GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2015 REGULAR SESSION

SENATE BILL NO. 77

TUESDAY, FEBRUARY 10, 2015

The following bill was reported to the House from the Senate and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to a medical order for scope of treatment.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 311.621 is amended to read as follows:

4 As used in KRS 311.621 to 311.643:

5 (1) "Adult" means a person eighteen (18) years of age or older and who is of sound
6 mind.

7 (2) "Advance directive" means a living will directive made in accordance with KRS
8 311.621 to 311.643, a living will or designation of health care surrogate executed
9 prior to July 15, 1994, and any other document that provides directions relative to
10 health care to be provided to the person executing the document.

11 (3) "Artificially-provided nutrition and hydration" means sustenance or fluids that are
12 artificially or technologically administered.

13 (4) "Attending physician" means the physician who has primary responsibility for the
14 treatment and care of the patient.

15 (5) "Decisional capacity" means the ability to make and communicate a health care
16 decision.

17 (6) "Directive" means a living will directive in writing voluntarily made by an adult in
18 accordance with the provisions of KRS 311.621 to 311.643.

19 (7) "Grantor" means an adult who has executed an advance directive in accordance with
20 KRS 311.621 to 311.643.

21 (8) "Health care decision" means consenting to, or withdrawing consent for, any
22 medical procedure, treatment, or intervention.

23 (9) "Health care facility" means any institution, place, building, agency, or portion
24 thereof, public or private, whether organized for profit or not, used, operated, or
25 designed to provide medical diagnosis, treatment, nursing, rehabilitative, or
26 preventive care, and licensed pursuant to KRS Chapter 216B.

27 (10) "Health care provider" means any health care facility or provider of health services,

1 including but not limited to, those licensed, certified, or regulated under the
2 provisions of KRS Chapters 211, 216, 311, 312, 313, or 314.
3 (11) "Life-prolonging treatment" means any medical procedure, treatment, or
4 intervention which:
5 (a) Utilizes mechanical or other artificial means to sustain, prolong, restore, or
6 supplant a spontaneous vital function; and
7 (b) When administered to a patient would serve only to prolong the dying process.
8 "Life-prolonging treatment" shall not include the administration of medication
9 or the performance of any medical procedure deemed necessary to alleviate
10 pain.
11 (12) ***"Medical order for scope of treatment" means an actionable medical order***
12 ***signed by a patient, a patient's legal surrogate, or a responsible party, and the***
13 ***patient's physician directing the use of life-sustaining treatment for the patient. A***
14 ***medical order for scope of treatment, if completed, shall implement or apply a***
15 ***health power of attorney or a living will directive if one exists.***
16 *(13)* "Permanently unconscious" means a condition which, to a reasonable degree of
17 medical probability, as determined solely by the patient's attending physician and
18 one (1) other physician on clinical examination, is characterized by an absence of
19 cerebral cortical functions indicative of consciousness or behavioral interaction with
20 the environment.
21 *(14)*[~~(13)~~] "Physician" means a person licensed to practice medicine in the
22 Commonwealth of Kentucky.
23 *(15)*[~~(14)~~] "Responsible party" means an adult who has authority under KRS 311.631 to
24 make a health care decision for a patient who has not executed a living will
25 directive.
26 *(16)*[~~(15)~~] "Surrogate" means an adult who has been designated to make health care
27 decisions in accordance with KRS 311.621 to 311.643.

