

House Bill 999

By: Representatives Lindsey of the 54th, Jacobs of the 80th, Oliver of the 83rd, Willard of the 49th, and Crawford of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide for legislative intent; to provide for definitions; to provide for portable medical
3 orders; to provide for requirements regarding who may administer a portable medical order;
4 to provide who is authorized to issue a portable medical order; to provide for the cancellation
5 of a portable medical order; to provide for the revocation of a portable medical order; to
6 provide that the Department of Community Health design a standardized portable medical
7 order form; to provide for immunity from certain liability for certain persons carrying out in
8 good faith decisions regarding a portable medical order; to provide for the effect of a portable
9 medical order on life insurance policies; to provide for the approval of the court with respect
10 to certain portable medical orders; to provide for related matters; to repeal conflicting laws;
11 and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
15 in its entirety Chapter 39, relating to cardiopulmonary resuscitation, as follows:

16 style="text-align:center">"CHAPTER 39

17 31-39-1.

18 The General Assembly finds that although cardiopulmonary resuscitation ~~has~~ and other
19 life-sustaining procedures have proved invaluable in the reversal of sudden, unexpected
20 death, it is appropriate for an attending physician, in certain circumstances, to issue an
21 order not to attempt cardiopulmonary resuscitation of a patient or other life-sustaining
22 procedures where appropriate consent or authorization has been obtained. The General
23 Assembly further finds that there is a need to establish and clarify the rights and obligations
24 of patients, their families or representatives, and health care providers regarding
25 cardiopulmonary resuscitation and the issuance of orders not to resuscitate and with respect

26 to the administration of life-sustaining procedures. The General Assembly further finds
 27 that, in the interest of protecting individual autonomy, cardiopulmonary resuscitation or the
 28 administration of life-sustaining procedures in some circumstances may cause loss of
 29 patient dignity and unnecessary pain and suffering. In recognition of the considerable
 30 uncertainty in the medical and legal professions as to the legality of implementing orders
 31 not to resuscitate or not to perform life-sustaining procedures, in recognition of the request
 32 of the Supreme Court of Georgia for legislative guidance in this area, and in recognition
 33 of the dignity and privacy which patients have a right to expect, the General Assembly
 34 declares that the laws of the State of Georgia shall recognize the right of patients or other
 35 authorized persons to instruct physicians and other health care personnel to refrain from
 36 cardiopulmonary resuscitation or from performing life-sustaining procedures.

37 31-39-2.

38 As used in this chapter, the term:

39 (1) 'Adult' means any person who is 18 years of age or older, is the parent of a child, or
 40 has married.

41 (2) 'Attending physician' means the physician selected by or assigned to a patient to have
 42 primary responsibility for the treatment and care of the patient. Where more than one
 43 physician share such responsibility, any such physician may act as the attending
 44 physician pursuant to this chapter.

45 (3) 'Authorized person' means any one person from the following list in the order of
 46 priority as listed below:

47 (A) Any agent under a durable power of attorney for health care or health care agent
 48 under an advance directive for health care appointed pursuant to Chapter 32 of this title;

49 (B) A spouse;

50 (C) A guardian over the person appointed pursuant to the provisions of Code Section
 51 29-4-1;

52 (D) A son or daughter 18 years of age or older;

53 (E) A parent; or

54 (F) A brother or sister 18 years of age or older.

55 (4) 'Candidate for nonresuscitation' means a patient who, based on a determination to a
 56 reasonable degree of medical certainty by an attending physician with the concurrence
 57 of another physician:

58 (A) Has a medical condition which can reasonably be expected to result in the
 59 imminent death of the patient;

60 (B) Is in a noncognitive state with no reasonable possibility of regaining cognitive
 61 functions; or

62 (C) Is a person for whom cardiopulmonary resuscitation would be medically futile in
 63 that such resuscitation will likely be unsuccessful in restoring cardiac and respiratory
 64 function or will only restore cardiac and respiratory function for a brief period of time
 65 so that the patient will likely experience repeated need for cardiopulmonary
 66 resuscitation over a short period of time or that such resuscitation would be otherwise
 67 medically futile.

68 (5) 'Candidate for withholding life-sustaining procedures' means a patient who, based on
 69 a determination to a reasonable degree of medical certainty by an attending physician
 70 with the concurrence of another physician:

71 (A) Has a medical condition which can reasonably be expected to result in the
 72 imminent death of the patient;

73 (B) Is a person for whom life-sustaining procedures would be medically futile in that
 74 such life-sustaining procedures will likely be unsuccessful in changing the patient's
 75 terminal medical condition and that such life-sustaining procedures would otherwise
 76 be medically futile; or

77 (C) Is in a state of permanent unconsciousness.

