~of the next ensuing regular session~~, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. The Governor may not make a subsequent interim appointment for the same vacancy. ~~A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.~~

(B) The Governor’s authority to make an interim appointment pursuant to subsection (A) terminates when the General Assembly convenes the regular legislative session following the interim period between regular legislative sessions during which the office became vacant.”

SECTION 4. Article 5, Chapter 3 of Title 1 of the 1976 Code is amended by adding:

“Section 1-3-211. (A) If a vacancy exists in the head of an agency that requires appointment by the Governor with the advice and consent of the Senate, the Governor may designate an employee of the agency as the acting head of the agency if the person designated was employed by the agency for at least twelve consecutive months prior to the date upon which the vacancy occurred. A person designated as an acting agency head pursuant to this subsection may serve as the acting agency head no longer than the second Thursday in May following date upon which the vacancy occurred.

(B)(1) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may not be designated by the Governor as the acting head of the agency to which the person was nominated.

(2) A person nominated by the Governor to head an agency that requires the advice and consent of the Senate who also had been previously designated as the acting head of the agency who did not receive the advice and consent of the Senate, or whose nomination was withdrawn, may no longer exercise any authority or duties of that agency.”

SECTION 5. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