1 *(17)*[~~(16)~~] "Terminal condition" means a condition caused by injury, disease, or illness
2 which, to a reasonable degree of medical probability, as determined solely by the
3 patient's attending physician and one (1) other physician, is incurable and
4 irreversible and will result in death within a relatively short time, and where the
5 application of life-prolonging treatment would serve only to artificially prolong the
6 dying process.
7 ➔SECTION 2. A NEW SECTION OF KRS 311.621 TO 311.643 IS CREATED
8 TO READ AS FOLLOWS:
9 *(1) An adult with decisional capacity, an adult's legal surrogate, or a responsible*
10 *party may complete a medical order for scope of treatment directing medical*
11 *interventions. The form shall have the title "MOST, Medical Orders for Scope of*
12 *Treatment," and an introductory section containing the patient's name and date*
13 *of birth, the effective date of the form including the statement "Form must be*
14 *reviewed at least annually," and the statements, "HIPAA permits disclosure of*
15 *MOST to other health care professionals as necessary" and "This document is*
16 *based on this person's medical condition and wishes. Any section not completed*
17 *indicates a preference for full treatment for that section." The form shall be in*
18 *substantially the following order and format and shall have the following*
19 *contents:*
20 *(a) Section A of the form shall direct cardiopulmonary resuscitation when a*
21 *person has no pulse and is not breathing by selection of one (1) of the*
22 *following:*
23 *1. "Attempt Resuscitation (CPR)"; or*
24 *2. "Do Not Attempt Resuscitation"; and*
25 *Include the statement "When not in cardiopulmonary arrest, follow orders*
26 *in B, C, and D.";*
27 *(b) Section B of the form shall direct the scope of treatment when a person has*

1 *a pulse or is breathing by selection of one (1) of the following:*
2 *1. Full scope of treatment, including the use of intubation, advanced*
3 *airway interventions, mechanical ventilation, defibrillation or*
4 *cardioversion as indicated, medical treatment, intravenous fluids, and*
5 *comfort measures. This option shall include the statement, "Transfer*
6 *to a hospital if indicated. Includes intensive care. Treatment Plan:*
7 *Full treatment including life support measures.";*
8 *2. Limited additional intervention, including the use of medical*
9 *treatment, oral and intravenous medications, intravenous fluids,*
10 *cardiac monitoring as indicated, noninvasive bi-level positive airway*
11 *pressure, a bag valve mask, and comfort measures. This option*
12 *excludes the use of intubation or mechanical ventilation. This option*
13 *shall include the statement, "Transfer to a hospital if indicated. Avoid*
14 *intensive care. Treatment Plan: Provide basic medical treatments."; or*
15 *3. Comfort measures, including keeping the patient clean, warm, and*
16 *dry; use of medication by any route; positioning, wound care, and*
17 *other measures to relieve pain and suffering; and the use of oxygen,*
18 *suction, and manual treatment of airway obstruction as needed for*
19 *comfort. This option shall include the statement, "Do not transfer to a*
20 *hospital unless comfort needs cannot be met in the patient's current*
21 *location (e.g. hip fracture).".*
22 *These options shall be followed by a space for other instructions;*
23 *(c) Section C of the form shall direct the use of oral and intravenous antibiotics*
24 *by selection of one (1) of the following:*
25 *1. Antibiotics if indicated for the purpose of maintaining life;*
26 *2. Determine use or limitation of antibiotics when infection occurs;*
27 *3. Use of antibiotics to relieve pain and discomfort; or*

1 *4. No antibiotics, use other measures to relieve symptoms.*
2 *This option shall include a space for other instructions;*
3 *(d) Section D of the form shall have the heading, "Medically Administered*
4 *Fluids and Nutrition: The provision of nutrition and fluids, even if*
5 *medically administered, is a basic human right and authorization to deny or*
6 *withdraw shall be limited to the patient, the surrogate in accordance with*
7 *KRS 311.629, or the responsible party in accordance with KRS 311.631."*
8 *and shall:*
9 *1. Direct the administration of fluids if physically possible as determined*
10 *by the patient's physician in accordance with reasonable medical*
11 *judgment and in consultation with the patient, surrogate, or*
12 *responsible party by selecting one (1) of the following:*
13 *a. Long-term intravenous fluids if indicated;*
14 *b. Intravenous fluids for a defined trial period. This option shall be*
15 *followed by "Goal:....."; or*
16 *c. No intravenous fluids, provide other measures to ensure*
17 *comfort; and*
18 *2. Direct the administration of nutrition if physically possible as*
19 *determined by the patient's physician in accordance with reasonable*
20 *medical judgment and in consultation with the patient, surrogate, or*
21 *responsible party by selecting one (1) of the following:*
22 *a. Long-term feeding tube if indicated;*
23 *b. Feeding tube for a defined trial period. This option shall be*
24 *followed by "Goal:....."; or*
25 *c. No feeding tube. This option shall be followed by a space for*
26 *special instructions;*
27 *(e) Section E of the form shall have the heading, "Patient Preferences as a*