78 ~~(5)~~(6) 'Cardiopulmonary resuscitation' means only those measures used to restore or
 79 support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

80 ~~(6)~~(7) 'Decision-making capacity' means the ability to understand and appreciate the
 81 nature and consequences of an order not to resuscitate, including the benefits and
 82 disadvantages of such an order, and to reach an informed decision regarding the order.

83 ~~(6.1)~~(8) 'Emergency medical technician' means a person certified as an emergency
 84 medical technician, paramedic, or cardiac technician under Chapter 11 of this title.

85 ~~(7)~~(9) 'Health care facility' means an institution which is licensed as a hospital or nursing
 86 home pursuant to Article 1 of Chapter 7 of this title or licensed as a hospice pursuant to
 87 Article 9 of Chapter 7 of this title, or a home health agency licensed pursuant to Article
 88 7 of Chapter 7 of this title.

89 (10) 'Life-sustaining procedures' means medications, machines, or other medical
 90 procedures or interventions which, when applied to a patient in a terminal condition or
 91 in a state of permanent unconsciousness, could in reasonable medical judgment keep the
 92 patient alive but cannot cure the patient and where, in the judgment of the attending
 93 physician and a second physician, death will occur without such procedures or
 94 interventions. The term 'life-sustaining procedures' shall include, but not be limited to,
 95 the provision of nourishment or hydration and the administration of medication to
 96 alleviate pain or the performance of any medical procedure deemed necessary to alleviate
 97 pain.

98 ~~(8)~~(11) 'Minor' means any person who is not an adult.

99 ~~(9)~~(12) 'Order not to resuscitate' means an order not to attempt cardiopulmonary
100 resuscitation in the event a patient suffers cardiac or respiratory arrest, or both.

101 ~~(10)~~(13) 'Parent' means a parent who has custody of a minor or is the parent of an adult
102 without decision-making capacity.

103 ~~(11)~~(14) 'Patient' means a person who is receiving care and treatment from an attending
104 physician.

105 (15) 'Portable medical order' means an order given by an attending physician to withhold
106 life-sustaining procedures from a candidate for withholding life-sustaining procedures.

107 ~~(12)~~(16) 'Reasonably available' means that a person to be contacted can be contacted
108 with diligent efforts by an attending physician, another person acting on behalf of the
109 attending physician, or the health care facility within a reasonable period of time as
110 determined by the attending physician.

111 31-39-3.

112 (a) Every patient shall be presumed to consent to the administration of cardiopulmonary
113 resuscitation in the event of cardiac or respiratory arrest or to the administration of
114 life-sustaining procedures in the event of a terminal illness, unless there is consent or
115 authorization for the issuance of an order not to resuscitate or to withhold life-sustaining
116 procedures. Such presumption of consent does not presume that every patient shall be
117 administered cardiopulmonary resuscitation or life-sustaining procedures, but rather that
118 every patient agrees to its administration unless it is medically futile.

119 (b) Every adult shall be presumed to have the capacity to make a decision regarding
120 cardiopulmonary resuscitation or the administration of life-sustaining procedures unless
121 determined otherwise in writing in the patient's medical record pursuant to this Code
122 section or pursuant to a court order. When an order not to resuscitate is requested by an
123 adult with decision-making capacity, such order shall be presumed, unless revoked
124 pursuant to Code Section 31-39-6, to be the direction of such person regarding
125 resuscitation. When a portable medical order has been properly administered pursuant to
126 Code Section 31-39-4, such order shall be presumed, unless revoked pursuant to Code
127 Section 31-39-6, to be the direction of such person regarding such portable medical order.

128 (c) Nothing in this chapter shall require a health care facility, any other facility, or a health
129 care provider to expand its existing equipment and facilities to provide cardiopulmonary
130 resuscitation or life-sustaining procedures.

131 31-39-4.

132 (a) It shall be lawful for the attending physician to issue an order not to resuscitate
133 pursuant to the requirements of this chapter. Any written order issued by the attending

134 physician using the term 'do not resuscitate,' 'DNR,' 'order not to resuscitate,' 'no code,' or
135 substantially similar language in the patient's chart shall constitute a legally sufficient order
136 and shall authorize a physician, health care professional, or emergency medical technician
137 to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain
138 effective, whether or not the patient is receiving treatment from or is a resident of a health
139 care facility, until the order is canceled as provided in Code Section 31-39-5 or until
140 consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs
141 earlier. An attending physician who has issued such an order and who transfers care of the
142 patient to another physician shall inform the receiving physician and the health care
143 facility, if applicable, of the order.