1 *Basis for this MOST Form," shall include the language, "Basis for order*
2 *must be documented in medical record," and shall:*
3 *1. Provide direction to indicate whether or not the patient has an*
4 *advance medical directive such as a health care power of attorney or*
5 *living will and, if so, a place for the printed name, position, and*
6 *signature of the individual certifying that the MOST is in accordance*
7 *with the advance directive; and*
8 *2. Indicate whether oral or written directions were given and, if so, by*
9 *which one (1) or more of the following:*
10 *a. Patient;*
11 *b. Parent or guardian if patient is a minor;*
12 *c. Surrogate appointed by the patient's advance directive;*
13 *d. The judicially appointed guardian of the patient, if the guardian*
14 *has been appointed and if medical decisions are within the scope*
15 *of the guardianship;*
16 *e. The attorney-in-fact named in a durable power of attorney, if*
17 *the durable power of attorney specifically includes authority for*
18 *health care decisions;*
19 *f. The spouse of the patient;*
20 *g. An adult child of the patient, or if the patient has more than one*
21 *(1) child, the majority of the adult children who are reasonably*
22 *available for consultation;*
23 *h. The parents of the patient; and*
24 *i. The nearest living relative of the patient, or if more than one (1)*
25 *relative of the same relation is reasonably available for*
26 *consultation, a majority of the nearest living relatives;*
27 *(f) A signature portion of the form shall include spaces for the printed name,*

1 *signature, and date of signing for:*
2 *1. The patient's physician;*
3 *2. The patient, parent of minor, guardian, health care agent, surrogate,*
4 *spouse, or other responsible party, with a description of the*
5 *relationship to the patient, and contact information, unless based*
6 *solely on advance directive; and*
7 *3. The health care professional preparing the form, with contact*
8 *information;*
9 *(g) A section of the form shall be titled "Information for patient, surrogate, or*
10 *responsible party named on this form" with the following language, "The*
11 *MOST form is always voluntary and is usually for persons with advanced*
12 *illness. MOST records your wishes for medical treatment in your current*
13 *state of health. The provision of nutrition and fluids, even if medically*
14 *administered, is a basic human right and authorization to deny or withdraw*
15 *shall be limited to the patient, the surrogate in accordance with KRS*
16 *311.629, or the responsible party in accordance with KRS 311.631. Once*
17 *initial medical treatment is begun and the risks and benefits of further*
18 *therapy are clear, your treatment wishes may change. Your medical care*
19 *and this form can be changed to reflect your new wishes at any time.*
20 *However, no form can address all the medical treatment decisions that may*
21 *need to be made. An advance directive, such as the Kentucky Health Care*
22 *Power of Attorney, is recommended for all capable adults, regardless of*
23 *their health status. An advance directive allows you to document in detail*
24 *your future health care instructions or name a surrogate to speak for you if*
25 *you are unable to speak for yourself, or both. If there are conflicting*
26 *directions between an enforceable living will and a MOST form, the*
27 *provisions of the living will shall prevail.";*

1 *(h) A section of the form shall be titled, "Directions for Completing and*
2 *Implementing Form" with these four (4) subdivisions:*
3 *1. The first subdivision shall be titled, "Completing MOST" and shall*
4 *have the following language:*
5 *"MOST must be reviewed, prepared, and signed by the patient's*
6 *physician in personal communication with the patient, the patient's*
7 *surrogate, or responsible party.*
8 *MOST must be reviewed and contain the original signature of the*
9 *patient's physician to be valid. Be sure to document the basis in the*
10 *progress notes of the medical record. Mode of communication (e.g., in*
11 *person, by telephone, etc.) should also be documented.*
12 *The signature of the patient, surrogate, or a responsible party is*
13 *required; however, if the patient's surrogate or a responsible party is*
14 *not reasonably available to sign the original form, a copy of the*
15 *completed form with the signature of the patient's surrogate or a*
16 *responsible party must be signed by the patient's physician and placed*
17 *in the medical record.*
18 *Use of original form is required. Be sure to send the original form*
19 *with the patient.*
20 *There is no requirement that a patient have a MOST.";*
21 *2. The second subdivision shall be titled, "Implementing MOST" and*
22 *shall have the following language: "If a health care provider or*
23 *facility cannot comply with the orders due to policy or personal ethics,*
24 *the provider or facility must arrange for transfer of the patient to*
25 *another provider or facility.";*
26 *3. The third subdivision shall be titled, "Reviewing MOST" and shall*
27 *have the following language:*

1 *"This MOST must be reviewed at least annually or earlier if:*
2 *The patient is admitted and/or discharged from a health care facility;*
3 *There is a substantial change in the patient's health status; or*
4 *The patient's treatment preferences change.*
5 *If MOST is revised or becomes invalid draw a line through sections A-*
6 *E and write "VOID" in large letters."; and*
7 *4. The fourth subdivision shall be titled, "Revocation of MOST" and*
8 *shall have the following language: "This MOST may be revoked by*
9 *the patient, the surrogate, or the responsible party."; and*
10 *(i) A section of the form shall be titled, "Review of MOST" and shall have the*
11 *following columns and a number of rows as determined by the Kentucky*
12 *Board of Medical Licensure:*
13 *1. "Review Date";*
14 *2. "Reviewer and Location of Review";*
15 *3. "MD/DO Signature (Required)";*
16 *4. "Signature of Patient, Surrogate, or Responsible Party (Required)";*
17 *and*
18 *5. "Outcome of Review, describing the outcome in each row by selecting*
19 *one (1) of the following:*
20 *a. No Change;*
21 *b. FORM VOIDED, new form completed; or*
22 *c. FORM VOIDED, no new form".*
23 *(2) The Kentucky Board of Medical Licensure shall promulgate administrative*
24 *regulations in accordance with KRS Chapter 13A to develop the format for a*
25 *standardized medical order for scope of treatment form to be approved by the*
26 *board, including spacing, size, borders, fill and location of boxes, type of fonts*
27 *used and their size, and placement of boxes on the front or back of the form so as*

1 *to fit on a single sheet. The board may not alter the wording or order of wording*
2 *provided in subsection (1) of this section, except to add identifying data such as*
3 *form number and date of promulgation or revision and instructions for*
4 *completing, reviewing, and revoking the election of the form. The board shall*
5 *consult with appropriate professional organizations to develop the format for the*
6 *medical order for scope of treatment form including:*
7 *(a) The Kentucky Association of Hospice and Palliative Care;*
8 *(b) The Kentucky Board of Emergency Medical Services;*
9 *(c) The Kentucky Hospital Association;*
10 *(d) The Kentucky Association of Health Care Facilities;*
11 *(e) LeadingAge Kentucky;*
12 *(f) The Kentucky Right to Life Association; and*
13 *(g) Other groups interested in end-of-life care.*
14 *(3) The medical order for scope of treatment form developed under subsection (2) of*
15 *this section shall include but not be limited to:*
16 *(a) An advisory that completing the medical order for scope of treatment form*
17 *is voluntary and not required for treatment;*
18 *(b) Identification of the person who discussed and agreed to the options for*
19 *medical intervention that are selected;*
20 *(c) All necessary information necessary to comply with subsection (1) of this*
21 *section;*
22 *(d) The effective date of the form;*
23 *(e) The expiration or review date of the form, which shall be no more than one*
24 *(1) calendar year from the effective date of the form;*
25 *(f) Indication of whether the patient has a living will directive or health care*
26 *power of attorney, a copy of which shall be attached to the form if available;*
27 *(g) An advisory that the medical order for scope of treatment may be revoked by*