144 (b) It shall be lawful for the attending physician to issue a portable medical order to a
145 candidate for withholding life-sustaining procedures pursuant to the requirements of this
146 chapter. Such order shall be documented on a form subject to the requirements established
147 by Code Section 31-39-6.1. A portable medical order shall require both the signature of
148 the attending physician and the patient. If the patient does not have the capacity to sign the
149 portable medical order, then an authorized person shall sign the order. An attending
150 physician shall be required to review a portable medical order administered to a patient at
151 least once every year and to indicate that such order is still appropriate by his or her
152 signature. A portable medical order issued by the attending physician clearly indicating
153 that life-sustaining procedures should not be administered to a patient shall constitute a
154 legally sufficient order and shall authorize a physician, health care professional, or
155 emergency medical technician to withhold life-sustaining procedures. A portable medical
156 order administered pursuant to this subsection shall be valid in any medical facility in
157 which the patient who is the subject of such portable medical order is being treated.

158 ~~(b)~~(c) An adult person with decision-making capacity may consent orally or in writing to
159 an order not to resuscitate and its implementation at a present or future date, regardless of
160 that person's mental or physical condition on such future date. If the attending physician
161 determines at any time that an order not to resuscitate or a portable medical order issued
162 at the request of the patient is no longer appropriate because the patient's medical condition
163 has improved, the physician shall immediately notify the patient.

164 ~~(c)~~(d) The appropriate authorized person may, after being informed of the provisions of
165 this Code section, consent orally or in writing to an order not to resuscitate for an adult
166 candidate for nonresuscitation or a portable medical order for an adult candidate for
167 withholding life-sustaining procedures; provided, however, that such consent is based in
168 good faith upon what such authorized person determines such candidate for
169 nonresuscitation or for withholding life-sustaining procedures would have wanted had such
170 candidate for nonresuscitation or for withholding life-sustaining procedures understood the

171 circumstances under which such order is being considered. Where such authorized person
 172 is an agent under a durable power of attorney for health care or health care agent under an
 173 advance directive for health care appointed pursuant to Chapter 32 of this title, the
 174 attending physician may issue an order not to resuscitate a candidate for nonresuscitation
 175 or a portable medical order for a candidate for withholding life-sustaining procedures
 176 pursuant to the requirements of this chapter without the concurrence of another physician,
 177 notwithstanding the provisions of paragraph (4) of Code Section 31-39-2.

178 ~~(d)~~(e) Any parent may consent orally or in writing to an order not to resuscitate or to a
 179 portable medical order for his or her minor child when such child is a candidate for
 180 nonresuscitation or a candidate for withholding life-sustaining procedures. If in the opinion
 181 of the attending physician the minor is of sufficient maturity to understand the nature and
 182 effect of an order not to resuscitate or a portable medical order, then no such order shall be
 183 valid without the assent of such minor.

184 ~~(e)~~(f) If none of the persons specified in subsections ~~(b)~~(c), ~~(c)~~(d), and ~~(d)~~(e) of this Code
 185 section is reasonably available or competent to make a decision regarding an order not to
 186 resuscitate or a portable medical order, an attending physician may issue an order not to
 187 resuscitate for a patient, provided that:

188 (1) Such physician determines with the concurrence of a second physician, in writing in
 189 the patient's medical record, that such patient is a candidate for nonresuscitation or a
 190 candidate for withholding life-sustaining procedures;

191 (2) An ethics committee or similar panel, as designated by the health care facility,
 192 concurs in the opinion of the attending physician and the concurring physician that the
 193 patient is a candidate for nonresuscitation or a candidate for withholding life-sustaining
 194 procedures; and

195 (3) The patient is receiving inpatient or outpatient treatment from or is a resident of a
 196 health care facility other than a hospice or a home health agency.

197 31-39-5.

198 (a) An attending physician for whose patient an order not to resuscitate or a portable
 199 medical order has been issued pursuant to subsection ~~(c)~~(d), ~~(d)~~(e), or ~~(e)~~(f) of Code
 200 Section 31-39-4 shall examine that patient at such intervals as determined periodically by
 201 the physician to determine whether the patient still qualifies as a candidate for
 202 nonresuscitation or as a candidate for withholding life-sustaining procedures, unless that
 203 order has been canceled or consent thereto revoked as provided in this chapter. That
 204 physician shall record such determination in the patient's medical chart. Failure to comply
 205 with this subsection shall not invalidate that order.