1 ***the patient, the surrogate, or a responsible party at any time; and***
2 ***(h) A statement written in boldface type directly above the signature line for the***
3 ***patient that states, "You are not required to sign this form to receive***
4 ***treatment."***
5 ***(4) A physician shall document the medical basis for completing a medical order for***
6 ***scope of treatment in the patient's medical record.***
7 ***(5) The patient, the surrogate, or a responsible party shall sign the medical order for***
8 ***scope of treatment form; however, if it is not practicable for the patient's***
9 ***surrogate or a responsible party to sign the original form, the surrogate or a***
10 ***responsible party shall sign a copy of the completed form and return it to the***
11 ***health care provider completing the form. The copy of the form with the***
12 ***signature of the surrogate or a responsible party, whether in electronic or paper***
13 ***form, shall be signed by the physician and shall be placed in the patient's medical***
14 ***record. When the signature of the surrogate or a responsible party is on a***
15 ***separate copy of the form, the original form shall indicate in the appropriate***
16 ***signature field that the signature is attached.***
17 ➔Section 3. KRS 311.623 is amended to read as follows:
18 (1) An adult with decisional capacity may make a written living will directive that does
19 any or all of the following:
20 (a) Directs the withholding or withdrawal of life-prolonging treatment; or
21 (b) Directs the withholding or withdrawal of artificially provided nutrition or
22 hydration; or
23 (c) Designates one (1) or more adults as a surrogate or successor surrogate to
24 make health care decisions on behalf of the grantor. During any period in
25 which two (2) or more surrogates are serving, all decisions shall be by
26 unanimous consent of all the acting surrogates unless the advance directive
27 provides otherwise; or

1 (d) Directs the giving of all or any part of the adult's body upon death for any
2 purpose specified in KRS 311.1929.
3 (2) Except as provided in KRS 311.633, a living will directive made pursuant to this
4 section ***or a medical order for scope of treatment made pursuant to Section 2 of***
5 ***this Act*** shall be honored by a grantor's family, regular family physician or attending
6 physician, and any health care facility of or in which the grantor is a patient.
7 (3) For purposes of KRS 311.621 to 311.643, notification to any emergency medical
8 responder as defined by KRS Chapter 211 or any paramedic as defined by KRS
9 Chapter 311, of a person's authentic wish not to be resuscitated shall be recognized
10 only if on a standard form or identification approved by the Kentucky Board of
11 Medical Licensure, in consultation with the Cabinet for Health and Family Services,
12 ***or a standard medical order for scope of treatment form approved by the***
13 ***Kentucky Board of Medical Licensure pursuant to Section 2 of this Act***.
14 ➔Section 4. KRS 311.633 is amended to read as follows:
15 (1) It shall be the responsibility of the grantor or the responsible party of the grantor to
16 provide for notification to the grantor's attending physician and health care facility
17 where the grantor is a patient that an advance directive ***or a medical order for scope***
18 ***of treatment*** has been made. If the grantor is comatose, incompetent, or otherwise
19 mentally or physically incapable, any other person may notify the attending
20 physician of the existence of an advance directive ***or a medical order for scope of***
21 ***treatment***. An attending physician who is notified shall promptly make the living
22 will directive or a copy of the advance directive ***or a medical order for scope of***
23 ***treatment*** a part of the grantor's medical records.
24 (2) An attending physician or health care facility which refuses to comply with the
25 advance directive ***or a medical order for scope of treatment made pursuant to***
26 ***Section 2 of this Act*** of a patient or decision made by a surrogate or responsible
27 party shall immediately inform the patient or the patient's responsible party and the