206 (b) If the order not to resuscitate or the portable medical order was entered pursuant to
207 subsection ~~(e)~~(d), ~~(d)~~(e), or ~~(e)~~(f) of Code Section 31-39-4 and the attending physician who
208 issued the order or, if that attending physician is unavailable, another attending physician,
209 at any time determines that the patient no longer qualifies as a candidate for
210 nonresuscitation or as a candidate for withholding life-sustaining procedures, the attending
211 physician or the physician's designee shall immediately include such determination in the
212 patient's chart, cancel the order, and notify the patient, the person who consented to the
213 order, and all health care facility staff responsible for the patient's care of the cancellation.

214 (c) If an order not to resuscitate or a portable medical order was entered pursuant to
215 subsection ~~(e)~~(d), ~~(d)~~(e), or ~~(e)~~(f) of Code Section 31-39-4 and the patient at any time
216 regains decision-making capacity, the attending physician who issued the order or, if that
217 attending physician is unavailable, another attending physician, shall immediately
218 determine if the patient consents to the order not to resuscitate or to the portable medical
219 order and, if the patient does not so consent, the attending physician or the physician's
220 designee shall cancel the order by an appropriate entry on the record and notify all health
221 care facility staff responsible for the patient's care of the cancellation.

222 31-39-6.

223 (a) A patient may, at any time, revoke his or her consent to an order not to resuscitate or
224 portable medical order by making either a written or an oral declaration or by any other act
225 evidencing a specific intent to revoke such consent which is communicated to or in the
226 presence of an attending physician or a member of the nursing staff at the health care
227 facility, a health care professional, or an emergency medical technician.

228 (b) Any parent or authorized person may at any time revoke his or her consent to an order
229 not to resuscitate a patient or to a portable medical order by making either a written or an
230 oral declaration or by any other act evidencing a specific intent to revoke such consent
231 which is communicated to or in the presence of an attending physician or a member of the
232 nursing staff at the health care facility, a health care professional, or an emergency medical
233 technician.

234 (c) Any physician who is informed of or provided with a revocation of consent pursuant
235 to this Code section shall, either by himself or herself or by designee, immediately include
236 the revocation in the patient's chart, cancel the order, and notify any health care facility
237 staff responsible for the patient's care of the revocation and cancellation. Any member of
238 the nursing staff, a health care professional, or emergency medical technician who is
239 informed of or provided with a revocation of consent pursuant to this Code section shall
240 immediately notify a physician of such revocation.

241 31-39-6.1.

242 (a) In addition to those orders not to resuscitate authorized elsewhere in this chapter, any
 243 physician, health care professional, or emergency medical technician shall be authorized
 244 to effectuate an order not to resuscitate for a person who is not a patient in a hospital,
 245 nursing home, or licensed hospice and the order is evidenced in writing containing the
 246 patient's name, date of the form, printed name of the attending physician, and signed by the
 247 attending physician on a form substantially similar to the following:

248 'DO NOT RESUSCITATE ORDER

249 NAME OF PATIENT: _____
 250 THIS CERTIFIES THAT AN ORDER NOT TO RESUSCITATE HAS BEEN
 251 ENTERED ON THE ABOVE-NAMED PATIENT.

252 SIGNED: _____
 253 ATTENDING PHYSICIAN
 254 PRINTED OR TYPED NAME OF ATTENDING PHYSICIAN: _____
 255 ATTENDING PHYSICIAN'S TELEPHONE NUMBER: _____
 256 DATE: _____'

257 (b) A person who is not a patient in a hospital, nursing home, or licensed hospice and who
 258 has an order not to resuscitate pursuant to this Code section shall wear an identifying
 259 bracelet on either the wrist or the ankle or an identifying necklace. The bracelet shall be
 260 substantially similar to identification bracelets worn in hospitals. The bracelet or necklace
 261 shall be on an orange background and shall provide the following information in boldface
 262 type:

263 'DO NOT RESUSCITATE ORDER

264 Patient's name: _____
 265 Authorized person's name and telephone number, if applicable: _____
 266 Patient's physician's printed name and telephone number: _____
 267 Date of order not to resuscitate: _____'

268 Any physician, health care professional, or emergency medical technician shall be
 269 authorized to regard such a bracelet or necklace as a legally sufficient order not to
 270 resuscitate in the same manner as an order issued pursuant to this chapter unless such
 271 person has actual knowledge that such order has been canceled or consent thereto revoked
 272 as provided in this chapter.

273 (c) Any order not to resuscitate evidenced pursuant to subsection (a) or (b) of this Code
 274 section may be revoked as provided in Code Section 31-39-6 and may be canceled as
 275 provided in Code Section 31-39-5.

276 (d) The Department of Community Health is authorized to develop a standardized portable
 277 medical order form. Such form shall describe the appropriate course of action for a patient
 278 who is a candidate for withholding life-sustaining procedures. The form shall include, but
 279 not be limited to, the following information:

280 (1) Full scope of treatment, which may include such treatment as intubation, advanced
 281 airway interventions, mechanical ventilation, and cardioversion;

282 (2) Limited additional interventions, which may include such treatment as intravenous
 283 solutions and cardiac monitoring;

284 (3) Comfort measures, which may include such treatments and medication intended to
 285 relieve pain and suffering; and

286 (4) Under what conditions transfer to a hospital would be necessary.

287 Nothing in this chapter shall preclude the inclusion of a do not resuscitate order as part of
 288 a form produced pursuant to this subsection. The Department of Community Health may
 289 develop a registry of patients who have completed a portable medical order form pursuant
 290 to this chapter. Patients shall submit their information on a voluntary basis for such
 291 registry.

292 31-39-7.

293 (a) No physician, health care professional, health care facility, emergency medical
 294 technician, or person employed by, acting as the agent of, or under contract with any of the
 295 foregoing shall be subject to criminal prosecution or civil liability or be deemed to have
 296 engaged in unprofessional conduct for carrying out in good faith a decision regarding
 297 cardiopulmonary resuscitation or a decision regarding the withholding of life-sustaining
 298 procedures authorized by this chapter by or on behalf of a patient or for those actions taken
 299 in compliance with the standards and procedures set forth in this chapter.

300 (b) No physician, health care professional, health care facility, emergency medical
 301 technician, or person employed by, acting as the agent of, or under contract with any of the
 302 foregoing shall be subject to criminal prosecution or civil liability or be deemed to have
 303 engaged in unprofessional conduct for providing cardiopulmonary resuscitation to a patient
 304 for whom an order not to resuscitate has been issued or for administering life-sustaining
 305 procedures to a patient for whom a portable medical order has been issued, provided that
 306 such physician or person:

307 (1) Reasonably and in good faith was unaware of the issuance of an order not to
 308 resuscitate or a portable medical order; or

309 (2) Reasonably and in good faith believed that consent to the order not to resuscitate or
310 portable medical order had been revoked or canceled.

311 (c) No persons shall be civilly liable for failing or refusing in good faith to effectuate an
312 order not to resuscitate or a portable medical order. No person shall be subject to criminal
313 prosecution or civil liability for consenting or declining to consent in good faith, on behalf
314 of a patient, to the issuance of an order not to resuscitate or a portable medical order
315 pursuant to this chapter.

316 (d) Any attending physician who fails or refuses to comply with an order not to resuscitate
317 or a portable medical order entered pursuant to this chapter shall endeavor to advise
318 promptly the patient, if conscious, or the next of kin or authorized person of the patient that
319 such physician is unwilling to effectuate the order. The attending physician shall thereafter
320 at the election of the next of kin or authorized person:

321 (1) Make a good faith attempt to effect the transfer of the patient to another physician
322 who will effectuate the order not to resuscitate or the portable medical order; or

323 (2) Permit the next of kin or authorized person to obtain another physician who will
324 effectuate the order not to resuscitate or the portable medical order.

325 (e) Any emergency medical technician who fails or refuses to comply with an order not
326 to resuscitate or a portable medical order entered pursuant to this chapter shall endeavor
327 to advise promptly the patient, if conscious, or the next of kin or authorized person of the
328 patient, if reasonably available, that such emergency medical technician is unwilling to
329 effectuate the order.

330 31-39-8.

331 (a) No policy of life insurance shall be legally impaired, modified, or invalidated in any
332 manner by the issuance of an order not to resuscitate or a portable medical order
333 notwithstanding any term of the policy to the contrary.

334 (b) A person may not prohibit or require the issuance of an order not to resuscitate or a
335 portable medical order for an individual as a condition for such individual's being insured
336 or receiving health care services.

337 31-39-9.

338 (a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility
339 which any person may have to effect the withholding or withdrawal of cardiopulmonary
340 resuscitation or life-sustaining procedures in any lawful manner or affect the validity of
341 orders not to resuscitate or a portable medical order issued and implemented under other
342 circumstances. In such respect, the provisions of this chapter are cumulative.

343 (b) Nothing in this chapter shall be construed to preclude a court of competent jurisdiction
344 from approving the issuance of an order not to resuscitate or a portable medical order under
345 circumstances other than those under which such an order may be issued pursuant to this
346 chapter."

347

SECTION 2.

348 All laws and parts of laws in conflict with this Act are repealed.