1 family or guardian of the patient of the refusal. No physician or health care facility
2 which refuses to comply with the advance directive ***or medical order for scope of***
3 ***treatment*** of a qualified patient or decision made by a responsible party shall
4 impede the transfer of the patient to another physician or health care facility which
5 will comply with the advance directive ***or medical order for scope of treatment***. If
6 the patient, the family, or the guardian of the patient has requested and authorized a
7 transfer, the transferring attending physician and health care facility shall supply the
8 patient's medical records and other information or assistance medically necessary
9 for the continued care of the patient, to the receiving physician and health care
10 facility.
11 (3) No physician, nurse, staff member, or employee of a public or private hospital, or
12 employee of a public or private health care facility, who shall state in writing to the
13 hospital or health care facility his objection to complying with the advance directive
14 of a patient,~~[or]~~ a health care decision of a responsible party under KRS 311.621 to
15 311.643***, or a medical order for scope of treatment under Section 2 of this Act***, on
16 moral, religious, or professional grounds, shall be required to, or held liable for
17 refusal to, comply with the advance directive,~~[or]~~ health care decision***, or medical***
18 ***order for scope of treatment*** as long as the physician, nurse, staff member, or
19 employee complies with the requirements of subsection (2) of this section regarding
20 patient notification and patient transfer.
21 (4) It shall be unlawful discriminatory practice for any person to impose penalties or
22 take disciplinary action against or deny or limit licenses, certifications, degrees, or
23 other approvals or documents of qualification to any physician, nurse, staff member,
24 or employee who refuses to comply with the advance directive of a patient,~~[or]~~ a
25 health care decision by a responsible party under KRS 311.621 to 311.643***, or a***
26 ***medical order for scope of treatment***, as long as the physician, nurse, staff member,
27 or employee complies with the provisions of subsection (2) of this section regarding

1 notification and transfer.

2 ➔Section 5. KRS 311.637 is amended to read as follows:

3 (1) The withholding or withdrawal of life-prolonging treatment or artificially-provided
4 nutrition and hydration from a grantor in accordance with the provisions of KRS
5 311.621 to 311.643 shall not, for any purpose, constitute a suicide. The making of
6 an advance directive under KRS 311.621 to 311.629***, a medical order for scope of***
7 ***treatment under Section 2 of this Act,*** or a health care decision by a responsible
8 party under KRS 311.621 to 311.643 shall not affect in any manner the sale,
9 procurement, or issuance of any policy of life insurance, nor shall it be considered
10 to modify the terms of an existing policy of life insurance. Notwithstanding any
11 term of the policy to the contrary, no policy of life insurance shall be legally
12 impaired or invalidated in any manner by a health care decision made by a surrogate
13 or responsible party or by the withholding or withdrawal from an insured patient
14 any medical procedure or intervention which would serve only to prolong
15 artificially the dying process.

16 (2) No person, corporation, or governmental agency shall require or induce any person
17 to execute a living will directive ***or a medical order for scope of treatment under***
18 ***Section 2 of this Act,*** or to make a health care decision as a responsible party under
19 KRS 311.621 to 311.643***,*** as a condition for a contract or for the provision of any
20 service, medical treatment, or benefit.

21 (3) Nothing in KRS 311.621 to 311.643 shall be construed to impose any liability on a
22 surrogate or responsible party for any expenses of the grantor for which the
23 surrogate or responsible party would not otherwise have been liable.

24 (4) KRS 311.621 to 311.643 shall not create a presumption concerning the intention of
25 an adult who has revoked or has not executed an advance directive ***or a medical***
26 ***order for scope of treatment under Section 2 of this Act,*** with respect to the use,
27 withholding, or withdrawal of life-prolonging treatment if a terminal condition

1 exists.

2 (5) KRS 311.621 to 311.643 shall not affect the common law or statutory right of an
3 adult to make decisions regarding the use of life-prolonging treatment, so long as
4 the adult is able to do so, or impair or supersede any common law or statutory right
5 that an adult has to effect the withholding or withdrawing of medical care.

6 (6) KRS 311.621 to 311.643 shall not preclude or restrict the right of persons to make
7 advance directives outside the provisions of KRS 311.621 to 311.643; and KRS
8 311.621 to 311.643 shall not restrict or preclude medical personnel, physicians,
9 nurses, or health care facilities from following other written advance directives
10 consistent with accepted medical practice.

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 3/12/2015